

KENNETH SCHMITT
Town Supervisor

TOWN OF CARMEL
TOWN HALL

ANN SPOFFORD
Town Clerk

FRANK D. LOMBARDI
Town Councilman
Deputy Supervisor

60 McAlpin Avenue
Mahopac, New York 10541
Tel. (845) 628-1500 • Fax (845) 628-6836
www.carmelny.org

KATHLEEN KRAUS
Receiver of Taxes

JOHN D. LUPINACCI
Town Councilman
SUZANNE MC DONOUGH
Town Councilwoman
JONATHAN SCHNEIDER
Town Councilman

MICHAEL SIMONE
Superintendent of Highways
Tel. (845) 628-7474

AGENDA
TOWN BOARD WORK SESSION
Wednesday, December 11, 2013 7:00pm

[Pledge of Allegiance – Moment of Silence](#)

Town Board Special Voting Meeting:

1. Res: Adopting Section 375i(p) of the New York State Retirement and Social Security Law and Filing said Resolution with the New York State Retirement System

Town Board Work Session:

1. Review of Town Board Minutes, November 20, 2013
 2. Michael Carnazza, Building & Codes Enforcer – Consider Refund of Application Permit Fee – American Legion Post 1080 (\$400)
 3. Mary Ann Maxwell, Town Comptroller – Consider Budget Revisions- October/November 2013
 4. Consider Renewal of Agreement with Putnam County Office of the Aging for Outreach Worker Services
- **Public Comment (Three (3) Minutes on Agenda Items Only)**
 - **Town Board Member Comments**

Open Forum:

- **Public Comments on New Town Related Business (Three (3) Minutes Maximum per Speaker for Town Residents, Property Owners & Business Owners Only)**
- **Town Board Member Comments**
- **Adjournment**

Executive Session:

- **Personnel – Engineering Department**

**RESOLUTION ADOPTING SECTION 375-i(p) OF THE NEW YORK STATE
RETIREMENT AND SOCIAL SECURITY LAW AND FILING SAID RESOLUTION
WITH THE NEW YORK STATE RETIREMENT SYSTEM**

WHEREFORE, on December 11, 2013, the Town Board for the Town of Carmel ("Town Board) hereby adopts via resolution the benefits prescribed under New York State & Local Retirement System's ("NYS Retirement System") Section 375-i(P), as set forth under New York State Retirement and Social Security Law, Article 11, Section 442(b)(3) ("Section 375-i(P)").

WHEREFORE the Town of Carmel seeks to offer the members of the Town of Carmel Police Department the benefits provided under Section 375-i(P) at the time of their retirement; and

NOW THEREFORE BE IT RESOLVED that, effectively immediately, the Town of Carmel shall take all necessary steps for implementation of the benefits set forth in Section 375-i(P) including the filing of this Resolution with the NYS Retirement System in anticipation of the Retirement System's approval of such filing.

Resolution

Offered by: _____

Seconded by: _____

<u>Roll Call Vote</u>	<u>YES</u>	<u>NO</u>
Jonathan Schneider	_____	_____
John Lupinacci	_____	_____
Suzanne McDonough	_____	_____
Frank Lombardi	_____	_____
Kenneth Schmitt	_____	_____

Pasquerello, Anne

From: Maxwell, Mary Ann
Sent: Thursday, December 05, 2013 12:38 PM
To: Pasquerello, Anne
Subject: Work session 12/11

Please add ***October/November 2013 Budget Revisions*** to next week's agenda.....thanks!

Mary Ann Maxwell
Town Comptroller
Town of Carmel
(845) 628-1500 ext 175
Fax (845) 628-7085
mam@ci.carmel.ny.us

MARYELLEN ODELL
County Executive



PUTNAM COUNTY
OFFICE FOR THE AGING

orig: M. Maxwell
cc: PC Off. of Aging / Anne ✓
11/27 BC

PATRICIA SHEEHY
Director

November 1, 2013

☒ Work Session 12/11/13

☐ Agenda _____

Town of Carmel
Kenneth Schmitt, Town Supervisor
60 McAlpin Ave.
Mahopac, NY 10541

Dear Supervisor Schmitt:

The Putnam County Office for the Aging is currently renewing our contract with you for the coming year, January 1, 2014 through December 31, 2014.

