

**Wawayanda Town Board Meeting 12/29/09**

December 29, 2009

A Special Meeting of the Town Board of the Town of Wawayanda was called to order at 7:02P.M., on Tuesday, December 29, 2009, at the Town Hall, Ridgebury Hill Road, Slate Hill, NY. The purpose of this meeting was to pay outstanding bills and to close all business for Fiscal Year 2009.

Those present were:	John R. Razzano	Supervisor
	David S. Cole	Councilman
	Edward Krajewski	Councilman
	Richard Penaluna III	Councilman
	Denise Quinn	Councilwoman
	Teresa Pierce	Town Clerk
	Richard Guertin	Attorney for the Town

Also Present: Kathryn Sherlock - Town Clerk Elect; Catherine Cole - Tax Collector; Howard Goldstein - Bookkeeper for the Town; Russell Budd - Town Consultant; Sara Sullivan - PT Court Clerk; Alfred Pierce - Recreation Committee Member; Mary Markiewicz & Barbara Parsons - Planning Board Members; Gladys Hall - Historian; and 4 other individuals.

**PLEDGE TO THE FLAG**

**Supervisor Razzano** read the Public Notice as it appeared in the Times Herald Record on December 21, 2009, advising of the cancellation of the December Workshop Meeting, and the scheduling of this final meeting for 2009. A prior Public Notice about the cancellation of the December Workshop was published on December 9<sup>th</sup>, 2009.

**PAYMENT OF BILLS:**

**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to authorize the payment of bills in the amount of **\$4,894.48** from the General Disbursement Account, representing bills that were payable upon receipt. Breakdown as follows:

PPG 09-01984	\$ 383.34
PPWS 09-01976, PPWS 01977 & PPWS 01983	\$4,511.14

**ALL IN FAVOR - CARRIED**

**Councilman Cole** spoke about two vouchers that had been presented for payment this month. The first one is from the Water & Sewer Department for a Toshiba Laptop voucher number WS09-02077 for \$574.98, and from the Parks Department voucher number G09-1990 for \$483.66 for the purchase of lights and brackets for the bucket truck. He also referred to voucher H09-01915 for \$1,479.89 for a black top saw paid at the December 3<sup>rd</sup>, 2009, meeting and said that his concern is that the Procurement Policy is not being enforced. Items are being received prior to the bills being paid and the purchases, as the one's he has referenced, are not being pre-approved.

With the decline in revenue and the fiscal tightening of the board he is suggesting that from this moment forward any vouchers ranging in cost of \$250.00 - \$500.00 should be submitted to the Supervisor's office for pre- approval prior to the actual purchase. We have procurement policy and we are not following it, just because the money is in the budget does not mean that we have to spend it, and said that there has to be some sort of structure enforced.

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**Supervisor Razzano** responded and said that there is a structure in place, and explained that with regard to the purchase of the laptop, Jeff Mills spoke to him prior to the purchase inquiring as to whether or not there was in fact enough money to cover the cost. Also, Mr. Mills did in fact obtain prices on other laptops as well as one available on state bid which was actually was few hundred dollars more than the one he purchased.

With regard to the Highway Department's purchase for the Black Top Saw, John VanBenschoten also spoke to him prior to this purchase, and he too obtained quite a few quotes, and purchased the one that had come in with the lowest price. Added that both departments had been cognizant of what they were spending.

**Councilman Cole** said that the Town has already purchased thousands of dollars in equipment and parts for this bucket truck and that it is starting to get repetitive and annoying. Added that it is hard to put up a fight when the item is already purchased and starring you in the face.

**Councilman Krajewski** referred to the purchase of the Laptop computer and said that he had just purchased a laptop for the Fire District and with his research, he found the Laptop's available on State bid to be quite higher than the ones available off State bid. He too looked into purchasing the Toshiba Mr. Mills has purchased and found the cost to be very reasonable.

**Councilman Cole** stated the he believes there needs to be checks and balances.

**Supervisor Razzano** said that the Department heads should already be following the policy, and with the volume of vouchers processed each month this could become a very time consuming process.

