

Regular Meeting
May 8, 2024

The regularly scheduled meeting of the Town of Homer Town Board held on Wednesday, May 8, 2024, in the town board room, was called to order by Supervisor Michael R. Park at 7:00 p.m.

PRESENT

Michael R. Park, Supervisor
Barry E. Warren, Deputy Supervisor
Caleb J. Leach, Councilmember
Kevin M. Williams, Councilmember
Sarah E. Head, Councilmember
Daniel J. Ellis II, Attorney for the Town
Heather M. Hill, Town Clerk
Brooke L. Poli, Deputy Clerk

OTHERS PRESENT

Mike McMahon, Chairman, Homer Planning Board
Paul Stepien, resident, Town of Homer
JoAnn Dukelow, resident, Town of Homer
Tony Krishock, Syracuse Astronomical Society
Kelly Preston, resident, Homer
Martin Sweeney, Town Historian
Victor & Ann Siegle, resident, Homer
Pierre Beaudry, resident, Village of Homer
Mary Dafoe, resident, Little York
Nancy Dafoe, resident, Little York
Tim Malchak, resident, Town of Homer
Boyd & Deb Chapman, resident, Town of Homer
Steve Major, resident, Town of Preble
Caoimne Dudgeon, resident, Town of Homer
Emmanuel Pothos, resident, Cortlandville
Karen Dudgeon, resident, Town of Homer
Larry Jones, resident, Town of Homer
Linda Jones, resident, Town of Homer
Tim Robideau, resident, Village of Homer
Amy Hall, resident, Town of Homer
Stephanie Spina, resident, Town of Homer
Amy Bertini, resident, Town of Preble
Adam Clifford, resident, Town of Homer
Raymond Dague, Syracuse Astronomical Society
Rae Cute, resident, Town of Homer
Deb Chapman
Sylvia Hammond
Brenda Contento
Jeff Higgins
Bess Path
Les Wainman
Jack Eves, X101 News
Don Ferris, resident, Village of Homer
Marie Ferro
Brooke Keeney
Lee Benson
Greg Leach

Patricia Pollack
Margaret Mellott, Cortland Standard
Fink Underwood
Barb Stepien
Amy Dehlman
John Rush
Anita Jebbett, resident, Town of Homer
Cathy Robinson
Maria V. Arnold
Ward Dukelow
Brady Armstrong
Kathleene & Joseph Compagni
Ashley Neiderman
Renee Neiderman
Kim Allen
Elizabeth McGrath
Melissa Bromwell
Susan & Ronald Porter
Jane O'Shea
Terri Fendya
Richard Neiderman
Karen O'Neil Covell
Andy Covell
Jeff Ehrlich
Charles Spina
Shawn Cute
Sandy Ehrlich
Anne W. Regard
Jarret Regard
Kelly Geremski
Patricia Martinez

ABSENT

John R. Phelps, Highway Superintendent, Town of Homer

PLEDGE OF ALLEGIANCE

MINUTES

On motion Councilmember Leach, seconded by Councilmember Head, and carried unanimously: **RESOLVED: The regular meeting minutes of the April 10th, 2024, meeting were approved as presented.**

BILLS TO BE PAID

General bills were approved as audited by Councilmember Williams, motioned by Councilmember Williams, seconded by Deputy Supervisor Warren, and carried unanimously: **RESOLVED: That General Fund vouchers #73 through #99 totaling \$13,307.81 are approved for payment.**

Highway bills were approved as audited by Councilmember Leach, motioned by Councilmember Leach, seconded by Councilmember Head, and carried unanimously: **RESOLVED: That Highway Fund vouchers #41 through #62 totaling \$232,151.77 are approved for payment.**

MONTHLY REPORTS

Presented for audit by the Town Board were:

1. The Town Clerk's report of all receipts and disbursements for April 2024.

2. The Supervisor's reports on all financial activities for April 2024.
3. The Code Enforcement Officer's report on all building permits issued for April 2024.

On motion by Councilmember Head, seconded by Deputy Supervisor Warren and carried unanimously: **RESOLVED: The Town Clerk's monthly report for April 2024, the Supervisor's monthly report for April 2024, and the Code Enforcement Officer's monthly report for April 2024, are received, accepted, and filed.**

BILLBOARDS

Supervisor Park opened the discussion and asked if any board members had a motion regarding billboards. Councilmember Williams stated he would like to motion to authorize and direct the town attorney to draw up a draft billboard law, using the information we have gained tonight and the information that we have gained over the last two years, so that we can begin the SEQR process and consider the next steps for potential adoption of a billboard law and Councilmember Leach seconded his motion. Further discussion occurred.

Councilmember Head shared she and Councilmember Leach started attending town board meetings last year and learning about the billboard proposals. Since that time, she has educated herself on the proposal.

Head discussed the issue of freedom of speech and the lack of control the town would have over what advertisements would be permitted if the billboards were approved.

She agreed with Supervisor Forbes' prior proposal at the 2023 November town board meeting of creating a floating zone along Interstate 81 that would allow local businesses to advertise. This would allow the town to have control over what is permitted to be advertised and set limitations on size and whether the signs were digital or static. She stated that she is generally opposed to off premises billboard signs in Homer.

Councilmember Williams shared his research and reviewed in detail the below draft law he proposed, for purposes of discussion, for an Interstate 81 Overlay District.

