

TOWN BOARD MEETING
Public Hearing
September 11, 2012
6:00 P.M.

PRESENT: Councilpersons: Kevin Armstrong, Leonard Govern, Supervisor Bruce Dolph, Hwy. Supt., Walt Geidel, Attorney Frank Wood and Town Clerk Ronda Williams

ABSENT: Patty Wood, Luis Rodriguez-Betancourt

OTHERS PRESENT: Wayne Reynolds – Department of Public Works, Ronald Fletcher, Lillian Brown-Burdick – The Walton Reporter

Supervisor Dolph opened the Public Hearing for those wishing to speak in favor or against the proposed Local Law #2 of 2012 a law to Establish the Town of Walton Planning Board and permits the Town Board to appoint to the planning board 2 alternate members in the case of interest or other factor such as illness, vacation or other absences.

With no comments, the Public Hearing was closed at 6:05 p.m.

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RESOLUTION #83

APPROVAL OF MINUTES

A motion was made by Councilman Armstrong, seconded by Govern approving the minutes of August 7 & 30, 2012 as presented. All in favor, motion carried.

FLOOR TIME:

Wayne Reynolds – Commission of Public Works approached the Board and informed them of the ability and procedure to abandon roads in the Town of Walton. Mr. Reynolds explained two types of abandonment:

Total – Documented non-use for 6 years.

Qualified – Non-use does not have to be proved, instead two years next previous has not usually been traveled by 2 vehicles by the greater part of the day. This is covered under Highway Law 205 & 205B. He would hold a Public Hearing and send letters to adjoining landowners allowing them to provide evidence that it is traveled more than twice a day. He would then

make a recommendation to the Town Board who could act on that recommendation.

Councilman Armstrong questioned how many has Mr. Reynolds done? He stated four.

Supervisor Dolph questioned if part of a road could be abandoned? Mr. Reynolds replied yes.

Councilman Armstrong questioned if lawsuits have been filed and how does abandonment affect CHIPS? Mr. Reynolds stated no lawsuits filed and CHIPS will be recalculated with the reduction in mileage.

Councilman Armstrong questioned if a road could be taken back over? Mr. Reynolds stated yes but would need to be brought up to the Towns specifications and would be up to the landowner to do so.

Supervisor Dolph provided the Board with a list of potential roads and named Bill Finch, Budine, Fitch, Chase and Tower Roads to consider for abandonment. He stated the taxpayers should not be paying for a private driveway.

Councilman Govern made a motion to proceed with the study to abandon the mentioned roads. At this time Mr. Reynolds requested the verbiage from the provided resolution be used.

RESOLUTION #84

QUALIFIED ABANDONMENT OF ROADS

WHEREAS it appears to the Town Superintendent of Highways, and the Town Board, that Bill Finch, Budine, Fitch, Chase and Tower Roads have not become wholly disused, but that it has not for two years next previous thereto, been traveled along the greater part thereof, by more than two vehicles daily, in addition to pedestrians and persons on horseback; and

WHEREAS Section 205 and 205B of the Highway Law of the State of New York provide for a qualified abandonment of highways meeting the above described conditions, and

WHEREAS the Town Superintendent and the Town Board feel that it would be in the best interest of the town to propose a qualified abandonment on Bill Finch, Budine, Fitch, Chase and Tower Roads.

NOW THEREFORE BE IT RESOLVED that the Town Board notify the County Superintendent of Highways to proceed with the proposed Qualified Abandonment of Bill Finch, Budine, Fitch, Chase and Tower Roads pursuant to Section 205 and 205B of the Highway Law.

Motion made by Councilman Govern, seconded by Armstrong
Councilpersons Wood and Rodriguez-Betancourt were not in attendance.
Motion carried by vote of 3 ayes and 0 nays.

Ronald Fletcher approached the Board to question if they would help him with his health insurance and requested they take a vote tonight so he would know where he stood. Councilman Armstrong stated Mr. Fletcher would be responsible for his own insurance and stated the Town does not supply retirees with health benefits.

Mr. Fletcher argued the fact of his time provided to the town and the money he saved the town over the last 37 years should warrant the help. Supervisor Dolph stated we can't be selective

with who we provide health insurance to after retirement, it could be very costly to the tax payers.

Discussion took place as to whether Mr. Fletcher was willing to work part-time yearlong to help pay for his insurance but he stated he was not or he would never have retired. Supervisor Dolph stated he is still checking into the Chamber insurance to see if he could get a better rate for Mr. Fletcher.

SUPERINTENDENT OF HWY. REPORT:

Reported that Budine Road work is progressing and the steel should be delivered Monday. Councilman Govern stated he was surprised by how clean the water was diverted around the work area.

Reported that the auction ended for the 2005 Ford truck with a final bid of \$12,000 and recommended the Board accept the bid amount.

RESOLUTION #85

BID AWARD FOR 2005 FORD TRUCK

A motion was made by Councilman Armstrong, seconded by Govern to accept the \$12,000.00 bid for the surplus 2005 Ford Truck. All in favor, motion carried.

Reported that all money has been received on the 1993 Event and is now considered closed out.

Requested permission to hire a replacement for retiree Ronald Fletcher and the Board requested an ad be placed in the Walton Reporter.