In order to submit our contract preparations, please submit the following, and /or fill out the attached documents:

- Putnam County Purchasing Department Notice and Affidavit
- W-9 Form

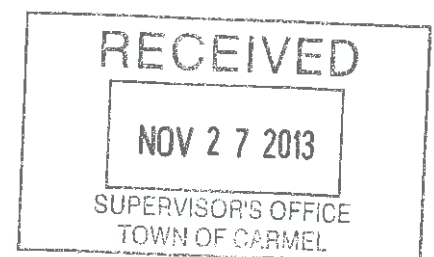
Please send the above at your earliest convenience, so that we may prepare and send these contracts to you for signature.

Thank you, in advance, for your prompt attention to the above.

Sincerely,

Doreen Crane
Coordinator of Services

DC:mgh



Contract #: _____

Putnam County Purchasing Department
Notice of Application to Certify Compliance with Federal Law
(8 U.S.C. Section 1324 a)
with Respect to Lawful Hiring of Employees
To be completed by Applicant / Covered Employer / Owner

Employer / Business / Company Name: Town of Carmel

Address: 60 McAlpin Ave. Mahopac, NY 10541

Vendor #: _____ (if known) Contract ID: _____ (if known)

Contact: _____ Telephone: _____

Term of Contract or Extension: 1 year

Amount of Contract Extension: \$5,000

Brief Description of Project or Service: Outreach Worker

Subcontractor: _____

Address: _____

Vendor #: _____ Telephone: _____

Contact: _____

Description of Compensation, Project or Service: _____

Evidence of Compliance: Copies of the following must be maintained by covered employers or the owners thereof for each employee for the time periods set forth in the Putnam County Code, Chapter 134, Section 5.

- United States Passport; or
- Resident alien card or alien registration card; or
- Birth certificate indicating that the person was born in the United States; or
- A drivers license, if it contains a photograph of the individual; AND a social Security number card (other than such a card which specifies on its face that the issuance of the card does not authorize employment in the United States); or
- Employment authorization documents such as an H-1B Visa, and L-1 Visa, or other work visa as may be authorized by the United States Government at the Time the County contract is awarded for all covered employees.

Affidavit of Compliance
with the Requirements of
8 U.S.C. Section 1324 a
with Respect to Lawful Hiring of Employees

State of New York County of

Putnam

) :ss:
)

_____ being duly sworn, deposes and says:
(Print name of deponent)

1) I am the Owner / Authorized Representative of _____
(circle one) (Name of Corp., business, company)

2) I certify that I have complied, in good faith, with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as set forth in the Putnam County Chapter.

(Signature of deponent)

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public, State of New York

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

☐ Exempt
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**Agreement
Between
COUNTY OF PUTNAM
and
TOWN OF CARMEL**

THIS AGREEMENT, made by and between **COUNTY OF PUTNAM**, a municipal corporation of the State of New York, having an office and place of business at 40 Gleneida Avenue, Carmel, New York 10512, by and through its Office for the Aging (hereinafter referred to as the "COUNTY") and **TOWN OF CARMEL**, a municipal subdivision located at 60 McAlpin Avenue, Mahopac, New York 10541 (hereinafter referred to as the "TOWN").

WHEREAS, the TOWN is a municipal subdivision in the County of Putnam, with more than 2,000 residents over the age of 60 years; and

WHEREAS, the parties herein recognize a need for linkage to County and other governmental agencies for residents of the TOWN who are over the age of 60 years; and

WHEREAS, the TOWN agrees that an Outreach Worker provided by the COUNTY to the TOWN in order that such linkage be provided to residents of the TOWN who are over the age of 60 years, as more fully described herein, is in the best interests of the TOWN.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

FIRST: The TOWN agrees to pay the sum of FIVE THOUSAND (\$5,000.00) DOLLARS to the COUNTY for the services of an Outreach Worker, to be furnished by the COUNTY and agreeable to the TOWN, in accordance with the terms and conditions set forth herein.

SECOND: The COUNTY agrees to provide an Outreach Worker to the TOWN, upon the terms and conditions set forth herein:

Duties:

- a) The Outreach Worker shall actively seek out and assist persons residing in the TOWN's geographical area who are over the age of 60 years and have health and/or financial problems and/or are in need of governmental assistance; and
- b) The Outreach Worker shall provide such persons with the guidance and assistance necessary to contact and/or make application for/to obtain services from the proper governmental agencies and other available resources.

Hours:

- a) The Outreach Worker shall be available to guide and assist such persons at a designated area provided by the Office for the Aging and provide office hours and home visits, on demand and as deemed necessary to carry out the foregoing services, for a minimum of 12.5 hours per week.

THIRD: The TOWN agrees that it will at all times faithfully, industriously and to the best of its ability, perform all of the duties that may be required of and from it pursuant to express and implicit terms hereof, to the reasonable satisfaction of the COUNTY.