Town Of Homer
Draft Law
I-81 BILLBOARD OVERLAY DISTRICT

1. Statement of Intent/Purpose

- a. To establish standards for the regulation of an Interstate -81 billboard overlay district in the Town Of Homer.
- b. To recognize Interstate 81, with its average 31,000 vehicle traffic counts per day, with future estimates increasing, which travel through the five Cortland County Exits, as a significant marketing source for increased commerce through the county. *(Source: NYS DOT Traffic Data Viewer Website. 2019 Traffic Data)*. Additionally, the Homer and Preble exits provide increased traffic as daily commuters head to work in Ithaca and then home.
- c. To recognize that Billboards are, by their nature, different in scope and purpose from other types of signage in the Town. Interstate-81 Billboards also advertise or communicate goods, services or messages not conducted, sold, or generated on the lot where the Billboard is located.
- d. To recognize that Billboards are significantly larger in size than other types of signage allowed in the Town and their principal purpose is to dramatically attract the attention of the travelling public on Interstate 81
- e. To recognize the potential impact of a billboard on adjacent areas is significantly greater than other types of signage. Recently, more local businesses, non-profits, event centers, desire to utilize advancements in technology which permit signs (including Billboards) to change messages electronically, and with more frequency. *(Source-Cortland County Chamber of Commerce)*
- f. To recognize newer technologies can increase the potential impact of a Billboard in terms of adversely dominating the environment in which they operate due to light spillover and light pollution, unless regulated in a reasonable fashion. The intent is to establish size, location and operating standards and regulations for Billboards, including addressing those utilizing these newer technologies, in order to minimize the secondary effects that can accompany the unregulated display of these types of signs.

- g. To recognize the potential financial impact to approximately 1,000 businesses, 8 destination event centers, the Town of Homer, the Village of Homer, and the County of Cortland, as a place to stop, visit, stay & enjoy all that the county has to offer. Businesses and municipalities alike are working together to promote the county as a place to live and raise a family. Being within the driving radius of the future Micron development (*Source- Syracuse.com 03/06/2023- Tim Knauss*), we can seize the opportunity to showcase all that the Town of Homer and County of Cortland have to offer at the same time as bringing in outside dollars into the county, increasing sales tax proceeds, and potentially reducing the tax burden to the residents of the Town of Homer and the County of Cortland.
- h. To recognize that the majority(**insert percentage**) of the revenue for the Town of Homer annual budget is Sales tax revenue, supplemented by property tax levy.
- i. To comply and adhere to Federal and state Laws enacted under federal law (23 USC 131)(23 CFR 750) and New York State implemented rules found under title 17 NYCRR part 150

2. Definitions

BILLBOARD	Any Single or double-faced Billboard having back to back surface display areas, no part of which is more than two (2) feet apart, is considered to be a single Billboard
STATIC BILLBOARD	A billboard which need definition
DIGITAL BILLBOARD	A Billboard which incorporates, in whole or in part, an Electronic Message..
ELECTRONIC MESSAGE	A Billboard or Freestanding Sign, or portion thereof, that can be electronically changed by remote or automatic means, or that appears to change or have movement caused by any method other than manually removing and replacing the Billboard or its components.
FREESTANDING SIGN	A sign not attached to or part of a building but separate by itself and supported by one or more uprights, braces or other structural elements in or upon the ground.
SIGN FACING	The surface of the sign on, against, or through which the message of the sign is exhibited.
SIGN AREA	The sign surface area of a sign face is the entire area measured within a single continuous perimeter enclosing all elements of the sign which form an integral part of the sign and which are organized, related, and composed to form a single unit. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign
STANDARD ILLUMINATED SIGNS	Signs or individual letters in which an artificial source of light is used in order to make the message readable. This definition shall include internally and externally lighted signs, and reflectorized, glowing, or radiating signs.
DIGITAL ILLUMINATION SIGN	Need Definition?
SIGN STRUCTURE	The supports, uprights, bracing, and framework for the sign. In the case of a SIGN STRUCTURE consisting of two or more sides where the angle formed between any of the sides (or the projection thereof) exceeds 15 degrees, each side shall be considered a separate

3. Locations

- a. Billboards shall be limited to property with physical frontage on Interstate- 81 in business, commercial, and industrial districts that meets the requirements of Federal law (23 USC 131) (23 CFR 750 and New York State implemented rules found under title 17 NYCRR part 150.
- b. Billboards erected to be visible to travelers on interstate 81 shall be no further than 300 feet from the highway boundary of interstate 81 at a point perpendicular to the centerline of the highway.
- c. Billboards shall not be erected within 500 feet of an interchange, intersection, safety rest stop, or information center.
- d. Billboards shall not be erected within 400 feet from any habitable residential structure.
- e. Billboards located on top of, cantilevered over or otherwise suspended above any building or structure are prohibited.

4. Spacing

- a. Not more than three (3) Billboards may be located per linear mile regardless of the fact that such Billboards may be located on different sides of the roadway. The linear mile measurement shall not be limited to the boundaries of the Town where the particular roadway extends beyond such boundaries.
- b. Insert NYS DOT separation regs here for digital separation requirements?