Presented the highway inventory list to the Board and filed a copy with myself. Supervisor Dolph requested this list be forward to the insurance company.

Reported he would like to reclaim the Kilmer mine. Supervisor Dolph suggested not to proceed with that until the lawsuit between the parties has been resolved. Councilman Armstrong question what happens with the permit. Superintendent Geidel stated he would have to continue to reapply.

Provided the Board with his budget requests for 2013.

TOWN CLERK'S REPORT:

Reported that the Dog Control Officers monthly report is available for review in my office.

Reported that the NYS Department of Agriculture & Markets performed an inspection on August 16, 2012 and was found to be "Satisfactory".

Reported that three Use of Facilities have been filed.

Chamber of Commerce – August 28 – October 27, 2012
Sunday's from 4:00 -5:00 p.m.

DCMO BOCES New Vision Class – Sept. 4 – June, 2012
Daily 8:15 – 12:00 p.m.

Cecil Davis II – Sales Presentation
November 7 & 16, 2012
3:30 – 5:00 p.m.

SUPERVISOR’S REPORT:

Provided the Board with a report generated by the County showing the number of miles of road per town and number of employees per mile.

Reported the Walton Town Justice have requested permission to apply for a \$30,000 Justice Court Assistance Grant.

RESOLUTION #86

PERMISSION TO APPLY FOR JUSTICE COURT ASSISTANCE GRANT

A motion was made by Councilman Armstrong, seconded by Govern granting permission for the Walton Town Justice to apply for a Justice Court Assistance Grant. All in favor, motion carried.

Reported receipt of the Town Clerk’s monthly report.

Reported on his monthly Supervisors Reports.

Reported that request for cell tower rights have been received from a couple of companies and will inform them we only own the land.

Reported that he and Superintendent Geidel attended a HUD Grant Meeting. He explained that there is 7.5 million dollars available from the Federal Government to repay New York State for the 12.5% that they provided to the towns during those last disaster events.

A motion was made by Councilman Govern for Local Law #2 of 2012 but rescinded until after the SEQR was review.

Reported that the reservoir recreational use report was received and most activity took place on the Pepacton. He stated he is working with the County Chamber of Commerce to promote more activity for the Canonsville.

Reported that he has received the CEO monthly report and mileage sheet and things seem to be improving but will request more detail information such as type of inspection.

Reported that information was received on opposing the pipeline and drilling in New York State. He stated he is in favor of the pipeline and would like to see it come through Delaware County so that the residents and business could tap into it and save money.

Reported that the Village Recreational Contract has been received with a request of \$27,000.

RESOLUTION #87

2012-2013 VILLAGE RECREATIONAL CONTRACT

A motion was made by Councilman Armstrong, seconded by Govern granting Supervisor Dolph permission to enter into a contract with the Village of Walton for recreational services to town residents without cost. The Town of Walton agrees to pay the Village of Walton \$27,000.00 for June 1, 2012 – May 31, 2013. All in favor, motion carried.

RESOLUTION #88

AGREEMENT BETWEEN THE DELAWARE COUNTY SOIL AND WATER CONSERVATION DISTRICT AND TOWN OF WALTON FOR EMERGENCY WATERSHED PROTECTION

A motion was made by Councilman Govern, seconded by Armstrong granting Supervisor Dolph permission to enter into an agreement with the Delaware County Soil and Water Conservation for Emergency Watershed Protection for MacGibbon Hollow, Marvin Hollow and County Route 22 Roads. All in favor, motion carried.

**AGREEMENT BETWEEN
THE DELAWARE COUNTY SOIL AND WATER CONSERVATION
DISTRICT AND TOWN OF WALTON FOR EMERGENCY WATERSHED
PROTECTION**

THIS AGREEMENT, made and entered into the 11 day of September 2012, by and between **THE DELAWARE COUNTY SOIL AND WATER CONSERVATION DISTRICT** (the "DCSWCD"), a governmental entity, having its principal office at 44 West Street, Suite 1, Walton, NY 13856, State of New York, and Town of Walton ("the Sponsor"), located at 129 North Street, Walton, NY 13856 (address), henceforth referred to as the "Recipient" collectively referred to as the "Parties".

WHEREAS, the DCSWCD is a governmental entity established in NYS Municipal Law Book 52-B to provide technical support to Delaware County, including the Delaware Stream Corridor Management Program (DSCMP) ("Program"); and

WHEREAS, pursuant to Section 4.6 of the 2007 Filtration Avoidance Determination, New York City Department of Environmental Protection committed to a locally-driven stream management plan implementation process; and

WHEREAS, pursuant to the 2009 agreement (20090018734) between the Delaware County Soil and Water Conservation District and the New York City Department of Environmental Protection (NYCDEP) which established a Stream Management Plan Implementation Program, including staff support and funding to pay for stream management plan implementation in the West of Hudson Watershed; and

WHEREAS, the Presidentially declared disasters associated with tropical storm Irene and Lee has resulted in the Natural Resource Conservation Service ("NRCS") providing funds to NYS municipalities in disaster declared counties under the Emergency Watershed Protection program ("EWP") for the purpose of addressing damages along streams attributable to the disaster events; and

WHEREAS, Town of Walton (the Sponsor) has applied for funding under the NRCS EWP DSR-D-TW-02, DSR-D-TW-03 and DSR-D-TW-05 (Project Agreement number and related

Damage Survey Reports), hereafter referred to as the “EWP Project” has been reviewed by the NRCS and been determined to be an approved project for NRCS funding;

NOW, THEREFORE, in consideration of the promises and the respective representations and agreements hereinafter contained, the Parties agree as follows:

The DCSWCD agrees to provide funds to Town of Walton (the Sponsor) for the cost of the local share of the EWP Project and has authorized the lesser of a not to exceed amount of One Hundred Thirty One Thousand Seven Hundred Eighty Seven dollars and Ninety Nine cents (\$131,787.99) or 25 percent of the project(s) construction cost for the construction of the EWP Project per Attachment B “Budget”.