**Councilwoman Quinn** said that she is also very concerned with the expenditure of funds considering the status of our current economy, and that we certainly do need to be careful as to what we are spending. But, on the other hand, there are regular monthly expenses that exceed the amounts in question and does not believe that the procurement policy applies. It's not always a question of getting the best price for an item but if we in fact actually need it.

**Supervisor Razzano** said that his office will distribute a memo to all departments as a reminder that this policy needs to be followed.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Cole**, to authorize payment of bills from the General Disbursement Account in the amount of **\$169,159.64** Breakdown as follows:

General Fund	G09-02080 thru 02144 G09-01985 thru 02032 G09-02188 thru 02200	\$ 73,170.04
Highway Fund	H09-02145 thru 02175	58,961.61
Water/Sewer Districts	WS09-02033 thru 02078 WS09-02181 thru 02187	22,517.64
Robinn Meadows Capital Project	RMC009-02079	1,910.00

### WATER/SEWER BREAKDOWN:

Robinn Meadows Sewer District	1,907.58
Robinn Meadows Water District	4,552.11
Ridgebury Lake Acres Sewer District	3,469.93
Ridgebury Lake Water District	1,639.02
Denton Hills Water District	1,662.97
Arluck Water District	688.28
Water/Sewer Dist. #1	8,597.75
Water/Sewer Total =	\$22,517.64

**ALL IN FAVOR - CARRIED**

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**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to pay **McGoey, Hauser and Edsall** for services rendered in reference to the following:

- Javeline Mine - \$33.00
- CPV Power - \$799.80
- DeBlasio - \$132.60
- Tintle - \$106.80
- Kessler - \$706.88
- Scafuro - \$247.40
- Survig - \$304.50
- Algeria/Janes - \$145.50
- Conklin - \$119.70
- Catlin Creek - \$476.46
- Lakeridge - \$400.50
- Panattoni Onsite Inspections - \$1,692.62

Payments will be made through the Special Trust and Agency and charged to the individual Escrow Accounts listed above.

**ALL IN FAVOR - CARRIED**

**Supervisor Razzano** referred to a charge from **C.T. Male Associates, P.C.**, for a hotel stay in the amount of \$874.90 to be charged to the Escrow Account for CPV Valley. He suggested that the Board hold off paying this amount until we consult with the applicant to confirm if this is a reimbursable expense.

No action taken.

**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to close out the following Escrow Account and return the remaining funds to the applicant:

- Gladys Loyas - \$621.50

Payment will be made through Special Trust and Agency Account.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to reimburse the Budget Account 1420.101A for invoices or expenses in reference to the following Escrow Accounts:

- CPV (General - Legal & Consulting Escrow) - \$341.91

Payments will be made through the Special Trust and Agency and charged to the individual Escrow Account listed above.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to reimburse the Budget Account 1420.1 for invoices or expenses in reference to the following Escrow Accounts:

- CPV (General - Legal & Consulting Escrow) - \$323.00

Payments will be made through the Special Trust and Agency and charged to the individual Escrow Account listed above.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to reimburse the Budget Account 1440.1A for invoices or expenses in reference to the following Escrow Accounts:

- Panattoni Onsite Env. Review - \$3,789.00

Payments will be made through the Special Trust and Agency and charged to the individual Escrow Account listed above.

**ALL IN FAVOR - CARRIED**

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**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to reimburse the Budget Account 8020.4A for invoices or expenses in reference to the following Escrow Accounts:

- Algeria/Janies Sunoco - \$30.25
- Ford - \$150.00
- Scafuro - \$150.00
- LZ Sally - \$10.25
- Javelin Mine - \$228.10
- Javelin Mine - \$33.00
- A Thru Z - \$48.80

Payments will be made through the Special Trust and Agency Account and charged to the individual Escrow Accounts listed above.