5. Height

- a. The height of the Billboard shall not exceed fifty (50) feet above the highest level of the roadway upon which the Billboard faces or to which the message upon the Billboard is directed. In the event that the Billboard is situated upon two roadways having different levels, the height of the Billboard shall be measured from the higher roadway. A Billboard's height, for purposes of this Section, shall be measured from the natural grade at the base of the sign structure to the highest point of the sign structure.

6. Sign Area

- a. The Sign area (messaging component) of any side of a Billboard shall not exceed seven- hundred (700) square feet..
- b. Tandem or stacked Billboards are prohibited.
- c. Vee style Billboards are permitted.
- d. Billboards exceeding four-hundred forty (440) sq. feet in area may not be double-faced, abutting and facing the same direction. Any Billboard with a single sign face divided into separate advertisements, and any Billboards which stand flush to one another () shall be considered double- faced.

7. Illumination

- a. Billboards with standard illumination shall be equipped with a timer so as to only illuminate such Billboard for the time period between one half-hour prior to sunset and one half hour after sunrise.
- b. Billboards with Standard illumination light shall have appropriate shielding directing the light to the sign and reducing spill over.
- c. All Digital illumination Billboards shall be equipped with a light sensor mechanism to automatically adjust the level of brightness in response to ambient light conditions, and to produce a response to the changes in ambient light conditions at all times day or night.
- d. Electronic Messages shall be designed and equipped to freeze the device in one position if a malfunction occurs. The displays must also be equipped with a means to immediately discontinue the display if it malfunctions, and the Billboard owner must immediately stop the electronic message when notified by the Town that it is not complying with the standards of this section. Prior to issuing any necessary permits for an Electronic Message, the applicant shall submit to the Town written verification from the manufacturer that the Digital Billboard is so designed and equipped.
- e. Digital Billboards shall also be equipped with a means to immediately turn off the Electronic message display or lighting if they malfunction, creating a safety hazard or distraction, and the Billboard owner or agent shall immediately turn off the Electronic Messages or lighting when notified by the Town that it is not in compliance with this local law.

- f. The maximum brightness levels of all Billboards shall not exceed .3 (three tenths) foot-candles over ambient light levels measured within one-hundred fifty (150) feet of the source. (*Source: Outdoor Advertising Association of America (OAAA) Dr. Ian Lewin) (American Sign Association)*)
- g. Electronic Images and Messages.

1. Digital Billboards shall contain only a single, contiguous Electronic Message on each Billboard face.
2. Images and messages displayed on Digital Billboards shall be static or still images. Animation, video streaming, moving images, or other pictures and graphics displayed in a progression of frames that give the illusion of motion or moving objects is prohibited.
3. Sequential messaging as part of an Electronic Message is prohibited. The images and messages displayed on all Digital Billboards shall be complete within themselves without continuation in content to the next image or message or to any other Billboard.

8. Size.

1. Every line of copy and graphics in an Electronic Message shall be at least twelve (12) inches in height. If there is insufficient room for copy and graphics of this size within the actual copy and graphic area of a Billboard, then no Electronic Message shall be permitted

9. Duration.

1. The display or message on a Digital Billboard may change no more frequently than once every eight (8) seconds. (*Source: international sign association*)
2. The transition from one digital billboard image or message to another shall be instantaneous, without delay or special effects.

10. Emergency Alert notification MOA.

1. Emergency Management Public Communication
2. Digital Billboards shall be made available to the county emergency management and or other authorizing emergency agencies such Fema IPAWS or NYAlert or Amber Alerts that issues emergency declarations under a memorandum of understanding by both parties.

11. Construction and Maintenance

- i. A Billboard shall be constructed in such a fashion that it will withstand all wind and vibration forces that can normally be expected to occur in the vicinity and in compliance with all applicable codes, and be stamped by a qualified certified engineer.
- ii. The minimum design load of wind force shall be 35psi, and the hole depth shall be clearly stated in on the stamped engineered plans
- iii. A Billboard shall be maintained so as to assure proper alignment of structure, continued structural soundness and continued readability of message.
- iv. A visual inspection for structure worthiness shall be performed by the Town of Homer Code Officer or licensed certified engineer and shall be submitted to the Town of Homer code office every 5 years.

12. Permitting documents

- a. Prior to submitting a permit, The Town of Homer shall require an authorized OUTDOOR ADVERTISING APPLICATION AND PERMIT (currently form ROW375) from NYSDOT Form in the form of a permit and also a Town of Homer building permit application.

13. Other Applicable Laws

1. A Billboard must comply with all applicable provisions of Federal and State law, and all other relevant regulations and ordinances of the Town.

14. Validity

1. If any part or provision of this local law or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the Town Board. The Town of Homer hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

15. Repeal.

1. All ordinances, local laws and parts thereof inconsistent with this Local Law are repealed.

16. Effective Date.

1. This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of New York State's Municipal Home Rule Law.

List of Sources:

American Sign Council

NYDOT Traffic viewer Website

NYS variable message guidelines Office of traffic and safety 2018

National Institute of Health, Impact of billboards on driver visual behavior

Daktronics

Outdoor Advertising Association Of America

Syracuse.com

Chamber of Commerce, Bob Haight

Homer Business Association, Don Richards

NYALERT

FEMA- IPAWS notification

International sign association-

Various towns similar

Chief of Police Homer Robert Pitman

To do:

Consult with Code on Tools for compliance

Does this law require GML 239-m referral? What documentation should be requested?

