

**INC. VILLAGE OF PLANDOME HEIGHTS
SPECIAL MEETING OF THE BOARD OF TRUSTEES
PLANDOME HEIGHTS VILLAGE HALL
JANUARY 20, 2023; 10:30 AM
MINUTES OF MEETING**

Present:	Mayor	Kenneth C. Riscica
	Trustee	Mary Hauck
	Trustee	Florence Musalo
	Trustee	Gus Panopoulos
	Trustee	Norman Taylor
	Clerk-Treasurer	Arlene Drucker

Participating by phone:

Village Attorney	Christopher Prior, Esq.
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Absent:	Trustee	Daniel Cataldo
	Trustee	Kristina Lobosco

A Special Meeting of the Board of Trustees was called to order by the Mayor at 10:30 a.m. on Friday, January 20, 2023.

The Mayor noted that this meeting was called for the purpose of reviewing the Digitech contract and authorizing the payment to Seery.

The Mayor advised the Board that Richard Seery of Seery Imaging, the vendor with whom the Village has contracted in connection with its document scanning and retention program (the “Project”), has within the last week advised the Village that the Village must enter into a direct agreement with vendor Digitech Systems LLC, d/b/a PaperVision.com, in order to enable Seery Imaging to perform its Project services for the Village, because those services require the use of the tool provided by Digitech.

The Mayor expressed his surprise at this development, as he understood from Mr. Seery that all agreements to be entered into by the Village in connection with the Project already were in place. The Mayor noted that the Village Clerk has forwarded the agreement form provided by Digitech to the Board members and to the Village Attorney. The Village Attorney had provided to the Mayor a series of comments, which the Board discussed. The Mayor asked the Village Attorney, attending the meeting by phone, to provide input.

The Village Attorney prefaced his comments by noting that, in his experience, it is unlikely that Digitech would readily make changes to its boilerplate agreement for a small customer like the Village. He noted that, while items such as choice of law, choice of jurisdiction and statute of limitations were in that category, the Board should consider raising one significant concern with Digitech. Specifically, he noted that the Village will be paying Digitech for its services, which involve the use of intellectual property about which the Village knows nothing. Digitech should be asked to (i) represent to the Village that Digitech owns all right, title and interest, including to all intellectual property, that it uses to provide this service, and (ii) hold the Village harmless if a 3rd party brings a claim against VPH alleging to the contrary. The Village should not be responsible if a third party pursues the Village for infringing on the 3rd party’s rights just because the Village is using a Digitech service that is the cause of the infringement. The Village Attorney noted that he recently reviewed a boilerplate agreement from SAP, a publicly traded software and cloud service vendor, which includes in its boilerplate agreement the sort of protection for its customers that the Village Attorney is now recommending.

The Board considered the remote possibility of such a third party claim being made against the Village, a small customer of Digitech, but agreed that the Board should request same, while also being prepared for the possibility that Digitech will not be flexible for such a small account. The Board members discussed the need for the Digitech tool to be in place so that the Project can go forward without delay. The Board members understand that firms such as Digitech must be mindful of their reputation in the marketplace, which serves as a last line of defense for small customers that are unable to obtain requested contract modifications, and that relying on the need for a large vendor to protect its place in the market can often be a reasonable basis to accept the type of risk identified by the Village Attorney.

After discussion and on motion made by Trustee Musalo, seconded by Trustee Panopoulos and unanimously carried, the Board enacted the following resolution:

BE IT RESOLVED, that the PaperVision.com Subscriber Agreement between the Village and Digitech Systems LLC, in the form reviewed with the Board by the Village Attorney, with such amendments and modifications thereto, if any, as are recommended by the Village Attorney and accepted by Digitech, be and it hereby is, approved by the Board, and the Mayor is hereby authorized to execute and deliver same, in the name and on behalf of the Village, and the Village is authorized to perform its obligations thereunder.

BE IT FURTHER RESOLVED, that the payment to Seery Systems for \$13,060.64 is approved on the Special Abstract of Claims Number 10 of the Budget Year 2022 – 2023 for claim number 234.

There being no further business to discuss, Trustee Musalo motioned to adjourn the meeting and such motion was seconded by Trustee Panopoulos. All Trustees present were in favor.

The meeting was adjourned at 10:51 am.

Respectfully submitted,

Arlene Drucker
Clerk-Treasurer