

Village of Owego Board of Trustees Meeting

A regularly scheduled Village of Owego Mayor and Board of Trustees meeting was held on Monday, February 1, 2016 at 7:00 pm at 20 Elm Street, Owego, New York, 13827. The following people were in attendance:

Mayor:	Kevin Millar
Trustees:	Jenny Ceccherelli Earl Hartman Steve May Phoebe Morris Mike Phelps
Clerk-Treasurer:	Rod Marchewka
Village Attorney:	Robert McKertich
Police Chief:	Karen Vinti
WWTP Supt.:	Ron Horton
Absent:	Trustee Manville DPW Supt. Soules

Pledge and invocation.

Sign In Sheet – Insert “A”

Public Comment:

None.

Two Rivers Greenway Signage. Discussion on sign placement and should the Tioga County Tourism office pay for these?

Motion by Trustee Ceccherelli, seconded by Trustee May, to table the vote on the Greenway Signage until trustees can meet with the county. Trustee Ceccherelli, Trustee Hartman, Trustee May, and Trustee Phelps voted aye. Trustee Morris voted no and Mayor Millar abstained.

Motion Carried 4-1-1

Above motion tabled until next regular meeting (1-15-2016).

Motion by Mayor Millar, seconded by Trustee Ceccherelli, to hold a Public Hearing on Monday February 15, 2016 at 7:00 on Local Law No. 1 of 2016 a Local Law amending the Village of Owego Senior Citizen Tax Exemption Law. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Motion by Trustee May, seconded by Trustee Ceccherelli, to approve the following resolution:

A RESOLUTION EXTENDING THE EMPLOYMENT OF THREE RETIRED POLICE OFFICERS PURSUANT TO A MEMORANDUM OF AGREEMENT

At a meeting of the Village Board of the Village of Owego held at the Village Board Room, 20 Elm Street, Owego, New York on the 1st day of February 2016, the following resolution was offered:

WHEREAS, the Village of Owego has entered into a Memorandum of Agreement with the Owego Police Benevolent Association authorizing the hiring of retired police officers on a temporary full time basis; and

WHEREAS, the Village Board hired retired police officers Rudy Parker, Darryl Dibble and Michael Buemi pursuant to the terms of the Memorandum of Agreement; and

NOW THEREFORE, BE IT RESOLVED that the Village Board of the Village of Owego hereby approves a six month extension of employment, to expire on August 17, 2016, for officers Rudy Parker, Darryl Dibble and Michael Buemi in accordance with paragraph 1 of the Memorandum of Agreement; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Motion by Mayor Millar, seconded by Trustee Ceccherelli, to reschedule the board meeting of February 16, 2016 (Tuesday) to February 15, 2016 (Monday). Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Motion by Trustee Ceccherelli, seconded by Trustee Morris to set a Public Hearing for February 15, 2016 at 7:10 to abolish the Architectural Review Board Law. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

- Attorney McKertich is working on EDU sewer law updates and also reviewing the EDU definitions

Motion by Trustee Ceccherelli, seconded by Trustee May, to approve the Special Village of Owego Board of Trustees Meeting Minutes of January 14, 2016 as submitted by the clerk-treasurer. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps voted aye. Mayor Millar abstained.

Motion Carried 5-0-1

Insert "B" – letter from Attorney Berson

Attorney McKertich disputes merit Trustee Phelps statement which was read into the board minutes on January 14, 2016. (page 1)

Motion by Trustee Ceccherelli, seconded by Trustee Morris, to approve the Village of Owego Board of Trustees Meeting Minutes of January 19, 2016 as submitted by the clerk-treasurer. Roll Call Vote: Trustee Ceccherelli, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye. Trustee Hartman passed and then voted aye. Trustee May abstained

Motion Carried 5-0-1

Motion by Trustee Morris, seconded by Trustee Ceccherelli, to approve the payment of bills as submitted by the clerk-treasurer as follows:

General Fund	-	\$330,507.23
Sewer Fund	-	\$ 45,872.75
Sewer Plant Upgrade	-	<u>\$243,749.56</u>
Total	-	\$620,129.54

Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Motion, by Trustee May, seconded by Trustee Ceccherelli, to approve the following election contracts with Tioga County:

**ELECTION SERVICES AGREEMENT BETWEEN TIOGA COUNTY BOARD OF ELECTIONS
AND THE VILLAGE OF OWEGO CONCERNING VILLAGE ELECTION TO BE HELD ON
MARCH 15, 2016**

THIS AGREEMENT is entered into between the Tioga County Board of Elections, with offices at 1062 State Route 38, Owego, NY 13827 (hereinafter referred to as the "Board of Elections") and the Village of Owego, with offices at 178 Main St., Owego, NY 13827 (hereinafter referred to as the "Village").