Detail prerequisite approvals needed by DOT or Highway how to write verbage
TO ACCOMPANY PERMIT REQUEST

Courtney Metcalf emergency management MOA? County Chair?

Additional wordage needed when converting standard to digital signage to require the NYSDOT electronic sign

Definitions need more

While compiling the draft law, Williams stated he reviewed the Town of Homer's Comprehensive Plan and tried to incorporate a compromise into the draft law. He discussed the town working to keep property taxes down and the consideration of additional avenues that would assist with that. He discussed different sizes of signs, light mitigation, and negotiations that could be agreed upon and discussed further.

Supervisor Park stated there is a lot more homework that the town board would have to complete before a final decision on billboards is made.

He asked if there was any other discussion from the town board.

On motion by Councilmember Williams, seconded by Councilmember Leach: Park- Aye, Leach- Aye, Williams- Aye, Warren- Aye, Head- Nay: **RESOLVED: Motion to authorize and direct the town attorney to draw up a draft billboard law, using the information we have gained tonight and the information that we have gained over the last two years, so that we can begin the SEQR process and consider the next steps for potential adoption of a billboard law.**

PRIVILEGE OF THE FLOOR

Supervisor Park asked if anyone would like to speak or have any questions for the town board. There was no one who wanted to speak.

HIGHWAY SUPERINTENDENT

Councilmember Leach updated that the highway department will be finishing a highway maintenance project this upcoming week. Highway Superintendent Phelps has the majority of the sand and sod purchased for next year and are ahead of schedule. The town was notified of the reimbursement funding they will receive from the state through CHIPS. The highway department will not be reimbursed until the end of the year. funding from the state has been completed but the town will not receive the funding until the end of the year. Supervisor Park stated the town pays their bills in a timely manner, which assists with faster delivery times.

NEW HIGHWAY TRUCK

There was discussion on the existing Town of Homer's 2013 Dodge RAM truck that needs to be replaced with a new truck, as the body of the truck is rusting and damaged. There was a quote obtained from Robert Green Truck Division for the purchase of a new 2024 Dodge RAM truck in the amount of \$102,576.10. Highway Superintendent Phelps recommended purchasing the proposed truck. The town board stated the existing 2013 Dodge RAM truck would go to auction after the approval for the purchase of the new truck.

On motion by Councilmember Leach, seconded by Councilmember Williams and carried unanimously: **RESOLVED: To purchase the proposed new 2024 Dodge RAM truck from Robert Green Truck Division in the amount of \$102,576.10, which follows the Town of Homer's Procurement Policy.**

TOWN CLERK

Town Clerk Hill reported the second notice reminders for both fully and partially unpaid taxes were mailed. Hill also reported they were entering wedding season and are composing a job description for the new part time clerk position.

PERSONNEL POLICY

Supervisor Park stated there was a revised Personnel Policy that Attorney Ellis composed for the town board to review. He thanked Attorney Ellis for his work on the revisions and included the original policy for comparison. Park stated he would like to review and discuss the changes at the next town board meeting and get the town board members' feedback.

AFR-AUD

Supervisor Park updated the town board that the AFR-AUD had been filed and accepted by the state. If any board member would like to review the report, he would be happy to send it.

ART COLLECTION MANAGEMENT POLICY/HISTORIC COLLECTION/ART LOAN AGREEMENT

Supervisor Park stated Attorney Ellis completed the discussed amendments to the proposed Town of Homer Historian Collection/Art Agreement. The word *artifacts* alongside the word *art* added and two signature requirements were added and other minor changes. The town board thanked Attorney Ellis and Historian Sweeney for their work.

On motion by Councilmember Williams, seconded by Councilmember Head and carried unanimously: **RESOLVED: To adopt the below Town of Homer Historic Collection/Art Loan Agreement and Collection Management Policy.**

Town of Homer Historic Collection/Art Loan Agreement

This Loan Agreement ("Agreement") is entered into on _____[Date]_____, by and between: The Town of Homer, a Municipal Corporation located at 31 North Main Street, Homer, New York ("Lender"), and _____[Name of Borrower]_____, located at _____[Address]_____ ("Borrower").

Whereas, Lender owns certain artwork or an artifact described as _____
_____ (the "Artwork or Artifact"); and

Whereas, Borrower desires to borrow the Artwork or Artifact for the purposes of _____[Purpose of Loan]_____;

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Loan of Artwork or Artifact:

a. Lender agrees to loan the Artwork or Artifact to Borrower for the duration of _____[Start Date]_____ to _____[End Date]_____ (the "Loan Period").

b. Borrower agrees to exhibit the Artwork or Artifact at its premises located at _____[Address of Borrower]_____ during the Loan Period and will return said Artwork or Artifact by the termination date of the Loan Period..

2. Care of Artwork or Artifact:

a. Borrower agrees to exercise reasonable care in handling, transporting, and displaying the Artwork during the Loan Period.

b. Borrower shall provide adequate and reasonable security measures to protect the Artwork from theft, damage, or unauthorized access.

c. The plan for the standard of reasonable care and adequate security shall be approved by the Town Historian prior to Borrower taking possession of the Art or Artifact and the Borrower shall satisfy the standards which have been established. The standard of care and handling shall be that which is prescribed by the Metropolitan Museum of Art as described in the publication entitled "The Care and Handling of Art Objects: Practices in The Metropolitan Museum of Art" a copy of which is incorporated herein by reference and made a part hereof as if fully set forth herein.