FOURTH: The term of this Agreement will commence January 1, 2013 and will terminate on December 31, 2013, unless otherwise terminated in accordance with paragraphs "SEVENTH" or "EIGHTH" hereof.

FIFTH: As also provided in Paragraph "FIRST" herein, for the services rendered by the Outreach Worker according to Paragraph "SECOND", the TOWN shall submit full

payment in the amount of \$5,000.00 to the COUNTY on or before December 31, 2013. It is understood and agreed that any reduction in payment to the COUNTY by the TOWN may result in reduced hours (including benefits) of the Outreach Worker.

The COUNTY shall be responsible for the payment of the Outreach Worker's salary and benefits, including training expenses and other related costs, over and above the sums payable to the COUNTY by the TOWN under this Agreement. Additionally, to the extent the Outreach Worker is required to use his/her personal vehicle in the performance of his/her duties under the terms of this Agreement, the COUNTY shall reimburse the Outreach Worker for such expenses at the current Internal Revenue Service approved mileage rate.

Any and all requests for payment to be made will be submitted on properly executed claim forms (or invoices) of the COUNTY and paid only after approval by the Director of the Office for the Aging or his/her duly authorized representative.

Prior to the making of any payments hereunder, the COUNTY may, at its option, audit all files and disbursement records of the TOWN as are reasonably pertinent to this Agreement to substantiate the basis for payment, including but not limited to the TOWN'S records of its financial transactions with the COUNTY. The TOWN'S files and records shall be kept in accordance with sound accounting practices and each transaction shall be fully documented. Should the COUNTY request such files and records, the TOWN shall provide the files and records to the County Auditor or his/her authorized representative, as well as to the County Commissioner of Finance, or his/her duly authorized representative, within ten (10) business days of the COUNTY'S request.

SIXTH: The work to be performed pursuant to the terms of this Agreement will commence promptly upon assignment by the Director of the Office for the Aging or his/her duly authorized representative and will be conducted in the best interest of the COUNTY.

SEVENTH: It is understood and agreed by and between the parties hereto that payment by the TOWN under the terms of this Agreement is a material element of this Agreement. Any failure to provide said payment will be deemed a material breach and this Agreement will terminate without notice. No substitution of the services will be permitted during the term of this Agreement without the express written consent of the COUNTY.

EIGHTH: Except as otherwise provided in paragraph "SEVENTH" herein, the COUNTY, upon ten (10) days' notice to the TOWN, may terminate this Agreement, in whole or in part, when the COUNTY deems it to be in its best interest. In such event, reimbursement to the TOWN for payments already made by the TOWN will be prorated and the COUNTY will be liable only for payment for services already rendered and expenses incurred under this Agreement prior to the effective date of termination.

The TOWN, upon thirty (30) days' notice to the COUNTY, may terminate this Agreement, in whole or in part, when the TOWN deems it to be in its best interest.

In the event of a dispute as to the value of the services rendered to the TOWN by the Outreach Worker prior to the date of termination, it is understood and agreed that the Director of the Office for the Aging or his/her duly authorized representative will determine the value of such services rendered by the Outreach Worker. Such reasonable and good faith determination will be accepted by the TOWN as final.

NINTH: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the COUNTY is void.

TENTH: Where applicable, the TOWN will comply, at its sole expense, with the provisions of all state and municipal requirements and with all state and federal laws applicable to the TOWN as an employer of labor or otherwise. The TOWN will further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder, as applicable.

ELEVENTH: No discrimination by the TOWN will be permitted during the performance of this Agreement with respect to race, religion, creed, color, national origin, sex, age, handicap, political affiliation or beliefs.

TWELFTH: In addition to, and not in limitation of, the insurance requirements contained in Schedule "A" entitled "Putnam County Insurance Requirements," attached hereto and made a part of this Agreement, the TOWN agrees, to the fullest extent permitted by law, to protect, defend, indemnify and hold the County of Putnam and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the performance hereof, unless that liability was created by the sole and exclusive negligence of the COUNTY. The TOWN further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at its sole expense, and agrees

to bear all costs and expenses related thereto, even if it (claims, etc.) is groundless, false or fraudulent.

THIRTEENTH: The failure of the COUNTY to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term of condition, but the same shall remain in full force and effect. No waiver by the COUNTY of any provision hereof shall be implied.

FOURTEENTH: All notices of any nature referred to in this Agreement shall be in writing and hand delivered or sent by registered or certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the COUNTY:

COUNTY ATTORNEY
48 Gleneida Avenue
Carmel, New York 10512

To the TOWN:

TOWN OF CARMEL
60 McAlpin Avenue
Mahopac, New York 10541

All notices shall be effective on the date of mailing.

FIFTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It will not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

SIXTEENTH: This Agreement will be deemed executory only to the extent of the monies available to the COUNTY for the performance of its terms and no liability will be incurred by the COUNTY beyond the monies so available.

SEVENTEENTH: This Agreement will be construed and enforced in accordance with the laws of the State of New York. Any and all disputes and/or legal actions or proceedings arising out of this Agreement shall be venued in Putnam County, New York.

EIGHTEENTH: Unless specifically provided by law, electronic signatures may be used in lieu of a signature affixed by hand. The use of said electronic signatures shall have the same force and effect of law and shall be deemed binding. Moreover, this contract shall not be deemed effective until fully executed by the TOWN, the required COUNTY signatories and the County Executive.


NINETEENTH: The TOWN is required to provide the following documents to the COUNTY before this Agreement will be finalized and/or executed by the COUNTY, and before the COUNTY will approve any voucher/invoice submitted for payment:

1. "Request for Taxpayer Identification Number and Certification" form (IRS Form W-9).
2. "Notice of Application to Certify Compliance with Federal Law" and "Affidavit of Compliance," in accordance with the provisions of 8 U.S.C. §1324a and Chapter 134 of the Putnam County Code. Where applicable, in the event that the TOWN subcontracts any part of the work under this Agreement in accordance with paragraph "NINTH" of this Agreement, the TOWN shall provide the COUNTY with a completed "Notice of Application to Certify Compliance with Federal Law" and an

“Affidavit of Compliance” for each and every subcontractor hired to perform work under this Agreement.

3. Appropriate Certificate of Insurance, in accordance with paragraph “TWELFTH” of this Agreement and the requirements contained in Schedule “A”.

IN WITNESS WHEREOF, the parties have executed this Agreement in Carmel, New York, on the date hereinabove set forth.

 Date 10/1/13
TOWN OF CARMEL
60 McAlpin Avenue
Mahopac, New York 10541

By: KENNETH SCHMITT TOWN OF CARMEL SUPERVISOR
Please Print Name & Title

ACKNOWLEDGMENT OF TOWN:

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

On this 30 day of Sept, 2013 before me personally appeared Kenneth Schmitt personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacity and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

GREGORY L. FOLCHETTI
Notary Public, State of New York
No. 02FO5054988 Putnam
Qualified in Putnam County
Commission Expires January 29, 2014


Notary Public

SCHEDULE A

PUTNAM COUNTY INSURANCE REQUIREMENTS

I. It is the requirement of the County of Putnam and/or Putnam County Highway Department that for work performed under contract and/or permit authorized by the County and/or Highway Department and/or any event or performance conducted on county property that the contractor or permittee procure and maintain at their own expense and without expense to the County, until final acceptance of the work by the County, the insurances listed below.

- Before commencement of any work, event or performance a certificate or certificates of insurance must be furnished to the county and/or highway department in forms satisfactory to the County and/or Highway Department.
- All insurance coverages must be from an A.M. Best Rated "secured" (B+-A++), New York State admitted insurer.
- All certificates of insurance must provide that the policy or policies shall not be changed or canceled until at least thirty (30) days prior written notice has been given to the County and/or Highway Department.
- When required by the Highway Department the "XCU" exclusion of the policy or policies shall be eliminated or show proof that "XCU" is covered.

II. The Contractor shall provide and maintain at its own expense the following minimum insurance coverage:

A. Workers' Compensation Insurance - This is statutorily required and is required for all contracts. Each policy must cover all operations and all locations involved in the contract. If applicable, the policy should also include New York State Disability Benefits.

B. Commercial General Liability Insurance - Each policy must cover all operations and all locations involved in the contract and include the following:

- \$1,000,000 for each occurrence
- \$50,000 for the Fire Damage Legal Liability Limit
- \$5,000 for the Medical Expense Limit
- \$1,000,000 for the Personal & Advertising Injury Limit
- \$2,000,000 for the General Aggregate Limit
- \$2,000,000 for the Products/Completed Operations Aggregate Limit

C. Commercial Automobile Liability Insurance - Each policy must cover all operations and locations involved in the contract and including the following:

- (1) Owned Automobiles
- (2) Hired Automobiles
- (3) Non-Owned Automobiles

Unless specifically required, each policy shall provide Combined Single Limits of not less than \$1,000,000 for Bodily Injury and Property Damage.

D. Professional Liability Insurance (if applicable) - Each policy must cover errors and omissions. The policy limit shall be no less than \$1,000,000 per claim.