ARTICLE 1
GENERAL PROVISIONS

Section 1.01 Program

The DCSWCD shall pay for eligible costs that are directly attributable to the construction of the EWP Project described in NRCS Project Agreement by this reference incorporated herein. The Town of Walton (the Sponsor) agrees to implement the Project in accordance with the terms of this Agreement.

Section 1.02 Duration of the Agreement

This Agreement shall be effective when fully executed by the Parties. This Agreement shall terminate one (1) year after the effective date subject to an extension approved in writing by the DCSWCD. This Agreement may be extended, renewed, or terminated upon a mutual written agreement of the Parties.

ARTICLE 2
DESCRIPTION OF WORK

Section 2.01 Description of Work

The DCSWCD and the Sponsor agree to the Scope of Work (Attachment A) detailing the work to be performed by DCSWCD and the Sponsor for the completion of the EWP Project. The Scope of Work will be considered complete upon approval of this contract by the DCSWCD. The Scope of Work may not be amended without the written approval of DCSWCD and the NYCDEP.

ARTICLE 3
PAYMENT

Section 3.01 Definition of Eligible EWP Project Costs

Eligible EWP Project costs are reasonable and necessary costs directly attributable to the construction of the Project incurred during the term of this Agreement.

Section 3.02 Payment Generally

- A. The DCSWCD shall reimburse the Sponsor in an amount not to exceed One Hundred Thirty One Thousand Seven Hundred Eighty Seven dollars and Ninety Nine cents (\$131,787.99) over the term of this Agreement for the eligible EWP Project Costs, in accordance with the payment procedures set forth in Section 3.03 of the Agreement and apportioned to Damage Survey Reports (DSR) as per Attachment B “Budget”. Where applicable, DCSWCD may decrease the cost of the local share of the EWP project after receipt of competitive bids by the Sponsor.
- B. If the cost of constructing the Project exceeds the maximum dollar amount budgeted for the Project set forth in Paragraph A of this section 3.02, the Sponsor shall complete the Project using its own resources or funding obtained from other sources.

- C. Payments shall be made by the DCSWCD in the form of a check made payable to the Sponsor upon certification by the NRCS and the DCSWCD of project completion.
- D. The Sponsor will submit a request for reimbursement of in-kind technical services related to project survey, design, inspection, let and administer contracts and inspect work herein referred to as “eligible costs” to the NRCS for up to 7.5% of the actual cost of constructing the EWP project. Reimbursement of the eligible costs shall be deducted from the local share of the EWP project paid by the DCSWCD to the Sponsor or shall be paid by the Sponsor to the DCSWCD upon receipt by the Sponsor from the NRCS.
- E. The cost of the Sponsor’s administration of the project are not eligible for reimbursement by DCSWCD.

Section 3.03 Payment Procedures- Voucher or Reimbursement Methods

Payments may be made either as reimbursement for payments made by the Sponsor or as invoiced payments for costs incurred. Following the execution and commencement of this Agreement the amounts payable to the Sponsor under this Agreement shall be made as follows:

- A. When any request for payment is submitted, DCSWCD and NYCDEP may inspect the progress of the work for which payment is being sought.
- B. The approved invoiced and vouchered amount shall be paid by the DCSWCD to the Sponsor, or the Sponsor and the Vendor, within 45 days of the DCSWCD's receipt of the invoice and certified voucher and all other appropriate documentation.
- C. The Sponsor shall submit to the DCSWCD all documentation in support of expenditures under this Agreement as required by the DCSWCD. Adequate documentation to be submitted shall include but not be limited to copies of purchase orders, paid bills, cancelled checks, certified payroll. The Sponsor shall provide the DCSWCD additional documentation to support each invoice as the DCSWCD reasonably requires.
- D. The DCSWCD may withhold payment for any expenditure claimed by the Sponsor that the DCSWCD determines are not reasonable and necessary costs for the construction of the Project.