**ALL IN FAVOR - CARRIED**

**BUDGET TRANSFERS & SUPPLEMENTAL APPROPRIATIONS:** The Town Bookkeeper, Howard Goldstein, provided a list of recommended Budget Transfers and Supplemental Appropriations, as follows:

### GENERAL FUND:

ACCOUNT	TRANSFER IN	TRANSFER OUT
9950.9A		75,000.00
7110.4A	25,000.00	
1620.4A	50,000.00	
1340.1A	60.67	
1420.1A	7,248.52	
1420.1A	2,241.09	
1460.4A	42.00	
1995.4A	23,078.14	
1995.4A	1,980.00	
5182.4A	109.03	
5182.4A	385.00	
9010.8A	1,165.50	
9050.8A	700.00	
9089.8A	950.00	
9730.7A	553.70	
9730.6A		200.00
9040.8A		700.00
8020.4A		500.00
7020.4A		8,000.00
5132.4A		6,000.00
3650.4A		2,000.00
1930.4A		9,970.00
1990.4A		6,495.56
7520.4A	195.00	
8010.4A	600.00	
1990.4A		5,443.09
	114,308.65	114,308.65

### HIGHWAY FUND BUDGET TRANSFERS

ACCOUNT	TRANSFER IN	TRANSFER OUT
9010.4DR	1,165.50	
9040.4DR		1,165.50

### HIGHWAY FUND SUPPLEMENTAL

5150.2DE		3,647.94
0599.0DE	3,647.94	

### ARLUCK WATER DISTRICT BUDGET TRANSFERS

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ACCOUNT	TRANSFER IN	TRANSFER OUT
9730.7FAWD	177.63	
8320.4FAWD		177.63

**DENTON WATER DISTRICT BUDGET TRANSFERS**

ACCOUNT	TRANSFER IN	TRANSFER OUT
8320.4FDH		930.00
9730.7FDH	930.00	

**SEWER DISTRICT 1 BUDGET TRANSFERS**

ACCOUNT	TRANSFER IN	TRANSFER OUT
8120.4SD1	17.25	
9730.7SD1		4,545.14
8130.4SD1	4,527.89	

**SEWER DISTRICT 1 SUPPLIMENTAL**

ACCOUNT	TRANSFER IN	TRANSFER OUT
0599.0SD1		13,000.00
8130.4SD1	13,000.00	

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to authorize the Town Bookkeeper, Howard Goldstein, to make Budget Transfers and Supplemental appropriations, as recommended.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to authorize Howard Goldstein, Town Bookkeeper, to make any additional Budget Transfers and Supplemental Appropriations, as deemed necessary to balance the ledgers for the year 2009.

**ALL IN FAVOR - CARRIED**

**TRUCK BODY/HIGHWAY DEPARTMENT/BID RESULTS:** In response to the "Notice to Bidders" which appeared in 'The Times Herald Record' on December 11, 2009, the following is a list of bids that were received and opened at 11:30 A.M. on Wednesday, December 23, 2009. Bid as follows:

NAME OF BIDDER	BID
Amthor Welding 20 Osprey Lane Gardiner, NY 12525	\$11,200.00
Dutches County Diesels, Inc. 6075 Route 22 Millerton, NY 12546	\$12,067.00
Tracey Road Equipment 6803 Manlius Center Road East Syracuse, NY 13057	\$12,218.45

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to accept the Truck Body Bid that was submitted by Amthor Welding.

**ALL IN FAVOR - CARRIED****2009 BUDGET ENCUMBRANCES:**

A list of necessary encumbrances from the 2009 Budget was presented, as follows:

GENERAL FUND			
ENCUMBERED FUNDS FROM 2009 BUDGET			
VENDOR	ACCT. #		AMOUNT
Ulster Uniform Service, Inc.	1620.4A	General	\$60.00

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Thompson West	1355.4A	Assessor	\$157.50
NY Mckinneys Consol Law		Assessor	94.50
	1410.4A	Town Clerk	126.00
	1220.4A	Supervisor	252.00
Chester Printing	1355.4A	Assessor	\$356.00
Staples Business Advantage:	1620.4A	General Fund	\$ 27.78
	1110.4A	Court	250.22
	1440.4A	Building Dept	364.12
	1220.4A	Supervisor	26.22
	1410.4A	T. Clerk	56.20
	8020.4A	P. Board	10.71
	1340.4A	Budget Ofc.	8.72
	1220.401A	Sup Secty	474.13
	1355.4A	Assessor	751.45
Water&Sewer		All Districts	36.98 (\$4.62 per district)
Staples Credit Plan	7510.2A		919.97
Truck Body (RFP)	5130.4DM	Highway	\$11,200.00