3. Insurance:

a. Borrower shall maintain insurance coverage on the Artwork or Artifact during the Loan Period, with coverage for loss, theft, damage, and liability. The certificate of insurance shall be attached hereto upon execution of this loan agreement.

b. Lender shall be named as an additional insured and loss payee on Borrower's insurance policy for the duration of the Loan Period.

4. Condition of Artwork or Artifact:

a. Borrower acknowledges that it has examined the Artwork or Artifact and accepts it in its current condition.

b. Borrower agrees to return the Artwork or Artifact to Lender at the end of the Loan Period in the same condition as when it was received.

5. Reproduction Rights:

a. Borrower agrees not to reproduce, photograph, or make any copies of the Artwork or Artifact without the prior written consent of Lender.

6. Indemnification:

a. Borrower agrees to indemnify, defend, and hold harmless Lender from and against any claims, damages, liabilities, losses, costs, and expenses arising out of or related to Borrower's use of the Artwork or Artifact during the Loan Period.

7. Governing Law:

a. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

8. Forum Selection:

a. Any and all disputes arising from this agreement shall be decided solely and exclusively by state or county courts located in Cortland County, New York.

9. Entire Agreement:

a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

10. Modification:

a. No modification or amendment to this Agreement shall be effective unless in writing and signed by both parties.

11. Execution:

a. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Town of Homer _____ [name of borrower entity] _____

By: _____
Supervisor Michael Park enter signatory name/title

By: _____

By: _____
Town Historian

COLLECTION MANAGEMENT POLICY

Approved by the Board of Trustees of the Town of Homer, New York, in the County of Cortland, on ----- --, 202---

MISSION STATEMENT: Founded in 1794-95, the Town of Homer, New York, realizes its need to participate in recognizing the heritage of the community it serves. While it is not the responsibility of the Town as a municipality to operate a museum of art and historical artifacts, the Town recognizes it has through the years become a repository for works of art and artifacts of significance to the Town's history. Some of these items have come into the Town's possession through donations and have subsequently been made accessible to the public through display within the historic Town Hall built in 1908. Of special note, are the two nineteenth century portraits rendered by Homer's native son Francis Bicknell Carpenter who gained fame for his iconic image of President Lincoln in his "First Reading of the Emancipation Proclamation before the Cabinet" rendered during six months at the White House in 1864. Thus, the Town is dedicated to the preservation of these paintings by Carpenter and any art work or artifacts entrusted to their care and to the valuable role they play in understanding and appreciating local history. Such items are referred to in this document as "Collection."

ACQUISITION AND COLLECTION OVERSIGHT: The responsibility for the oversight of any art work or artifacts now owned by or acquired in the future by the Town of Homer falls upon the Town's Historian and the Board of Trustees. The Historian is to keep the Board apprised of all notable acquisitions made in any given year, especially in regard to works of art and artifacts that come to that Office. While the Historian is chiefly responsible for ephemera and photographs that should be archived by the Town, tangible artifacts and works of art not specifically deemed to be put into the Town's ownership, are to be left to the Historian's discretion as to the most suitable repository in the area for each, such as the several museums and historical societies in the environs of Homer.

PROVENANCE: The Town of Homer will not purchase or accept as a gift, bequest or loan any work of art or artifact it knows or has good reason to believe is not significant to the history of the town or is of questionable provenance or was stolen or sold under duress. In acquiring works of art entrusted to its ownership, the Town, through the efforts of its Historian, will make a good faith effort to maintain a record of the item's provenance (origin and previous ownerships).

OUTGOING LOANS: Should any requests be made for art work or artifact(s) in the Town's Collection to be provided on temporary loan to another organization, said loan requests must be evaluated in light of the art-historical and scholarly value of the exhibition for which they are requested. The borrowing institution must be able to ensure the safety of the loan before a loan is approved. All loan requests must be approved by the Historian and the Town Board. It is understood that certain works of art should not leave the Town Hall except under extraordinary circumstances because of their physical condition or their great importance to the Town's history. All loans should be for a specific period of time and should be documented by written loan agreements between the Town of Homer and its borrowers, which should be signed by both parties prior to transport. Packing and transportation arrangements must be made by or agreed to by the Historian.

INSURANCE: The Trustees of the Town of Homer should regularly review the type and amount of insurance carried for any of its physical assets, including significant works of art or artifacts in its Collection, especially any going out on loan.

LOANS TO THE TOWN: In the rare case works of art or artifacts relevant to the town's history might be temporarily loaned to the Town for public exhibition in the Town Hall, the Town should exercise the same standard of care for borrowed items as it exercises for its own Collection.

CARE OF THE COLLECTION: The Town Board and the Town Historian are entrusted with the preservation of the Town's works of art and must be guided by an absolute respect for the integrity and conservation of the works of art. Conservation and protection from physical harm is essential to the stewardship of any works of art and to extending their lifespan. It is understood that only under the direst circumstances should significant works of art or artifacts be offered up for sale, since that would be relinquishing the Town's responsibility to preserve, promote, and celebrate its heritage.

PERMA THIRD PARTY CONTRACT

Supervisor Park stated the town needs to submit and sign the yearly Public Employer Risk Management Association, Inc. (PERMA) Program Agreement for Third Party Administration Services listed below.