Section 3.04 Conditions of Payment

- A. The DCSWCD’s obligation to pay Funds is contingent upon the Sponsor’s submission of invoices, as specified in Section 3.03 above.
- B. In the event of a breach of a material term of the terms of this Agreement by the Sponsor, including but not limited to, the Sponsor’s failure to implement the Project or progress the work, the DCSWCD shall be entitled, in addition to any other rights or remedies available to it at law or in equity, to withhold payments to the Sponsor, in an amount to be determined by DCSWCD.
- C. Except for the contractual liability to the Sponsor created by this Agreement, this Agreement is not intended to be construed as, and is not, an admission of the DCSWCD’s liability in any other context to pay for the costs which the DCSWCD is assuming hereunder, and this Agreement shall not be used as an admission or precedent in any other action, proceeding or document.
- D. Upon final payment under this Agreement, the Sponsor agrees that payment by the DCSWCD shall serve as a general release of any and all actions, causes of actions, demands, suits, proceedings, cost, claims, charges (including but not limited to fees, costs and disbursement of experts, consultants and attorneys), which the Sponsor, his/her administrators, executors or assigns have or may have against the DCSWCD under this Agreement for any and all EWP Project Costs.
- E. Any and all modifications to the Scope of Work or Change Orders to subcontracts will require the written approval of DCSWCD and NYCDEP prior to implementation.

Section 3.05 Disputed Payments

Any disputes that may arise regarding payments under this Agreement shall be resolved in accordance with this Agreement and shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 4 PERSONNEL

Section 4.01 Employees

- A. The Sponsor and the DCSWCD agree that the Sponsor, and its employees, agents, contractors, subcontractors and/or consultants are independent contractors, and not employees of the DCSWCD, the City of New York ("City") or NYCDEP.
- B. In accordance with such status as an independent contractor, the Sponsor covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the DCSWCD or the City or NYCDEP.
- C. All experts, consultants or employees of the Sponsor who are employed by the Sponsor to perform work under this Agreement are neither employees of the DCSWCD, the City or NYCDEP, nor under contract to the DCSWCD, the City or NYCDEP and DCSWCD, nor the City or NYCDEP are responsible for their work, direction, compensation and personal conduct while engaged under this Agreement.
- D. Nothing in the contract shall impose any liability or duty on the DCSWCD, the City or NYCDEP for the acts, omissions, liabilities or obligations of the Sponsor, or any person, firm company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Sponsor for taxes of any nature including but not limited to unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this contract, to any person, firm or corporation.
- E. Neither the DCSWCD, the City or NYCDEP shall be responsible for any physical injuries or death to the Sponsor's agents, servants, or employees or to any other person or damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of the Sponsor's officers, trustees, employees, agents, servants, or independent contractors. The Sponsor shall hold harmless and indemnify the DCSWCD, the City and NYCDEP from liability upon any and all claims for damages on account of such injuries or death to any such person or damages to property on account of any neglect, fault or default of the Sponsor, its officers, trustees, employees, agents, servants, or independent contractors to the extent. Neither the DCSWCD, nor the City or NYCDEP shall be responsible for the safety and protection of any of the Sponsor's employees in the event of the negligence, fault or default of the Sponsor.
- F. The Sponsor and his/her agents, employees, contractors and subcontractors shall comply with all applicable state, federal and local laws, rules and regulations, including, but not limited to, the Worker's Compensation Law and minimum wage and unemployment insurance requirements of the Labor Law, Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c), if applicable.

Section 4.02 Equal Employment

The Sponsor shall not engage in any employment discrimination, or any discrimination in retaining contractors, based upon race, creed, color, national origin, sex, age, disability, marital status, or sexual orientation.

ARTICLE 5 PROCUREMENT OF GOODS AND SERVICES

Section 5.01 General

The Sponsor shall comply with all provisions of the New York State General Municipal Law in the procurement and selection of contractors, consultants and all other goods and services under this Agreement.

Section 5.02 Consultants and Other Subcontractors

- A. A contract between the Sponsor and a consultant or other subcontractor (Subcontractor) (the Subcontract) to perform work to be paid with funds provided by the DCSWCD pursuant to this Agreement shall include the following:
1. A requirement that the Subcontractor perform all work in accordance with the terms of this Agreement and with the Scope of Work;
 2. A requirement that the Subcontractor perform all acts to be performed under the Subcontract in compliance with all applicable federal, state and local laws, rules, regulations and orders, including the Watershed Regulations;
 3. A requirement that the Contractor have liability insurance in sufficient amount and scope to protect the interests of the DCSWCD and NYCDEP as provided in Attachment C.
 4. A statement and a requirement that the Subcontractor agrees to indemnify the DCSWCD, the City and NYCDEP and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 9;
 5. A statement and requirement that nothing contained in the subcontract shall impair the rights of the DCSWCD, City, or NYCDEP under this Agreement;
 6. A statement and requirement that the nothing contained in the subcontract shall create any contractual relation between the subcontractor and the City or NYCDEP;
 7. A statement and requirement that the subcontractor agrees that it has not and shall not engage in any unlawful discrimination based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
 8. A requirement that the subcontractor shall comply with all applicable federal, State and local laws, rules and ordinances, including but not limited to the Davis-Bacon Act (40 USC 276a et seq), the Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the Copeland Anti-Kickback Act (40 USC 276c), if applicable.
 9. A requirement that the Contractor agree to and comply with the Project budget, the Scope of Work, a progress schedule for completion of work within specified milestones and payment schedule which is dependent upon completion of work within the specified milestones and payment schedule which is dependent upon completion of the work within the specified period of performance; and
- B. The Sponsor shall enforce the foregoing provisions of its Subcontracts.