**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to approve the Encumbrances from the 2009 Budget, as presented.

**ALL IN FAVOR - CARRIED**

**TOWN CLERK CORRESPONDENCE:**

**APPROVAL OF MINUTES:** Town Clerk, Teresa Pierce, requested approval of the minutes of the September 3<sup>rd</sup>, September 22<sup>nd</sup>, October 8<sup>th</sup>, October 20<sup>th</sup>, November 5<sup>th</sup>, November 17<sup>th</sup> and November 22<sup>nd</sup>, 2009 Town Board Meetings.

**MOTION** by **Councilman Cole**, seconded by **Councilman Penaluna**, to approve the minutes of September 3<sup>rd</sup>, September 22<sup>nd</sup>, October 8<sup>th</sup>, November 5<sup>th</sup>, November 17<sup>th</sup> and the November 22<sup>nd</sup>, 2009 Town Board Meetings, as presented by the Town Clerk.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Councilman Cole**, seconded by **Councilman Penaluna**, to approve the minutes of the October 20<sup>th</sup>, 2009 Town Board workshop meeting, as presented by the Town Clerk.

**VOTE**

Supervisor Razzano	-	Aye
Councilman Cole	-	Aye
Councilman Krajewski	-	Aye
Councilwoman Quinn	-	Abstained**
Councilman Penaluna	-	Aye

**MOTION CARRIED**

\*\* **Councilwoman Quinn** abstained from the vote because she was not in attendance at this meeting.

**TAX COLLECTOR BOND:** **Teresa Pierce**, Town Clerk submitted a memo advising that since there is a new Tax Collector, the board needs to acknowledge, accept, and sign a 'Certificate of Liability Insurance' which was provided by our insurance agency, Marshall & Sterling, Inc.. The Certificate indicates that the Tax Collector, Patricia Green, and her deputy, Diane Morgan, are covered for a total of \$1,000,000 (one million dollars) through Selective Insurance Company of America.

The certificate indicates and expiration date of February 2, 2010, and this is based on the renewal date of our town's insurance policy. Once this insurance is renewed, a new certificate will be provided, which also will need to be acknowledged and signed. As required, the certificate will

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be sent to the County Clerk's office, and once a renewed certificate is received and signed, it too should be forwarded to the County Clerk.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski** to acknowledge and accept the 'Certificate of Liability Insurance' from Selective Insurance Company of America, which provides coverage in the total amount of \$1,000,000 (one million dollars) on the Tax Collector, Patricia Green, and the Deputy Tax Collector, Diane Morgan.

**ALL IN FAVOR - CARRIED**

**HUMANE SOCIETY CONTRACT:** The Middletown Humane Society had presented a proposed contract for 2010. There will be no increase in the fee which is charged for each dog taken to the shelter, thereby the total charge will remain at \$65.00.

Traditionally, the town charges an extra redemption fee of \$10.00 per animal, above the shelter's fee, in order to cover the cost of gasoline and clerical work of the Animal Control Officer and Town Clerk's office.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to authorize the Supervisor to sign the renewal contract between the Town of Wawayanda and the Humane Society of Middletown, Inc. for the period beginning January 1, 2010 and ending December 31, 2010, and to authorize the dog redemption fee of \$75.00.

### VOTE

Supervisor Razzano	-	Aye
Councilman Cole	-	Aye
Councilman Krajewski	-	Aye
Councilwoman Quinn	-	Nay**
Councilman Penaluna	-	Aye

**MOTION CARRIED**

\*\* **Councilwoman Quinn** voted "Nay" because she does not agree with the shelter's policy to euthanize unwanted animals.