E. Excess Liability Insurance or an Umbrella Policy (if applicable) - A policy is required if the amount paid under the contract is above \$100,000. The limits required on the policy depend on the total contract amount.

- \$100,000 - \$250,000 - 1 million
- \$250,001 - \$500,000 - 5 million
- \$500,000+ - 10 million

F. Bid, Performance/Payment, Labor & Material Bonds - A policy is required for any contract in excess of \$250,000. These bonds shall be provided by a New York State admitted surety company in good standing.

III. Specific information **MUST** appear on each and every Insurance Certificate provided to the County.

A. The following must appear under the section entitled, "Certificate Holder"

**COUNTY OF PUTNAM
48 GLENEIDA AVENUE
CARMEL, NEW YORK 10512
ATTN.: LAW DEPT./RISK MANAGER**

B. The following language must appear in the section entitled, "Description of Operations/Locations, etc.":

"Putnam County is included as an additional insured except for Professional Liability and Workers' Compensation."

STANDARD INSURANCE REQUIREMENTS AND INDEMNIFICATION REQUIREMENT:

All policies and certificates of insurance of the contractor shall contain the following clauses:

1. Putnam County is named as an additional insured and as Certificate Holder. Insurers shall have no right of recovery or subrogation against the County of Putnam (including its agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
2. The Clause "other insurance provisions" in a policy in which the County of Putnam is named as an additional insured, shall not apply to the County of Putnam.
3. The insurance companies issuing the policy or policies shall have no recourse against the County of Putnam (including its agents or agencies) for payment of any premiums or for assessments under any form of policy.
4. Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the risk of the contractor.

Michael G. Carnazza
Director of Code Enforcement



60 McAlpin Avenue
Mahopac, New York 10541

Kenneth Schmitt
Supervisor

☒ Work Session 12-11-13

☐ Agenda _____

MEMORANDUM

To: Supervisor Kenneth Schmitt and members of the Town Board

From: Michael Carnazza, Building Inspector

Date: November 27, 2013

Re: American Legion refund of ZBA fee

Please be advised that the American Legion paid a fee to the ZBA for a Use Variance in the amount of \$400.00 (see attached).

I request that the fee be returned to the American Legion as the application was dismissed without prejudice and not heard by the ZBA.

Thank you.



TOWN OF CARMEL ZONING BOARD OF APPEALS

60 McAlpin Avenue, Mahopac, NY 10541 – Phone: (845) 628-1500 – Fax: (845) 628-7085

MEMORANDUM

To: Receiver of Taxes
From: Donna Esteves
Date: October 11, 2013
Subject: American Legion – TM #76.9-1-7

Attached is a check in the amount of \$400.00, which represents payment for the above captioned ZBA application.

MAHOPAC POST 1080 AMERICAN LEGION 50-1139/219 4656
BAR ACCOUNT
P.O. BOX 915
MAHOPAC, NY 10541
DATE 10-10-13
PAY TO THE ORDER OF Town of Carmel \$400—
FOUR hundred & 00/100 DOLLARS
MAHOPAC NATIONAL BANK
A Tompkins Community Bank
www.welcomebanking.com
MEMO U
⑆021911398⑆ 055⑈75753⑈7⑈ 4656
Jesone Puello

Pasquerello, Anne

From: Lupinacci, John
Sent: Saturday, November 30, 2013 9:12 AM
To: Pasquerello, Anne
Cc: Schmitt, Kenneth; Flombardiesq@aol.com; Suzi McDonough; Suzie McDonough; john.lupinacci@boehringer-ingelheim.com; Jonathan Schneider; Schneider, Jonathan; gfolchetti@aol.com
Subject: Re: draft agenda for 12/4 - exec session and dec 11 work meeting request

Good Morning

Executive Session

Can we please have exec session? We had mentioned some topics previously...

1) review of engineering dept and functions. Or is it too early.

- We need engineering to focus on getting some rec projects moving
- we need to discuss, roles
- we need to discuss planning board requirements with new engineers

- Vara Request

Also, this was mentioned before, a few weeks back during budget time, when Mr. Buckley wrote the letter, can we add him to Dec 11th work meeting to discuss, review Rec projects, etc... An overview of what's happening with rec.

Kenny any chance during a meeting in December we can get the. "pacappella"?