Public Employer Risk Management Association, Inc. (PERMA) Program Agreement for Third Party Administration Services

THIS AGREEMENT dated as of _____ entered into by and between the Public Employer Risk Management Association, Inc. ("PERMA"), a New York not-for-profit corporation having its principal place of business at 9 Cornell Road, Latham, New York 12110 and **Town of Homer, a town, having its principal place of business at 31 N. Main Street, , Homer, NY, 13077** (the "Member"), for administrative services to be provided by PERMA in connection with the Member's obligation to provide workers' compensation benefits for and to its employees.

1. **Purpose.** The Member desires to engage PERMA to provide Worker's Compensation Law claims administration services for certain "tail claims" that have arisen and PERMA is willing to provide those claims administration services upon the terms set forth in this agreement.

2. **Definitions.** For purposes of this agreement, the following terms will have the meanings indicated:

a. **"Allocated Loss Adjustment Expenses"** means all costs and expenses PERMA incurs that are attributed to the processing of Tail Claims, including, but not limited to, fees, costs, assessments and other charges imposed by the Workers' Compensation Board, medical cost containment and management services, in the amounts set forth in Schedule B, attorneys' fees and disbursements, court reporter services and transcripts, deposition charges and transcripts, fees for the service of process, court costs, courier/express mail, appeal bonds, printing costs related to trials and appeals, witness and expert fees, medical examinations and review, laboratory costs, engineering fees, independent adjuster fees, surveillance, photography and similar costs and expenses reasonably incurred and related to the investigation and defense of claims or the protection and collection of subrogation rights of the Member.

b. **"Benefit Payments"** means payments that are required by the Workers' Compensation Law and the rules, regulations and decisions of the Workers' Compensation Board to be made to claimants, providers and other vendors with respect to a Tail Claim.

c. **"Electronic Data Interchange or EDI"** means the Worker's Compensation Board has adopted Claims Electronic Data Interchange Release 3.0, as adopted by the Workers' Compensation Board, or such other electronic data interchange as may be adopted by the Workers' Compensation Board.

d. **"Tail Claim"** means existing indemnity and medical worker's compensation claims and all Worker's Compensation Board awards against the Member that arose prior to **11/1/2019** that the Member has assigned to PERMA to administer.

3. **Term.** This agreement will be effective on **6/1/2024** and will continue in force for one year, unless sooner terminated in accordance with paragraph 8. 2

4. **PERMA's obligations.** During the term of this Agreement, PERMA, will provide to the Member the services provided for in this agreement with respect to Tail Claims. PERMA will, as appropriate:

- a. Process claims and disburse Benefit Payments within the timeframe required by the Worker's Compensation Law, provided that the Member advances the funds required and approves payments in accordance with the requirements of this agreement;
- b. Contract with CorVel or another third party for review of medical bills, and with Optum or another third party for pharmacy benefit management services, all at the sole cost and expense of the Member;
- c. Cause all required workers' compensation forms to be prepared and filed;
- d. Contact the injured employee or employees, as appropriate;

- e. For those Members paying by wire/automated clearing house (ACH) transfer, provide to the Member, on a weekly basis, a check register for each check run the previous week and drawn on the bank account established by the member;
- f. For those Members paying by cash, provide to the Member, on a monthly basis, an invoice and check register for each check run during the previous month and drawn on the bank account established by PERMA for the member;
- g. Retain and supervise, on behalf of and at the sole cost and expense of the Member, legal counsel necessary for the prosecution or defense of any claim or litigation related to a claim, subject to the approval of counsel by the Member, which shall not be unreasonably withheld or delayed;
- h. Attend, through a representative of PERMA, or an attorney retained by PERMA, all compensation hearings;
- i. Promptly advise the Member of Worker's Compensation Board decisions related to each claim;
- j. Initiate a challenge to any other administrative decisions made by an Administrative Law Judge or seek to correct a factual error in an administrative decision, if PERMA determines that it is reasonably necessary to do so;
- k. Recommend to the Member whether to request a modification, rescission or review of an award or decision of the Worker's Compensation Board, a panel of the Board, an Administrative Law Judge issued after a hearing and after the exhaustion of administrative remedies, recommend whether to file a judicial appeal and act upon the Member's decision once made;
- l. Settle claims within the authority given PERMA by the Member or as otherwise agreed in writing by the Member and PERMA; and
- m. Pay all claims by check identifying the Member as the insurer. 3