Section 5.03 Background Investigation Compliance for Contractors

- A. The Sponsor agrees and covenants to hire only responsible Subcontractors with respect to any work to be performed under this Agreement.
- B. A responsible person or firm is one who or which, in the reasonable opinion of the Sponsor and/or its agents or representatives, has the capability in all respects to fully perform the contract requirements, including appropriate licenses where applicable, and the business integrity to justify the award of a contract under this Agreement.

Section 5.04 Business Integrity - VENDEX

This section sets forth the procedures and criteria for determining whether a contractor has the necessary business integrity. The Sponsor is not required to comply with these procedures unless a contractor is to be awarded a contract under this program which is valued at \$100,000 or more when aggregated with the value of all other contracts awarded to the contractor from funds provided by NYCDEP during the immediately preceding twelve-month period. In order to avoid any potential delay in the awarding of contracts, the Sponsor may notify potential contractors of their ability to obtain pre-approval through the VENDEX process as set forth herein.

Section 5.04 Business Integrity

A. For purposes of this Section the following definitions apply:

1. "Affiliate" shall mean an entity in which the parent of the proposed Subcontractor owns more than 50 percent voting stock or an entity in which a group of principal Applicants which owns more than 50 percent of the proposed Subcontractor also owns more than 50 percent of the voting stock.

2. "Contract" shall mean any contract between the Sponsor and a Subcontractor for the procurement of labor, materials, equipment or services, where such labor, materials, equipment, or services are provided after the date that this Agreement is executed and are paid for, in whole or in part, with funds payable by the City pursuant to this Agreement.

3. "Covered Contract" shall mean a Contract of \$100,000 or more with a Subcontractor, or which is valued at \$100,000 or more when aggregated with the value of all other contracts funded with funds provided by the City awarded to the same Subcontractor during the immediately preceding twelve month period. In determining whether a Contract is a Covered Contract, the Sponsor shall be entitled to rely on a certificate of the subject Subcontractor, except where the Sponsor has actual knowledge that a contract is a Covered Contract.

4. "Governmental Entity" shall include the State or any political subdivision thereto, any entity described in Section 99-r of the New York General Municipal Law, and any federal state or local agency, department, board, bureau, public authority or public benefit corporation.

5. "Principal Applicant" shall mean an individual, partnership, joint venture or corporation, which holds a ten- percent (10%) or greater Ownership interest in a proposed Subcontractor.

6. "Subcontractor" shall mean any person or entity, other than a Governmental Entity, which enters into a contract with Applicant, or with a Governmental Entity which has entered into a Contract with the Applicant, for work to be done, in whole or in part, after this Agreement is executed.

B. A covered Contract shall not be awarded to persons or entities other than "Eligible Subcontractors." An "eligible Subcontractor" for purposes of this Section is a subcontractor that has a satisfactory record of business integrity. A Subcontractor shall be deemed to lack the requisite record of business integrity if any of the following criteria are met within or during the period commencing ten (10) years prior to completion of the City Vendor Information Exchange System ("VENDEX") questionnaire and continuing through the date of determination:

1. Criminal conduct in connection with government contracts or the conduct of business activities involving: a) the infliction, attempted infliction, or threat of death, intentional personal injury, or intentional property damage, in connection with involvement in a pattern of racketeering, labor racketeering, extortion, obstruction of justice, or other comparable crimes; b) bribery, fraud, bid rigging, embezzlement, theft, perjury, forgery, or other comparable crimes; c) serious moral turpitude, fundamental lack of integrity, or a pattern or practice of a knowing disregard for the law so as to call into question the integrity of the proposed Subcontractor; or d) conspiracy to do any of the above acts. Evidence of such

conduct shall consist of (A)(1) a judgment of conviction, (2) a pending criminal indictment, or (3) a formal grant of immunity in connection with a criminal prosecution, in each case of a proposed Subcontractor; any director or officer, any principal, and any employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed Subcontractor, or any affiliate or subsidiary of the proposed Subcontractor; or (B) any ongoing criminal investigation by a law enforcement agency in which the proposed Subcontractor, any director or officer, any principal, employee primarily responsible for contracting procedures, or any holder of five percent (5%) or more of the shares or equity of the proposed subcontractor, or any affiliate of the proposed Subcontractor is a target.

2. An actual determination by a person or entity which has jurisdiction of a willful noncompliance with the prevailing wage requirements of Section 220 of the Labor Law by the proposed Subcontractor or any affiliate thereof.

3. An actual determination by a person or entity which has jurisdiction of a significant willful violation of the Workers' compensation Law, including, but not limited to, the failure to maintain required workers' compensation or disability coverage.

4. An actual determination by a person or entity which has jurisdiction of a submission by the proposed Subcontractor to a government agency of a false or misleading statement on a uniform questionnaire or other form in connection with a bid or proposal for, or award of, a contract or request for approval of a subcontractor.

5. A conviction or judgment of a civil liability against the Proposed Subcontractor for fraud in connection with a bid or proposal for or award of a contract or request for approval of a subcontract.

6. Debarment or current suspension of the proposed Subcontractor for reasons of business integrity from consideration for the award of contracts with a government, governmental entity or public authority pursuant to any procedure enacted by statute or adopted by regulation providing for notice and hearing.