**RENEWAL OF JUNK YARD LICENSES:** The Town Clerk received requests for renewal of annual licenses, as follows:

#### **Joseph Viserta d/b/a County Metal Yard:**

Joseph Viserta submitted a letter requesting a permit for his recycling center known as County Metal Yard Inc., which is located on County Route 12 (Lower Road), New Hampton. The Town Board has not issued a permit for this operation in at least 15 or more years, and that is because it was believed that he was in litigation with the Town.

**Supervisor Razzano** stated that every year we discuss alleged litigation between Mr. Viserta and the Town. At this time he is in possession of a Stipulation of Settlement he obtained from Jack Graaff, Code Enforcement Officer dated December 29, 2009, signed by then Supervisor Jeff Bridges, Joseph Viserta, and then Town Justice Joseph Hocking. This matter has been resolved and for whatever reason we were unaware of this. Each year Mr. Viserta requests renewal for this and each year we put it off because we did not know the status. But now since we have proof this has been settled he sees no reason as to why we should not approve and reissue the permit.

**Barbara Parson** stated that there were still problems with Mr. Viserta when Tom DeBlock was Supervisor, and said that even if he was to come before the Planning Board for a site plan approval it would not be granted because he still is not in compliance.

**Supervisor Razzano** stated that he is not saying that Mr. Viserta is in compliance but the fact that the fee is now \$500.00, and that he continues to operate, the town should be collecting the fee. He clarified that he does not believe collecting the fee means that the Town is in agreement with the way he is running his operation. It does not seem fair that the individuals who also obtain a Junkyard permit and are in compliance should be the only ones to pay the fee.

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The stipulation talks about all of the things he is concerned about today, and noted that there are a few items that have been complied with such as installing a fence and the planting of trees. It also talks about the junk being too close to the road which is still too close to the road, and the vehicles having the ability to pull off the road to load and unload their goods and wares. Mr. Viserta has done some of the work and he still has work to do, and again he does not believe that not issuing him the permit is going to prove anything considering the establishment has been there since 1960.

**Mary Markiewicz** asked how he continues to operate if he does not have a permit.

**Supervisor Razzano** responded that he has not had a permit in over 18 years.

**Barbara Parson** commented that the business has definitely expanded over the years and that the current location is not able to contain it. If you travel along that road at any given time during a day you have trucks parked on the roadway, and with regard to the planting of trees, there is just no place to plant them.

**Councilwoman Quinn** commented that it is her belief that if we approve this permit we are acknowledging what he is doing and pretty much saying that it is ok.

**Councilman Cole** said that pretty much Mr. Vistera is still in violation with the Stipulation of Settlement.

**Attorney Guertin** clarified that if the Board approves the permit to be issued it does not validate that the business is being conducted properly, and it will not prevent the Town from issuing code violations or taking him back to court for non compliance. Issuing the permit is purely and administrative function and it is up to Mr. Viserta to make sure that his property is maintained. Additional discussion took place.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to authorize the renewal of the Junkyard License for Joseph Viserta.

**VOTE**

Supervisor Razzano	-	Aye
Councilman Cole	-	Nay
Councilman Krajewski	-	Aye
Councilwoman Quinn	-	Aye
Councilman Penaluna	-	Aye

**MOTION CARRIED**

**Re: Michael Martine d/b/a Martine's Service Center, Inc.**, 3814 Route 6, Middletown, NY.  
**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to authorize the annual renewal of the Junkyard License for **Michael Martine**.

**ALL IN FAVOR - CARRIED**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to go into Executive Session to discuss employment of a particular individual.

**ALL IN FAVOR - CARRIED**

**EXECUTIVE SESSION:** No action taken.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to close Executive Session and re-open the regular meeting.

**ALL IN FAVOR - CARRIED****COURT CLERK POSITIONS (3):**

**Patricia Pomposello** / Appointment as full-time Court Clerk:

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to appoint Patricia Pomposello to the full-time Court Clerk position with a starting salary of \$13.00 per hour effective January 1, 2010.

**ALL IN FAVOR - CARRIED**



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**Sara Sullivan** / Appointment from part-time clerk to full time Court Clerk:

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to appoint Sara Sullivan to the full-time Court Clerk position with a salary of \$13.00 per hour effective January 1, 2010.