Sent from my iPad

On Nov 27, 2013, at 9:30 AM, "Pasquerello, Anne" <amp2@ci.carmel.ny.us> wrote:

Will be taking off today. Attached draft for your eyes only. There are six very special people that I am very thankful for. Wishing you all a very Happy Thanksgiving. May it be filled with love, family, health and laughter. Love you all!! XXOO

Anne Pasquerello

**Confidential Assistant to Town Supervisor
Carmel Town Hall
60 McAlpin Avenue
Mahopac, NY 10541
Office: 845-628-1500 ext. 137
Fax: 845-628-6836**

This communication may be confidential and is intended for the sole use of the addressee(s). No use or reproduction of the information provided is permitted without the written consent of the Town of Carmel. If you are not the intended recipient, you should not copy, disclose or take any action in reliance on this communication. If you have received this communication in error, please notify the sender by reply e-mail and delete the message and any attached documents.

<TB12-4-13.rtf>

Robert Vara
18 Kent Acres
Gypsy Trail
Carmel, New York 10512

Man/Email Sup. ✓
T. Bd. - ✓
Legal Counsel ✓
Labor Counsel ✓
9/26/13
(2)

☒ Exec. Sec.
☒ Work Session 11/11/13
☐ Agenda _____

September 5, 2013

Carmel Town Board
Carmel Town Hall
60 McAlpin Avenue
Mahopac, New York 10541



RE: Overtime Rate Calculation

Dear Board Members:

I believe that the calculation for my overtime rate of pay is incorrect and not in accordance with the Fair Labor Standards Act. The FLSA requires that an employer add "wage augments" to my base salary to determine my correct overtime rate. I have attached a document from the FLSA website and have highlighted the relevant areas.

In my particular case, the \$2,800.00 that I receive each year as longevity pay should be added to my base salary in order to calculate my overtime rate.

Just to simplify it by using my actual numbers:

My Salary is \$80,304.48. There are 2,088 working hours (261 days X 8 hrs.) in a year. Based upon this, my hourly rate of pay is \$38.46. The current rate of overtime that I am being paid is \$57.67 (1.5 X \$38.46) which is incorrect. The correct calculation under the FLSA is as follows: \$80,304.48 (base salary) + \$2,800 (longevity "wage augment") = \$83,104.48 / 2,088 working hours = \$39.80 X 1.5 = \$59.70 (correct overtime rate of pay under FLSA).

Just to put it into some perspective in order of magnitude. The difference is about 3.5%. So if you do a look back for say 6 years from today, let's assume that I have earned \$4,000.00 per year in overtime (which is probably high, as a matter of fact, my YTD for

2013 is only \$692.36). That comes out to \$24,000.00 that was paid incorrectly. If you make the 3.5% adjustment, then the amount that would be due is \$840.00.

It is my understanding that this is the method of calculation that has been used for the Highway Department and the Police Department.

The reason that I am using 6 years is because that is the limitation period under New York State law for breach of contract. In the collective bargaining agreement between the TOC and CSEA it provides for overtime payment under Article IV (C) (copy attached). That overtime rate should always have been calculated in accordance with the FLSA.

What I am asking is that the Board direct Accounting to determine my actual overtime pay for the last six years in order to determine what amount is owed to me and make appropriate adjustments going forward and pay me what I consider my back pay in accordance with the FLSA.

This is a fairly small matter in my opinion. I am not asking for anything more than what is required by the law. This is not a threat to sue the Town of Carmel. It is provided to the Board as a simple request.

As always, feel free to contact me if you have any questions.

Sincerely,



Robert Vara

FLSA overtime rate of pay).

The FLSA formula for determining the regular rate is to divide the total amount of straight time compensation received by the employee "for work" by the number of hours that compensation was intended to pay for. For example, if nonexempt employee "A" is paid a salary of \$400 per week for a normal 40 hour work week, the hourly equivalent is \$10 per hour. However, the FLSA does not prescribe how many hours per week of straight time a salary must be intended to compensate. This is left to the market, and the arrangements between employers and employees. Thus, for example, a nonexempt employee ("B") may be hired at a salary of \$400 as straight time compensation for a normal work week of 50 hours. In that situation, the hourly equivalent of this salary is \$8 per hour. If the employee ("C") is hired at a salary of \$400 per week for 37.5 normal straight time hours per week, the hourly equivalent is \$10.67 per hour.

Assuming that the salary is the entire compensation received by the employee for work, the employee's regular rate of pay -- and therefore the FLSA overtime rate of pay -- varies depending on what the salary is "for." Assume the hypothetical employees described above actually worked 55 hours in a work week -- 15 FLSA overtime hours. Employee "A's" regular rate is \$10 per hour, which paid straight time for 40 hours. S/he is due \$15 per hour for each FLSA overtime hour, or an additional \$225, for total pay due of \$625.