5. The Member's obligations. The Member will:

- a. Pay all Benefits Payments by either wire/automated clearing house (ACH) transfer or cash advance.
 - i. If paying by wire/automated clearing house (ACH) transfer, the Member must deposit and maintain, in a bank account identified to PERMA, the amount of the Benefit Payments and Allocated Loss Adjustment Expenses PERMA estimates will be required to be paid or incurred during a 30-day period. PERMA may increase or decrease the estimate as PERMA reasonably determines. If PERMA increases the estimate, the Member will promptly replenish the account to the estimated amount by wire/ACH transfer. If PERMA decreases the estimate, PERMA will return the excess amount to the Member. Within 48 hours of receiving from PERMA the check register for each check run the previous week and drawn on the bank account established by the member, the Member will review the check register and transfer to PERMA sufficient funds to cover all payments reflected in the register. If the Member is unable to pay that amount within the time required, PERMA will draw on the deposited amount to pay the Benefits Payments. If the amount of the Benefits payments exceeds the amount of the deposit that is available, PERMA will not make the Benefits Payment until the Member deposits the necessary funds. If PERMA is required by the Workers' Compensation Board to pay a penalty for paying Benefits Payments late because the Member failed to make the deposit required by this paragraph, the Member will be liable to PERMA for the penalty and PERMA will deduct the amount of the penalty from the Member's account.
 - ii. If paying by cash advance, the Member must deposit and maintain, in a segregated bank account established by PERMA, the amount of the Benefit Payments and Allocated Loss Adjustment Expenses PERMA estimates will be required to be paid or incurred during a 90-day period. PERMA may increase or decrease the estimate as PERMA reasonably determines. If PERMA increases the estimate, the Member will promptly pay the additional amount to PERMA. If PERMA decreases the estimate, PERMA will hold the excess amount to be applied to future Benefit Payments and Allocated Loss Adjustment Expenses, and the Member's future required contributions will be reduced accordingly. Within 48 hours of receiving from PERMA the check register for each check run the previous month and drawn on the bank account established by the member, the Member will review the invoice and check register and pay to PERMA, by the 10th day of the month, sufficient funds to cover all payments reflected in the register. If the Member is unable to pay that amount within the time required, PERMA will draw on the deposited amount to pay the Benefits Payments. If the amount of the Benefits payments exceeds the amount of the deposit that is available, PERMA will not make the Benefits Payment until the Member pays the necessary funds to PERMA.

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If PERMA is required by the Workers' Compensation Board to pay a penalty for paying Benefits Payments late because the Member failed to make the payments required by this section, the Member will be liable to PERMA for the penalty and PERMA will deduct the amount of the penalty from the Member's account.

- b. Pay to PERMA, within 30 days of invoice, an annual administrative fee for each claim in the amount set forth in Schedule A and all Allocated Loss Adjustment Expenses.

c. Promptly upon the commencement of this agreement, and thereafter as may be required by PERMA, provide or cause to be provided to PERMA all required EDI and any other information required by the Worker's Compensation Board. The Member must provide the EDI and other information, at the Member's sole cost and expense, in a form reasonably acceptable to PERMA. If PERMA is required by the Workers' Compensation Board to pay a penalty because the Member has failed to provide EDI or any other information, the Member will be liable to PERMA for the penalty and PERMA will deduct the amount of the penalty from the Member's account.

d. Cooperate fully with PERMA by (i) providing all information PERMA reasonably requests, including all information PERMA reasonably deems necessary or helpful to defend any claim; (ii) if another individual or entity is currently holding the Member's funds with respect to any Tail Claims, directing that individual or entity either to transfer those funds to PERMA or to refund those funds to the Member; (iii) when requested by PERMA, attend hearings and trials by an employee or other person knowledgeable of the facts and authorized to resolve the claim; (iv) assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and conducting all hearings, suits and other proceedings; (v) arrange that all claims, all related inpatient and outpatient provider bills of any type and any other correspondence that is received relating to Tail Claims, are sent directly to PERMA.

e. Pay any costs and expenses incurred in the fulfillment of these obligations of the Member.

6. **Member Compliance with Worker's Compensation Law.** This Agreement does not assign or delegate to PERMA any responsibility the Member has under the Worker's Compensation Law, including, but not limited to, the Member's obligation to provide workers' compensation benefits to its employees, the Member's obligation to report with respect to workers' compensation claims and the Member's record retention obligations with respect to workers' compensation claims. The Member is responsible for all fines and penalties issued under the Worker's Compensation Law as a result of the Member's failure to satisfy those obligations.

PERMA does not accept or assume any such responsibility, in whole or in part.

7. **Indemnification.** PERMA assumes no liability for any obligation of the Member under the Workers' Compensation Law or any decision of the Workers' Compensation Board. The Member will indemnify, defend and hold PERMA, its subcontractors and their respective 5 affiliates, owners, partners, members, officers, directors, shareholders, agents and employees harmless from and against any and all of any kind, including reasonable attorneys' fees and disbursements, except to the extent that the claims, liabilities, damages or expenses are solely caused by PERMA's gross negligence or willful misconduct.

8. **Termination.** Either party may terminate this agreement on 30 days' notice to the other party. PERMA may terminate this agreement immediately upon notice to the Member if the member fails to pay any amount required to be paid by the member under this agreement. Upon termination, all amounts due PERMA from the Member will become immediately due and payable. The Member's obligations set forth in paragraphs 5 and 7 will survive the expiration or earlier termination of this agreement.

9. **Notices.** Notices under this agreement must be sent by electronic mail or facsimile to the designated contact at the email or facsimile number shown below. Notice sent to the contact person designated by the Member is notice to the Member. If to the Member: **Attn: Fred Forbes**

Fax:

Email: supervisor@townofhomer.org

Phone: 607-749-3364 If to PERMA:

Attn: Mary Beth Woods

Fax: 1-877-737-6232

Email: memberservices@perma.org

Phone: 518-220-1111

10. **Not a contract of insurance.** This is not a contract of insurance. PERMA is not and is not, in any way, to be deemed by reason of this agreement to be an insurer, underwriter or guarantor with respect to any benefits payable for which the Member may be liable with respect to the workers' compensation claims that are the subject of this agreement. PERMA is acting under this agreement solely as a claims' administrator with respect to the Tail Claims, and not as an insurer with respect to those or to any other claims. PERMA will not, under any circumstances, advance its own funds on behalf of the Member.