7. Arrears for more than one year on income, sales or payroll taxes.

C. Before any Covered contract is awarded to a subcontractor, the Sponsor or the Governmental Entity proposing to award the Covered Contract shall require the proposed subcontractor to complete the appropriate VENDEX questionnaire, or such revised standard VENDEX questionnaire as the City provides from time to time. The Sponsor or the Governmental entity shall also require that the proposed Subcontractor submit the completed VENDEX questionnaire to NYCDEP at least thirty-five (35) days before the Covered Contract is awarded to the following address:

New York City Department of Environmental Protection
59-17 Junction Boulevard
18th Floor
Corona, New York 11368
Attn: Agency Chief Contracting Officer

The City shall provide the Sponsor or Governmental Entity with the name of a contact person for the City who shall provide information during regular business hours as to whether the City has received a particular VENDEX questionnaire and the status of the City's review of such questionnaire. Within five (5) business days of receiving a VENDEX questionnaire, the City shall notify the Sponsor or the Governmental Entity if the VENDEX questionnaire is not complete. If the City fails to notify the Sponsor or Governmental Entity within such five (5) business day period, the VENDEX questionnaire shall be deemed complete. Within thirty-five (35) days of receiving the VENDEX questionnaire, the City may provide a report indicating whether any of the criteria of Subsection (B) are met, including an explanation of the non-confidential evidence that such criteria are met. If the report states in fact that such criteria are met, the Subcontractor will be deemed not to be an Eligible Contractor unless the City and the Sponsor or the Governmental Entity agrees that the Subcontractor possesses a satisfactory record of business integrity.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

Section 6.01 Status and Authority of the DCSWCD

DCSWCD represents and warrants that:

- A. DCSWCD has all requisite power and authority to execute, deliver and perform this Agreement.
- B. This Agreement has been duly authorized by all necessary action on the part of DCSWCD and has been duly executed and delivered by DCSWCD and, assuming due execution and delivery by the Applicant, constitutes a legal, valid, binding and enforceable obligation of DCSWCD.

Section 6.02 Status and Authority of the Sponsor

The Sponsor represents and warrants that:

- A. The Sponsor has all requisite power and authority to execute, deliver and perform this Agreement.
- B. This Agreement has been duly authorized by all necessary action on the part of the Sponsor and has been duly executed and delivered by the Sponsor and, assuming due execution and delivery by the DCSWCD, constitutes a legal, valid, binding and enforceable obligation of the Sponsor.
- C. The execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Sponsor is bound, or to the knowledge of the Sponsor, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Sponsor or any of its activities or properties.
- D. Acceptance of Funds hereunder shall be deemed at such time a reaffirmation of the representations and warranties hereof.

ARTICLE 7
RECORDS AND REPORTS

Section 7.01 General

The Sponsor agrees that a copy of any and all written materials and documents that are prepared pursuant to this Agreement shall be forwarded to the DCSWCD upon request. The DCSWCD shall have the right to use all written materials, documents and information that are gathered or prepared for this Agreement for any purpose deemed appropriate by the DCSWCD.

Section 7.02 Maintenance of Records

The Sponsor shall maintain complete and accurate records in readily accessible files on all of its activities in connection with this Agreement. Such records shall include, but are not limited to, financial records detailing the receipt, management, and disbursement of all funds provided pursuant to this Agreement. The Sponsor shall maintain all records relating to this Agreement for the longer of a period of five (5) years after termination of this Agreement or seven (7) year after the generation of the record.

Section 7.03 Audit and Inspection

- A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the State and the State Comptroller, and the City and the City Comptroller pursuant to the powers and responsibilities of such parties as conferred by State and City law.

- B. The Sponsor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the DCSWCD, and shall make its records related to this Agreement available to the City, including the City Comptroller, as they consider necessary.
- C. This Section 7.03 shall survive termination of this Agreement.

ARTICLE 8
DEFAULT, SUSPENSION OR TERMINATION

Section 8.01 Termination

If either party defaults in the observance or performance of any material terms of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, the non-defaulting party may (in addition to other rights or remedies available at law or in equity) terminate this Agreement, at any time thereafter, by providing written notice of termination to the defaulting party, specifying an effective date of termination, which date shall be no less than five (5) business days from the date such notice is sent.

Section 8.02 DCSWCD's Termination

In the event of termination by the DCSWCD pursuant to Section 8.01, the DCSWCD shall not be responsible for any obligations under this Agreement. The Sponsor will return all funds provided by DCSWCD under this contract within 45 days of notice of termination.

Section 8.03 Sponsor's Termination

This Agreement may be terminated by the Sponsor pursuant to Section 8.01 or upon (30) thirty days written notice to DCSWCD. If the Sponsor should terminate this Agreement, the termination shall in no way relieve the Sponsor from complying with any and all applicable laws, rules, and regulations pertaining to the Project or for payment for work completed before termination. The Sponsor agrees to return all funds provided under this contract by DCSWCD within 45 days of terminating this contract. The DCSWCD shall not be responsible for any payment to the Sponsor for a project that was not completed and executed in its entirety.