Employee "B" is different. S/he is also due time and one-half for 15 FLSA overtime hours worked, but s/he has "already" been paid the straight time rate of \$8 per hour for the first 50 hours. S/he is therefore due "the difference" between the \$8 of straight time already paid for these hours and the time and one-half overtime rate of \$12 per hour for these hours, or an additional \$4 per hour for 10 hours, or an additional \$40. S/he has been paid nothing for hours 51-55, and is due \$12 per hour for each of these. Thus, total wages due hypothetical employee "B" are \$400 + \$40 + \$60 = \$500. This kind of regular rate computation is sometimes, but inaccurately, known as a "half time" pay system.

Employee "C" has a regular rate of \$10.67 per hour, and therefore an FLSA overtime rate of \$16 per hour. The salary did not compensate for any of the FLSA overtime hours (hours 41-55), so s/he is entitled to an additional \$240 for these. However, s/he also worked hours 37.5-40, which are not FLSA overtime hours. In a work week when employee "C" did not work any FLSA overtime, how s/he was paid for hours 37.5-40 would not be an FLSA concern at all. However, an FLSA regulation requires that in FLSA overtime work weeks, the employee must be paid "all straight time due" in addition to all FLSA overtime due. Absent some peculiar employment arrangement governing payment for hours 37.5-40 (and no such arrangement exists in the hypothetical), employee "C" must be paid straight time for those, or 2.5 hours at \$10.67 per hour = \$26.68. Total pay due employee "C" is therefore \$400 + \$26.68 + \$240 = \$666.68.

There is another possible way that nonexempt employees may be paid on a salary, and that is if a salary is intended to compensate at straight time for "all" hours worked by the employee, whether "few or many." This type of straight time pay arrangement is permitted under the FLSA for nonexempt employees whose hours of work vary from work week to work week (and typically when their normal hours vary so that in some weeks they work fewer than 40 hours). Under these circumstances, a salary designed to compensate at straight time for "all" hours worked is called a "salary for fluctuating hours." On this kind of pay plan, the FLSA regular rate arithmetic formula is the same, but it results in some unusual computations.

To determine the regular rate for a nonexempt employee paid a salary for fluctuating hours requires dividing the salary amount by how many hours the employee actually worked in the work week. (Since the salary for fluctuating hours compensates at straight time for "whatever" number of hours were worked, the number of hours it was "intended" to compensate depends on how many hours were in fact worked.) Since (almost by definition), the hours actually worked by such an employee may vary from week to week, the employee's regular rate of pay may also vary from week to week. The more hours were actually worked, the less the regular rate is. For example, if employee "D" receives a \$400 "salary for fluctuating hours," and worked 60 hours in some week, the regular rate for that week is \$6.67. However, if "D" worked 48 hours in the following week, the regular rate for that week would be \$8.33. In the first week, "D" is entitled to 20 hours of FLSA overtime pay, at time and one-half the regular rate of pay for that work week. Time and one-half \$6.67 is \$10. However, the salary has already compensated "D" at straight time for each hour worked. What "D" is due is "the difference" between the \$6.67 regular rate for that week and the \$10 FLSA overtime rate for that week, for 20 FLSA overtime hours, or an additional \$3.33 per hour for 20 FLSA overtime hours, for a total of \$400 + \$66.60 = \$466.60. In the second week, when "D" worked 48 hours, s/he is due time and one-half of the regular rate of \$8.33 for each of the 8 FLSA overtime hours worked. Since s/he has already been paid \$8.33 for each of these FLSA overtime hours in the salary, what is due is an additional \$4.16 for each FLSA overtime hour. Thus, for the 48 hour week, "D" is due \$400 + \$33.28 = \$433.28. A salary for fluctuating hours is another variation of the type of FLSA overtime pay which is sometimes (but inaccurately) called a "half time" system. Valid wage plans using salaries for fluctuating hours are rare.

Wage augments.

Many nonexempt employees receive various wage augments in addition to their base wages. This may include items such as shift differentials, longevity pay, attendance pay, or "bonuses" of various kinds. Under the FLSA, any money received by an employee "for work" is part of the



employee's regular rate of pay. Wage augments such as those listed are considered compensation for work, and must therefore be factored into the regular rate (on a "pro rata" basis).