WHEREAS, the Village is holding a vote and election on March 15, 2016, and is seeking the assistance of the Board of Elections, in providing election services consisting of the provision and usage of voting machines, all equipment and supplies necessary to conduct voting operations; as well as training and assistance concerning voting operations; and

WHEREAS, pursuant to Section 3-224 of the New York State Election Law, the Board of Elections may permit municipalities within the county to use its voting machines and other equipment to be used for the conduct of elections, upon such rental and other terms and conditions as shall be fixed by the Board of Elections;

NOW THEREFORE, the parties named above hereby enter into this Agreement applicable to the Owego Village Vote and Election being held March 15, 2016 (hereinafter referred to as the "Election"):

I. BOARD OF ELECTIONS

1. The Board of Elections shall:

a. Provide and deliver voting machines, booths, privacy sleeves, detail tape and Vendor required specific marking pens to the Village in a number deemed adequate upon mutual agreement between the parties.

b. Provide training to noncertified Village Inspectors as to the operation of the voting machines at the Village's expense.

c. Subject to the Village's review, define the ballot in terms of format and language. Said ballot will be provided in a PDF form for the Village's review.

d. Provide poll books in a number and format agreed to by the Village which will be paid for at the standard rate by the Village.

e. Program the voting machines and pre-election test them.

f. Provide the services of two (2) Board of Election Technicians who shall create the aforementioned ballot definition, perform testing of the voting machines, program the security keys and flash memory cards, provide assistance as needed, and remove the voting machines, other equipment and supplies after their usage. Said Technicians shall respond immediately as needed should a situation arise wherein the Village Inspectors are unable to resolve an issue with the voting machines and/or equipment as needed to provide assistance in resolving issues that may develop.

g. Tioga County employees will deliver the voting machines and other equipment and supplies and return them to the Board in County vehicles and the Village will reimburse the Board for the cost of drivers and the fuel involved.

II. THE VILLAGE

1. The Village shall:

a. Provide the Board of Elections with the ballot layout and content by February 10th, 2016.

b. Notify the Board of Elections of its approval of the ballot definition PDF no later than February 12th, 2016.

c. The ballot printers will be directly paid by the Village. The Board has a contractual discounted price from Phoenix Graphics which is available to municipalities in Tioga County.

d. Test ballots will be delivered to the Board of Elections by Feb 23rd, 2016.

e. Pay for services of the aforementioned Board of Election Technicians, whose duties are outlined above, at their prevailing rate of pay. The Village shall pay for said services in full upon receipt of an invoice from the Board of Elections detailing the costs for said services.

f. Reimburse the Board of Elections for all consumables used in the process (i.e. detail tape, flash cards, lost pens or privacy sleeves, etc.)

III. GENERAL

1. The Village shall be responsible for the care and custody of the voting machines, other equipment and supplies, while they are in its possession; and as such the Village agrees to pay for (or reimburse) any repair or replacement costs incurred as a result of damage to the voting machines, other equipment and/or supplies while having possession thereof.

2. The Board of Elections and/or Tioga County shall NOT be liable for any voting machine and/or equipment failure during the Election; nor shall it be liable for any costs incurred by the Village as a result of such failures.

3. It is acknowledged that regarding all aspects of the Election, the aforementioned Village Inspectors shall be the sole agents and/or employees of the Village; and the Village, and NOT the Board of Elections or Tioga County, shall be solely responsible for the operation of the voting machines and any resulting liability incurred as a result thereof.

4. The parties, at their own cost and expense, agree to the insurance, indemnification and general terms and conditions set forth in Addendum A attached hereto entitled "Tioga County, New York – General Contract and Insurance Specifications", which are to be incorporated herein by reference as if fully set forth.

5. The parties agree that in carrying out the terms of this Agreement that they shall not discriminate against any person due to such person's race, color, creed, disability, sex, marital status, age or national origin and that at all times they will abide by the applicable provisions of the Human Rights law of the State of New York as set forth in Sections 290-301 of the Executive Law of the State of New York.