ARTICLE 9
INDEMNIFICATION

Section 9.01 Indemnification

The Sponsor, DCSWCD and the City agree to indemnify and save each other harmless from all claims, liabilities, losses or expenses of every character whatsoever for bodily injury, sickness or disease including death, or property damage arising out of the Program, where such injury, sickness or disease including death, or damage is the result of the indemnifying Party's negligence or willful tort occurring while working on activities related to this Agreement. In the event such injury or damage is caused by the combined negligence of the parties hereto, each party shall be responsible for its relative culpability. This provision shall survive the termination of this Agreement solely with respect to the inspecting, monitoring and repairing of projects constructed on private properties under executed Landowner Agreements as provided for below at Section 9.02.

Section 9.02 Landowner Agreements Required

The Sponsor shall obtain from those landowners of any property on which the project is to be located, an agreement ("Landowner Agreement") that grants DCSWCD, its authorized agents, employees and consultants and representatives of NYCDEP, the right to access the project area for the purpose of performing work, inspecting the project or monitoring its performance. A fully-executed Landowner Agreement shall be obtained prior to the commencement of work and prior to the expenditure or commitment of any program funds for such work.

ARTICLE 10
INSPECTION

Section 10.01 Inspection

- A. The Sponsor agrees to allow DCSWCD, NYCDEP, or the local municipality reasonable access to the property to inspect the EWP Project.
- B. The Sponsor shall be responsible to secure the necessary access and/or real property rights for any property essential to the EWP Project that is not owned by the Sponsor.

ARTICLE 11
INVESTIGATIONS

Section 11.01 Investigations

The Sponsor agrees to cooperate fully and faithfully with investigations, audits or inquiries relating to the subject matter of this Agreement.

ARTICLE 12
INSURANCE

Section 12.01 Insurance

If a contractor(s) or consultant(s) engaged in the design of a project hereunder is not a Sponsor employee, the Sponsor shall ensure that it has, and maintains during the term hereof, insurance in sufficient amount and scope to protect the interests of the DCSWCD and the City and NYCDEP as provided in Attachment C. DCSWCD, the City of New York and the NYCDEP shall be named as additional insureds on the general liability insurance policy of the contractor. The Sponsor shall submit to the DCSWCD Certificates of Insurance for the coverage required under this Agreement prior to commencement of any work by such contractor or consultant. Said certificates shall name DCSWCD as certificate holder and provide that cancellation of such insurance is not effective except upon 30 days prior written notice to DCSWCD.

ARTICLE 13
MISCELLANEOUS

Section 13.01 Severability

If any provision of this Agreement or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof shall not be affected or impaired in any way.

Section 13.02 Compliance with the Law

The Sponsor agrees that all acts to be performed in connection with this Agreement shall be performed in compliance with all applicable federal, State and local laws, rules, regulations and orders.

Section 13.03 Assignment or Other Disposition of the Agreement

The Sponsor may assign, transfer, convey, sublet, or otherwise dispose of this Agreement or any part thereof, or of its right, title, or interest therein, to any person, company or corporation, provided that: (a) DCSWCD and NYCDEP agrees in advance to such assignment, transfer, conveyance, sublet, or other disposition, and (b) the assignee, transferee, sub lessee, or other party to whom an interest herein is being transferred agrees in writing, to assume Sponsor's liabilities and obligations under this Agreement.

Section 13.04 Modification

This Agreement may not be modified or amended except by an instrument in writing signed by both of the parties hereto. This Agreement may not be modified or amended orally.

Section 13.05 Notification

Unless otherwise expressly provided in this Agreement, any notice from one party to the other required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by registered mail, return receipt requested, or by overnight mail, to the following addresses:

If to DCSWCD:

Delaware County SWCD
44 West Street, Suite 1
Walton, NY 13856
Attn: Richard Weidenbach, Executive Director

If to Sponsor:

Town of Walton
129 North Street
Walton, NY 13856
Attn: Bruce Dolph, Supervisor

Section 13.06 Claims or Actions Against the DCSWCD

- A. No director, officer, employee, agent or other person authorized to act on behalf of the DCSWCD shall have any personal liability in connection with this Agreement or any failure of the DCSWCD to perform its obligations hereunder.
- B. The Sponsor shall report to DCSWCD in writing within ten (10) business days of the initiation by the Sponsor or service on the Sponsor of any legal action or proceeding in connection with or relating to this Agreement. In the event any claim is made or any action brought in any way relating to the Agreement herein (except an action brought by the Sponsor against the DCSWCD), the Sponsor shall diligently render to DCSWCD and without additional compensation, any and all assistance which DCSWCD and may reasonably require of the Sponsor to prosecute or defend such claim or action.

Section 13.07 No Third Party Beneficiary

This Agreement is not intended to create any benefit or interest in any third party.

Section 13.08 Cooperation

The parties acknowledge and agree that during the term of this Agreement they will provide each other promptly with all documentation, reports, and information, which may be necessary to carry out their respective obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by or an obligation of any Party to provide documents or information protected by or to waive the attorney-client privilege or attorney-work product privilege.

Section 13.09 Miscellaneous

- A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. To the fullest extent permitted by law, the Parties consent to the jurisdiction of the Delaware County Supreme Court of the State of New York.
- B. This agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements with respect to such subject matter, whether written or oral.
- C. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Executive Director on behalf of the DCSWCD and Town of Walton (Sponsor) have executed this agreement in triplicate. One part to be delivered to the Sponsor, one part to the DCSWCD and one part to the NYCDEP.