Sometimes, this is easy to compute. For example, assume that a nonexempt employee is paid \$10 per hour, plus \$.50 per hour shift differential. For that work week, the regular rate is \$10.50 per hour, time and one half of which is \$15.75. In other circumstances, however, the FLSA arithmetic is more complicated. Assume, for example, a \$10 per hour employee who also receives an "extra" \$500 per year as longevity pay. That \$500 per year is considered compensation for work and is part of the employee's regular rate of pay. The difficult question is how the \$500 should be allocated to each hour actually worked by the employee; by how much per hour the longevity pay bonus increases this employee's regular rate. The answer is that the \$500 has to be allocated on a pro rata basis among "all" the hours the employee actually worked during the period when the bonus applied (since the longevity pay was "earned" for "all" the hours the employee worked). Since the longevity pay bonus covered a year's worth of work, it would be allocated among all the hours the employee actually worked in the year to which the bonus applied. This, of course, makes it impossible to determine how much to allocate per hour until the total hours worked by the employee over the entire year is known. Therefore, at the end of the year, the \$500 should be allocated to all the employee's work hours, and then the employee's FLSA overtime pay recomputed for each work week when FLSA overtime was worked using the adjusted regular rate. The employer should then tender the employee the "increase" in FLSA overtime pay attributed to the regular rate adjustment. Of course, for many employers this can be a daunting administrative task, and it may be questioned whether the cost of performing these computations will exceed the value of the exercise. Because of this, some employers may simply allocate the wage augments to the affected employees' normal "straight time" work weeks, increasing the regular rates accordingly even though ultimately that may result in employees receiving slightly more than the strict FLSA formula would require.



Most bonuses are required to be included in the employees' regular rates. The only exception is for bonuses which are entirely "discretionary" with the employer. A bonus is not discretionary if the employment policy is that an employee is entitled to the bonus if s/he meets certain predetermined requirements, such as successfully making a "quota." Nor are bonuses discretionary if they depend on the employer meeting predetermined goals, such as "profit sharing" triggered by a set revenue figure.

Payments to employees as reimbursements of out-of-pocket expenses are not required to be included in the regular rate, since they are not compensation "for work." For example, distinguish between educational "stipends" such as money paid to employees who have attained a specified degree, and "tuition assistance" programs in which the employer pays all or part of the costs of courses successfully completed by employees. The former is "compensation for work," includable in the regular rate. The latter is not, since it is a reimbursement for an expense. Extra money paid to employees to offset the cost of purchasing or dry cleaning work uniforms is not required to be included as part of the regular rate. Extra money paid to employees to compensate them for the time they may spend cleaning work uniforms is compensation for work and part of the regular rate. Mileage payments for the employee's use of a personally owned vehicle are reimbursements, not compensation for work.

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ARTICLE IV. WORKDAY AND WORKWEEK - PAYROLL PERIOD - OVERTIME

A. Workday and Workweek

1. a. The regular workweek for Town Hall employees shall be: five (5) days per week, Monday through Friday, eight (8) hours per day, 8:30 a.m. to 4:30 p.m., including one (1) hour for lunch.
- b. The Town shall have the right to schedule Civilian Dispatchers to any current forty (40) hour shift or to any newly created forty (40) hour shift within a seven (7) day workweek, including one (1) hour for lunch.
- c. The regular workweek for Highway employees who are members of the CSEA shall be five (5) days per week, Monday through Friday, eight (8) hours per day 7:30 a.m. to 3:30 p.m., including one (1) hour for lunch.
- d. The regular workweek for the Police Secretary shall be five (5) days per week, Monday through Friday, eight (8) hours per day 8:00 a.m. to 4:00 p.m., including one (1) hour for lunch.
2. Effective upon the execution of this Agreement, the regular work schedule for Parks and Recreation Department employees shall be based upon a two-week payroll period. During the two-week period, employees shall work eighty (80) hours at straight time, to be scheduled by the Director of the Parks and Recreation Department. After completion of eighty (80) hours of work in the two-week period, an employee shall be entitled to overtime pay.

B. Payroll Period: Employees will be paid on a bi-weekly basis.

C. Overtime

1. Employees shall be paid time and one-half their regular hourly rate of pay for all hours worked in excess of the regular workweek. Unless otherwise provided above, employees will be paid double time their regular hourly rate of pay for hours worked on Sunday, only if Sunday is not their regularly scheduled workday or for the seventh (7th) consecutive day of work. The hourly rate for overtime will be computed at 1/40th of the employee's normal weekly earnings. There shall be no pyramiding of overtime.

All bargaining unit personnel shall have the option of receiving payment or compensatory time at the appropriate overtime rate.

2. Paid leave time as specified elsewhere in this Agreement shall be considered as time worked for the purpose of computing overtime.
3. The Town will use its best efforts to pay overtime in the pay period subsequent to the pay period in which it was earned, as long as the overtime hours worked have been submitted within the pay period earned.