11. **Applicable law and forum.** This agreement will be construed under and governed by the laws of the State of New York. Any dispute under this agreement must be heard in the Supreme Court of the State of New York, County of Albany. The parties consent to the jurisdiction of that court and the venue.

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12. **Force majeure.** PERMA is not responsible for nonperformance or defective or late performance of its obligations under this agreement if the nonperformance, defective or late performance is due to causes beyond its control and occur without its fault or negligence, including without limitation, acts of God, strikes, war (including civil war), acts of any state or government, fire, explosions, the elements, epidemics, quarantine restrictions, blackout, embargo or unusually severe weather.

13. **Third parties.** This agreement is not intended to benefit and may not be construed to benefit, or to create any rights in, any third party.
14. **Amendments.** This agreement may not be modified or amended except in a written document signed by both parties.
15. **Severability.** If any provision of this agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will not affect the remainder of the agreement, which will remain in full force and effect and will be enforceable in accordance with its terms.
16. **Entire agreement; waiver.** This agreement constitutes the entire agreement between the parties and supersedes all prior understandings between the parties.
17. **No waiver.** No waiver or discharge of any breach of this agreement will be effective unless it is in writing signed by the party granting the waiver or discharge. The waiver of any breach of any provision of this agreement is not, and may not be deemed, a waiver of any subsequent breach of any provision of this agreement.
18. **Counterparts.** This agreement may be executed in multiple counterparts. All of the counterparts will, together, constitute a single, complete and fully executed document.

IN WITNESS WHEREOF, PERMA and the Member have duly executed this agreement as of the day and year first above written.

Public Employers Risk Management Association, Inc.

By:

Mary Beth Woods, Executive Director

Town of Homer By:

Name and Title

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Schedule A

Fees

Indemnity Tail Claims **800** per year per claim

Medical Tail Claims **200** per year per claim

Schedule B

Managed Care Fees

Medical Bill Review and PPO Network Charges \$5.60 per bill

Treasury Services-Per Transaction¹

- **Online Review in CareMC/Edge**

- **Explanation of Review**

- **Annual 1099 Reporting**

- **EDI Compliance & Transmission**

\$5.75 per Bill

Includes check fee, postage, duplicate bill fee, electronic submission and State reporting (NY HCRA Surcharge).

Enhanced Medical Bill Review 23% of Savings

Includes technical and professional review of bills for correct coding, up coding, unbundling, national condition edits, facility and surgical bill line item audit, review for non-compensable charges, review of implant charges, validation of diagnostic related group (DRG) coding, and review of non-fee scheduled services for fair and reasonable payment. Fees are calculated based on incremental savings achieved below the State mandated fee schedule.

PPO Network 23% of Savings

Includes access to proprietary national PPO network solution. Fees are calculated based on incremental savings achieved below the State fee schedule and enhanced savings.

Out of Network Negotiations 23% Savings

CorVel may negotiate out of network charges with a medical provider to pay an agreed upon rate. Fees are calculated based on an incremental saving achieved below the State fee schedule and enhanced savings.

Mandatory CMS MMSEA Reporting \$8.75 per transaction

On motion by Councilmember Williams, seconded by Councilmember Leach and carried unanimously: **RESOLVED: To authorize the supervisor to sign and submit the yearly PERMA agreement.**

COURT AUDIT

Supervisor Park asked for an update on the court audit. Councilmember Williams said the audit would be completed by May 13th and the report will be on the supervisor's desk May 14th.

PINE STREET BRIDGE

Supervisor Park updated the town board that Pine Street Bridge was red flagged by the state again. He contacted the engineering firm to discuss their options, and it was the same issue they have had in the past and are starting to develop a repair plan.

After discussing with Matt Schooley, they were able to set the weight limit at five-ton instead of the original seven-ton weight limit, which would allow more time to develop a plan and allow

the bridge to remain open. There was also discussion on the Wall Street Bridge and are in hopes to receive the grant the town applied for, as the cost to repair the bridge is over \$2.1 million.

NYSERDA CEC GRANT

Supervisor Park stated they were approved for a \$15,000.00 grant for an energy audit that can be applied to the town hall or the town garage. Supervisor Park recommended the energy audit to be applied to the highway garage, which would help subsidize the repairs. With the upcoming renovations to the downstairs of the town hall and the upstairs completed renovations, it makes the most sense to a lot the grant to the garage.

On motion by Deputy Supervisor Warren, seconded by Councilmember Williams and carried unanimously: **RESOLVED: To apply the \$15,000.00 grant for an energy audit to the Town of Homer Highway Garage.**

MEMORIAL DAY PARADE

Supervisor Park encouraged the town board members to participate in the upcoming Memorial Day parade. There was further discussion, and it was determined that Don Ferris would drive the town board members in the parade and would meet at the town hall at 8:30 am.

ATTORNEY FOR THE TOWN

Attorney Ellis had nothing further to add.

As there was no further business, the meeting adjourned at 7:41 p.m.

Brooke L. Poli
Deputy Town Clerk