6. To the extent time limits are not already provided for in this Agreement, the Village shall comply with all of its pre-Election obligations within 15 days of the Election and further acknowledges that no changes shall be permissible beyond that date.

IN WITNESS WHEREOF, the undersigned parties hereto have executed this Agreement on the date(s) set forth below.

TIOGA COUNTY BOARD OF ELECTIONS

By

John J. Langan, Commissioner

Dated: _____

Bernadette M. Toombs, Commissioner

Dated: _____

VILLAGE OF OWEGO

By

Rodney Marchewka, Owego Village Clerk

Dated: _____

TIOGA COUNTY, NEW YORK

General Contract and Insurance Specifications

Project Description or Contract Number:	Agreement for Election Services
Date Issued:	Tuesday, February 23, 2016 8:51 AM
Vendor name ("Contractor"):	
County Department:	Tioga County Board of Elections

Please read these specifications very carefully. These specifications are part of your contract with Tioga County. It is advisable that you forward a copy of these specifications to your insurance agent. Tioga County's waiver of any requirement(s) set forth herein shall not constitute a waiver of any other contract provision.

Part I. General Provisions

1. Each party shall procure and maintain during the term of this contract, at its own expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
2. Every required policy, including any required endorsements and any umbrella / excess policy, shall be primary insurance. Insurance carried by Tioga County, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Contractor.
3. Every required coverage type shall be on an "occurrence basis" unless otherwise specified or allowed.
4. Each party may utilize a combination of primary and umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage.
5. Proof of insurance coverage shall be provided on an ACORD 25 form or acceptable equivalent. All insurance certificates must be approved by the County Department of Law or its designee.
6. The amount of self-insured retention or deductibles must be disclosed on the certificates of insurance. Each party shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
7. Each party reserves the right to request a certified copy of any policy and any endorsement thereto.
8. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-, XI" or better by A.M. Best (Current Rate Guide).
9. If either party fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the non-breaching party may exercise any rights it has in law or equity, including but not limited to the following:
 - (a) immediate termination of the contract;
 - (b) withholding any / all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
 - (c) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by the non-breaching party shall be repaid upon demand, or at the non-breaching party's option, may be offset against any monies due to the breaching party.

Part II. Required Insurance – Minimum coverage types and amounts

1.

Coverage Type	Minimum Limits												
<p><u>Commercial General Liability per standard ISO form or equivalent with no modification of coverage for contractual liability</u></p> <ul style="list-style-type: none"> All endorsed policy exclusions shall be disclosed by submittal of forms Each party shall be named Additional Insured on the other's policy, on a primary, non-contributory basis. The additional insured requirement shall be provided by ISO endorsement forms CG 20 10, CG 20 37 and CG 20 01 (or equivalent forms) and shall not contain any exclusion for bodily injury or property damage arising from completed operations. Submittal of the specified Additional Insured forms is required with the ACORD 25. 	<table border="0"> <tr> <td>General Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Products & Completed Operations Aggregate</td> <td>\$2,000,000</td> </tr> <tr> <td>Personal & Advertising Injury</td> <td>\$1,000,000</td> </tr> <tr> <td>Each Occurrence</td> <td>\$1,000,000</td> </tr> <tr> <td>Fire Damage</td> <td>\$300,000</td> </tr> <tr> <td>Medical Expense</td> <td>\$10,000</td> </tr> </table>	General Aggregate	\$2,000,000	Products & Completed Operations Aggregate	\$2,000,000	Personal & Advertising Injury	\$1,000,000	Each Occurrence	\$1,000,000	Fire Damage	\$300,000	Medical Expense	\$10,000
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Fire Damage	\$300,000												
Medical Expense	\$10,000												
<p><u>Automobile Liability (Comprehensive Form)</u> Must cover owned, non-owned, leased and hired vehicles.</p>	<p>\$1,000,000 Combined Single Limit</p>												
<p><u>Professional Liability</u></p> <ul style="list-style-type: none"> If "Claims Made" coverage, must be maintained continuously for a minimum of two (2) years after contract termination Shall <u>not</u> contain restrictions for <ul style="list-style-type: none"> ✓ Contractual liability ✓ Express warranties or guarantees ✓ Personal injury 	<p>\$1,000,000 Each Claim \$1,000,000 Annual Aggregate</p>												
<p><u>Umbrella / Excess Liability (Following Form)</u></p> <ul style="list-style-type: none"> To extend over CGL, Auto 	<p>\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>												
<p><u>Workers' Compensation and Employer's Liability</u> If you have no employees (sole proprietor) a NYS Workers' Compensation Board issued waiver of the Workers' Compensation requirement is acceptable</p>	<p>Part 1 – Statutory Part 2 – (Unlimited in NYS) \$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Disease Each Employee</p>												
<p>(Proof of either Workers' Compensation Insurance or a NYS Workers' Compensation Board issued waiver of the Workers' Compensation insurance requirement is mandated by state law. There are no exceptions to this law.)</p>													