**ALL IN FAVOR - CARRIED**

**Elizabeth Seabright** / Appointment to part time Clerk Position:

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to appoint Elizabeth Seabright to the part-time Court Clerk position at a rate of \$14.00 per hour effective January 1, 2010.

**ALL IN FAVOR - CARRIED**

**Deputy Town Clerk /Chloe Murphy:**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to hire appoint Chloe Murphy as Deputy Town Clerk effective January 1, 2010 to work a total of 30 hours per week at a rate of \$12.50 per hour.

**ALL IN FAVOR – CARRIED**

**CPV ESCROW AGREEMENT:**

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Penaluna**, to adopt a resolution for the Agreement for the Payment of Municipal Legal and General Consulting Expenses by CPV Valley, LLC as follows:

**Resolution 22- 2009**  
**AGREEMENT FOR THE PAYMENT OF MUNICIPAL**  
**LEGAL AND GENERAL CONSULTING EXPENSES BY**  
**CPV VALLEY, LLC**

**THIS AGREEMENT** (the “Agreement”), made and entered into as of 29<sup>th</sup>, day of DECEMBER, 2009 (the “Effective Date”), by and between the **TOWN OF WAWYANDA**, a New York municipal corporation (the “Town”), with offices at 80 Ridgebury Hill Road, New York and **CPV VALLEY, LLC**, a New York limited liability company (the “Company”), with offices at 50 Braintree Hill Office Park, Suite 300, Braintree, Massachusetts (collectively, the Town and CPV are referred to as the “Parties”).

**WHEREAS**, the Company has optioned approximately 122 acres of land located in the Town, and the Company has filed an application for site plan approval with the Planning Board of the Town for the proposed project consisting of the construction, equipping and installation of a gas-fired electric generating facility known as and the CPV Valley Energy Center (the “Project”)

**WHEREAS**, in connection with the Project, the Town Board of the Town and the Company will be having negotiations regarding a proposed community benefit agreement and any other fees, consents or other approvals from the Town Board if the Town with regard to the Project (collectively, hereinafter call the “Agreements and Approvals”).

**WHEREAS**, the Town Board has assigned and designated the following people to assist the Town in the negotiation of the Agreements and Approvals for the Project; Richard Guertin, attorney to the Town, Russell Budd, as a general consultant; Hodgson Russ LLP, as special legal counsel; and McGoe, Hauser & Edsall, PC, engineers to the Town (collectively referred to as the “Professionals”) to assist the Town in the negotiation of the Agreements and Approvals.

**WHEREAS**, the Parties desire to set forth their agreement concerning the payment of fees for services rendered by the Professionals.

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**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, the Parties agree hereto as follows:

1. Except as otherwise provided herein, the Company agrees to pay the Town an amount as reimbursement for fees and expenses incurred by the Town for the services rendered by the Professionals prior to the Effective Date or which may be incurred by the Town after the Effective Date of this Agreement which relate to negotiation and execution of the Agreements and Approvals (the "Costs").

2. Notwithstanding the foregoing, this Agreement and the Company's obligations to pay for the Town's Costs hereunder shall not apply to any costs incurred by the Town related to any threatened or filed litigation against the Town by a third party in connection with the Agreements and Approvals in which the Company is named as a party or in which the Company intervenes as a party. The Company and the Town will negotiate in good faith for a sharing of legal and consultant fees and costs with respect to the matters contemplated for this Section. Further, the Company recognizes the Professionals' efforts may include working with the Orange County IDA and affected taxing jurisdictions for the purpose of obtaining a deviation allowing a larger share of PILOT funds to be paid to the Town under the PILOT Agreement the Company is negotiating with the IDA, but (a) the Company's reimbursement obligation hereunder shall be limited to \$3,225 and (b), in addition, the Company shall not be responsible or have any reimbursement obligation hereunder for Professionals' efforts to the extent those efforts are directed at influencing or negotiating the terms of the PILOT Agreement to increase the PILOT payments to be paid by the Company for a large total community benefit package (PILOT plus host community agreement) from the Company. The invoices by the Professionals for any efforts with the IDA or taxing jurisdictions shall separately describe the efforts for which the Company has a reimbursement obligation hereunder and any efforts for which the reimbursement obligation does not apply, and such invoices for all such reimbursable and nonreimbursable efforts related to the PILOT Agreement shall be submitted to the Company as otherwise provided herein.