2. The certificate face shall:

- indicate coverages and minimum amounts required in part II.1

- provide that the coverage(s) shall not be cancelled, terminated or materially changed (including an insurance limits reduction) unless prior written notice has been given to the Tioga County.

3. The Additional Insured & Certificate Holder for Tioga County should read:

County Of Tioga
Attn: Law Department
56 Main Street, Owego, NY 13827

Part III Defense and Indemnification

The following provisions concerning indemnification shall not be construed to indemnify the County for damages arising from bodily injury to persons or property contributed to, caused by or resulting from the sole negligence of the County or its employees.

The Contractor agrees to indemnify and hold the County of Tioga and any officer, employee and/or agent thereof free and harmless from any and all losse(s), penalty(ies), damages, settlement(s), cost(s), charge(s), professional fee(s) or other expense(s) or liability(ies) of every kind arising from or relating to any and all claim(s), lien(s), demand(s), obligation(s), action(s), proceedings or causes of action of any kind in connection with, or arising directly or indirectly from the negligent, grossly negligent or intentionally wrongful error(s) and/or omission(s) and/or act(s) of the Contractor (including Contractor's employees, agents and/or subcontractors) in the performance of this agreement.

The County of Tioga agrees to indemnify and hold the Contractor, and any officer, employee and/or agent thereof free and harmless from any and all losse(s), penalty(ies), damages, settlement(s), cost(s), charge(s), professional fee(s) or other expense(s) or liability(ies) of every kind arising from or relating to any and all claim(s), lien(s), demand(s), obligation(s), action(s), proceedings or causes of action of any kind in connection with, or arising directly or indirectly from the negligent, grossly negligent or intentionally wrongful error(s) and/or omission(s) and/or act(s) of the County of Tioga (including County of Tioga's employees, agents and/or subcontractors) in the performance of this agreement.

Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute (including specifically but not limited to New York State Labor Law §§ 200; 202; 240 & 241), ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Contractor, as aforesaid,.

Part IV Safety

Each party specifically reserves the right to suspend or terminate all work under this contract whenever the other party's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of contractor's employees, subcontractor's employees, county employees or member(s) of the general public on county property. This reservation of rights by each party in no way obligates each party to inspect the safety practices of the other party.

If one party exercises its rights pursuant to this part (the suspending party), the other party shall be given three days to cure the defect, unless the party making the claim, in its sole

and absolute discretion, determines that the service cannot be suspended for three days due to the suspending party's legal obligation to continuously provide contractor's service to the public or the suspending party's immediate need for completion of the other party's work. In such case, other party shall immediately cure the defect.

If the other party fails to cure the identified defect(s), suspending party shall have the right to immediately terminate this contract. In the event that suspending party terminates this contract, any payments for work completed by the other party shall be reduced by the costs incurred by the suspending party in re-bidding the work and /or by the increase in cost that results from using a difference vendor.

Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Attorney McKertich outlined the OHPC appeal process

Department Head Reports:

Police Chief Vinti –

- Sargent Kobylarz has completed a 3 week supervisor class
- Three (3) new recruits at the police academy – completion date of May 6th with graduation in June

WWTP Supt. Horton –

Motion by Trustee May, seconded by Trustee Morris, to schedule a Special Meeting on February 29, 2016 at 7:00 pm at 20 Elm Street, Owego, NY regarding the village and the sludge haulers who use the sewer plant. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

- Royal Ford has offered to replace the motor on the sewer (2004 F-450) truck. The cost of the engine is \$9,999.00. No cost for labor or parts that we just put on

Motion by Trustee Morris, seconded by Trustee May, to approve spending \$9,999.00 on repairs to the sewer truck (2004 F-450) with a 24 month warranty with unlimited miles. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Trustee Reports:

Trustee Phelps – discussed consolidation of the Owego DPW with the Town DPW. Village should look into this before we build a new joint DPW building.