3. As of the execution of this Agreement, the Company has deposited the sum of \$22,500 (the "Escrow Funds") with the Town Supervisor, which office shall hold the Escrow Funds, in escrow. On or before January 15, 2010, the Company will deposit an additional \$15,000 with the Town Supervisor in escrow, which additional payment will be added to the Escrow Funds. The Escrow Funds shall be used solely to pay Costs. The Town will provide an accounting to the Company of disbursements of the Escrow Funds on a monthly basis.

4. If at any time the balance of the Escrow Fund falls below \$10,000.00, the Company shall be notified, with a copy to its attorney, of the amount of the Escrow Funds remaining in the account with the Town, and, provided that the Town is in compliance with its obligations under this Agreement, the Company shall bring the balance of the Escrow Funds to \$25,000 or such other amount as the Town and the Company shall agree in writing signed by both parties within fifteen (15) business days from the Town's notification. In the event the Company fails to replenish the Escrow Funds as required by this Section within the time period set forth in this Section, then the Town Board may direct the Professionals to cease all work on the Project until such payment is received from the Company. If the Town Board direct the Professionals to cease work as a result of the Company's failure to replenish the Escrow Funds in accordance with this Section, the Company agrees the time frame in which the Town Board is required to provided the Company with any decision necessary for the continuance or completion of the Project, or to take any step in the process toward said decision, will be tolled until the Company has complied with the terms of this Section.

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5. The invoices for services rendered by Professionals will be submitted on a monthly basis (or more frequently if desired by Professionals) to the Office of Town Supervisor, which office will review the invoices, and the Town shall audit them for payment in accordance with normal Town procedures subject to the provisions herein. The Town agrees that the Company is entitled to a copy of all invoices, or summary sheets, subject to the Town's rights to delete attorney-client or privileged information / communications / materials, and upon receipt shall provide said copies to the Company. The Company may note any objections within five days, and if the Company notes any objections, it shall state the reasons therefor, and the parties shall work together in good faith to address the Company's objections. Notwithstanding the foregoing, the Company agrees the power to audit and pay bills is solely in the discretion of the Town Board.

6. The Company may terminate this Agreement at any time upon written notice to the Town (the "Company Termination Date"). In such event, the Company shall remain liable for Costs incurred to a date five (5) days after the date of such notice to the Town. If the Escrow Funds paid by the Company are insufficient to cover the costs of the Professionals incurred as of such date, the Town shall so advise the Company (including the amount of such difference and the invoices reflecting such Costs), and the Company shall pay the difference to the Town within thirty (30) days of the Town's notice. However, if the amount of undisbursed paid Escrow Funds exceeds the Costs incurred to the Company Termination Date, the Town shall remit to the Company the remaining Escrow Funds after paying such Costs within thirty (30) days after the Company Termination Notice. If the Company so terminates this Agreement, then the Town Board may direct the Professionals to cease all work on the Project. This Section shall survive any termination of this Agreement. In the event that the Company terminates this Agreement for a reason other than the Town's breach or default of this obligations hereunder, the Town may direct the Professionals to cease all work under this Agreement and the time frame in which the Town Board is required to provide the Company with any decision, or to take any step, necessary for the continuance or completion of the Project will be tolled until the Company has reauthorized this Agreement in writing or entered into another agreement with the Town in connection with the reimbursement of the Town for the Costs.

7. The Professionals do not have any obligation by or fiduciary relationship to the Company, its subsidiaries or affiliates, and nothing in this Agreement shall be read as making the Professionals employees of the Town.

8. The services provided by the Professionals shall not exceed the rates for the professional services in the respective individual agreements of such Professionals with the Town.

9. Upon completion of all the activities contemplated in this Agreement on the part of the Town's Professionals with respect to the Agreements and Approvals for the proposed Project, any Escrow Funds remaining in the escrow account of the Town after paying all of the outstanding Costs shall be promptly paid over to the Company.