Mayor Millar – there is a meeting on February 10, 2016 and a joint town meeting on April 13, 2016.

Mayor's Report –
Mayor's Report

February 1, 2016

Dec 3 Attended SUNY BEST presentation on funds awarded the Southern Tier.

VOOBM 2-1-2016

Dec 4 Buy out Closing
Dec 10 Attended & spoke at Owego Gardens Groundbreaking Ceremony
Dec 14 Met WATT Smart representative re street lights
Dec 15 Attended BMTS Policy Meeting
Dec 21 Attended & spoke at OFA Girls Volleyballs Rally
Dec 22 Attended a presentation by Doug Camin TC IT on fiber optic line coming to Owego
Jan 6 NYRCR DPW Floor Plan Review
Jan 8 Two EMT interviews
Jan 14 Special Village Board Meeting
Jan 15 EMT interview
Jan 25 Met BU MPA Grad Student re internship
Jan 26 Tele Con re cemetery project & drainage
Jan 28 TC Supreme Court
Jan 29 Met BU MPA intern coordinator

Motion by Trustee Hartman, seconded by Trustee Morris, to go into executive session to discuss litigation against the village. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

Public Comment –

Paul Bennett – the village should hold off on repairing the sewer truck and try to get a better deal.

8:04 into executive session

8:37 back in regular session

Motion by Trustee May, seconded by Trustee Hartman, to appeal the preliminary injunction in the Woodburn-Bennett law suit. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps voted aye. Mayor Millar abstained.

Motion Carried 5-0-1

Motion by Trustee May, seconded by Trustee Hartman, to adjourn at 8:40 pm. Roll Call Vote: Trustee Ceccherelli, Trustee Hartman, Trustee May, Trustee Morris, Trustee Phelps, and Mayor Millar voted aye.

Motion Carried 6-0

MARILYN D. BERSON
ATTORNEY AT LAW

24 ALDEN ROAD
POUGHKEEPSIE, NEW YORK 12603

263 ROUTE 17K, SUITE 1004
NEWBURGH, NEW YORK 12550
TEL. 845.566.5526/FAX 845.566.9416
e-mail: mberson@nysupa.com

VIA ELECTRONIC AND FIRST CLASS MAIL

January 29, 2016

Robert McKertich, Esq.
Coughlin & Gerhart, LLP
PO Box 2039
Binghamton, New York 13904

Re: Village Board Minutes of January 14, 2016
Statement of Trustee Phelps

Dear Mr. McKertich:

I have been provided with a copy of draft minutes from the Village of Owego Board meeting of January 14, 2016.

In the minutes is a statement read by Trustee Phelps in which he states in part that "Attorney Berson and her law firm are retained for legal counsel by Owego PBA and myself as a member of Vestal PBA" (copy enclosed). Frankly, I do not understand the purpose of this statement, other than to insinuate that I have some conflict in representing the Owego PBA or petitioners/plaintiffs in the lawsuit referenced in Trustee Phelps' statement. Whatever the purpose, Trustee Phelps' remarks are a complete misstatement of fact and terribly misleading.

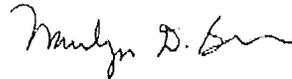
I have never been and I am not now retained by the Owego PBA or the Vestal PBA as legal counsel. I have never been retained and am not now retained to represent Trustee Phelps in any capacity, including in his capacity as a member of the Vestal PBA. In fact, I have never been retained to represent the Town of Vestal PBA in any matter.

I and other attorneys are retained as counsel by the New York State Union of Police Associations, Inc. (NYSUPA) to provide representation to police unions that contract with NYSUPA for labor representation. We are not retained by the union. Rather, when retained by NYSUPA, we represent the police union, and not its individual members.

Robert McKertich
January 29, 2016
Page 2

I am copying the Village Clerk on this letter and requesting that it be made part of the minutes of the next Village Board of Trustees meeting.

Yours truly,



Marilyn D. Berson

MDB:kob
Enc.

cc: Rod Marchewka, Village of Owego Clerk (via email and facsimile)
Jack Burkhard, President, Vestal Police Benevolent Association, Inc. (via email)
Brett Kobylarz, President, Owego Police Benevolent Association (via email)