10. Nothing in this Agreement shall obligate or otherwise commit the Town Board to enter into or approve the Agreements and Approvals for the Project.

**11. General Considerations**

a. Notification: Any notice, report or demand required, permitted or desired to be given pursuant to any of the provisions of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered in person to the individual or entity for whom it was intended or sent by Federal Express (or like overnight carrier service) or by certified or registered mail to the following addresses, effective upon receipt or refusal of deliver; any party may

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change the information relating to notice to such party by providing a notice of such change in accordance with the provisions of this Section:

**If to the Town:**

Town of Wawayanda  
80 Ridgebury Hill Road  
PO Box 106  
Slate Hill, New York 10973  
Attention: Town Supervisors

**If to the Company**

50 Braintree Hill Office Park  
Suite 300  
Braintree, Massachusetts 02184  
Attention: Steve Remillard

**With a copy to:**

Daniel A. Spitzer, Esq.  
Hodgson Russ LLP  
140 Pearl Street  
Buffalo, New York 14202

John B Hood, Esq.  
Nixon Peabody LLP  
1100 Clinton Square  
Rochester, New York 146004

b. Counterparts: This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.

c. Captions: The headings or captions of or within the sections of this Agreement are for convenience and reference only, and not form a part hereof, and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of the Agreement.

d. Singular/ Plural: Defined terms in this Agreement apply equally to the singular or plural, as the case may be, of such terms.

e. Applicable Law: All applicable statutes of New York State laws are deemed to be incorporated in and made part of this Agreement. If any such statute is not inserted through mistake or otherwise, then upon application of either party, this Agreement shall be physically amended forthwith to make such insertion.

f. Governing Law: This Agreement shall be governed and construed in all respects by the law applicable to contracts made and to be performed in the State of New York. For purposes of commencing or continuing legal actions to enforce obligations or rights of the parties under or arising out of this agreement, venue shall be in the New York State Supreme Court for Orange County, New York.

g. Modification: This Agreement constitutes that complete understanding of the parties with the respect to the subject matter hereto and may not be amended, modified, supplemented or waived except by written agreement duly executed by the parties.

h. Authority for Execution: Supervisor John Razzano, whose signature appears hereafter, has executed this Agreement as of the day and year first written above pursuant to a resolution adopted by the Town Board of the Town of Waywayanda, at a duly held meeting thereof.

**VOTE**

Supervisor Razzano - Aye  
Councilman Cole - Aye  
Councilman Krajewski - Aye  
Councilwoman Quinn - Aye  
Councilman Penaluna - Aye

**MOTION CARRIED**

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**MOTION** by **Supervisor Razzano**, seconded by **Councilwoman Quinn**, to go into Executive Session to discuss employment of a particular individual.

**ALL IN FAVOR - CARRIED**

**EXECUTIVE SESSION:** No action taken.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Cole**, to close Executive Session and re-open the regular meeting.

**ALL IN FAVOR - CARRIED**

**PUBLIC COMMENTS & QUESTIONS:**

**Mary Markiewicz** questioned the Board as to how they are justifying the starting salary for Chloe Murphy of \$12.00 per hour considering she does not have any prior experience with this position.

**Councilman Krajewski** provided her with a response.

**Supervisor Razzano** announced that the Re-Organization meeting will be on January 7<sup>th</sup>, 2010 at 7:00 P.M.

**Teresa E. Pierce / Retiring Town Clerk: Supervisor Razzano** acknowledged Teresa Pierce and commended her on her 26 years of dedicated and faithful service to the Town of Wawayanda. As Tax Collector, and for the past 22 years as Town Clerk, she has left an everlasting impression on us all. The Board wished her well in her retirement.

No other comments or questions.

**MOTION** by **Supervisor Razzano**, seconded by **Councilman Krajewski**, to adjourn the meeting.

**ALL IN FAVOR - CARRIED**

**MEETING ADJOURNED: 8:35 P.M.**

**PREPARED BY: KATHRYN SHERLOCK**

**RESPECTFULLY SUBMITTED,**

Kathryn A. Sherlock, Town Clerk