For the Sponsor:

BY: _____ (Name) Date: _____

For DCSWCD

BY: _____ Date: _____
 Richard A. Weidenbach
 Executive Director
 Delaware County Soil and Water Conservation District

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

On this ___ day of _____, 2012 before me personally came _____ (Sponsor Name) to me known, who, being by me duly sworn, did depose and say that he/she is the Sponsor of the Project(s) listed as per Attachment B "Budget".

 NOTARY PUBLIC

STATE OF NEW YORK)
) ss.
COUNTY OF DELAWARE)

On this ___ day of _____, 2012 before me personally came Richard Weidenbach, to me known, who, being by me duly sworn, did depose and say that he is the Executive Director of the DCSWCD described in and which executed the foregoing instrument; and that he signed his name thereto by the authority of the DCSWCD.

 NOTARY PUBLIC

Attachment A: Scope of Work

- A. Delaware Soil and Water Conservation District will:
 1. Provide the Sponsor with required access permission forms for enabling access to the site for the purpose of survey, construction and monitoring
 2. Provide any required surveys and designs needed for project construction and documents required for approval to proceed by the NRCS
 3. Provide costs estimates for construction prior to bidding for the project
 4. Provide bid specification and bid documents for soliciting contractors and as required by NRCS
 5. Prepare and deliver permit applications for construction where required
 6. Meet with regulatory agencies to review and secure required permits
 7. Conduct site showings for prospective bidders
 8. Meet with the Sponsor to review the awards and notify the contractor of the lowest apparent bidder
 9. Meet with NYC DEP representatives regarding environmental health and safety requirements for the project and ensure that the requirements are understood and followed by the contractor
 10. Inspect project construction
 11. Review and approve contract modifications
 12. Ensure completed jobs are properly certified as meeting the design criteria
 13. Provide as-built documents to the sponsor and NRCS as required
 14. Monitor the project

- B. The Sponsor will:
 1. Obtain any and all access permissions required for the survey, construction, and monitoring of the project

2. Meet with the District as needed to review and approve plans, bid documents, bid responses and address local concerns with project construction
3. Advertise and receive bids for the construction of the project
4. Maintain bidders log and other bid records
5. Conduct site showings for prospective bidders
6. Meet with the DCSWCD to review the awards and notify the contractor of the lowest apparent bidder
7. Provide safe access to the site for construction vehicles and contractors (flagman or signage where necessary)
8. Secure the project site from trespass from non-construction personnel during construction
9. Meet all requirements as specified in their contract with NRCS
10. Provide for the cost of project maintenance

Attachment B: Budget:

DSR#	Site #	Project Name	Budgeted Funds
DSR-D-TW-02		MacGibbon Hollow	\$36,736.74
DSR-D-TW-03		Marvin Hollow	\$7,380.00
DSR-D-TW-05		CR 22	\$87,671.25
Total			\$131,787.99

Attachment C: Insurance Requirements (see Attachment)

Attachment D: Vendex Requirements (see Attachment)

Supervisor Dolph read the Short Environment Assessment Form in which there were no significant adverse impacts on the environment.

RESOLUTION #89

RESOLUTION OF THE TOWN BOARD OF THE TOWN OF WALTON DETERMINING THAT THERE ARE NO ADVERSE IMPACTS ON THE ENVIRONMENT FROM ADOPTION OF LOCAL LAW NO.2 OF 2012

WHEREAS, the Town Board is adopting a local law that repeals and supersedes Local Law No. 2 of the year 2005 entitled “To Reduce the Membership and Terms of the Town of Walton Planning Board”;

NOW THEREFORE BE IT RESOLVED, that the Town Board has determined that the adoption of new local law entitled “local law No.2 of 2012 to establish the Town of Walton Planning Board” will not have significant adverse impacts on the environment; and

WHEREUPON, the Resolution was put to a vote and recorded as follows:

	Aye	Nay
Supervisor <u>DOLPH</u>	<u>X</u>	_____
Board Member <u>ARMSTRONG</u>	<u>X</u>	_____
Board Member <u>GOVERN</u>	<u>X</u>	_____
Board Member <u>WOOD</u>	_____	_____ ABSENT
Board Member <u>RODRIGUEZ</u>	_____	_____ ABSENT

RESOLUTION #90

LOCAL LAW #2 OF 2012 ESTABLISH THE TOWN OF WALTON PLANNING BOARD

RESOLUTION OF THE TOWN BOARD OF THE TOWN OF WALTON

In the Matter of the Amending Local Law No. 2 of 2005 entitled a local law to “To Reduce the Membership and Terms of the Town of Walton Planning Board”.

WHEREAS, the Town Board has reviewed, considered and is proposing a new Local Law No.2 of 2012;

WHEREAS, the Local Law was presented to the Town Board at least 10 days prior to the Town Board meeting on September 11, 2012;

WHEREAS, the Town Board adopted a resolution on August 7, 2012 scheduling a public hearing on the proposed Local Law No. 2 of 2012;

WHEREAS, the public hearing was properly noticed in the Town’s official newspaper on August 15, 2012;

WHEREAS, the public hearing on the proposed Local Law was held on September 11, 2012 at the Town Hall;

WHEREAS, the Town Board reviewed and considered all public comments received on the proposed Local Law;

WHEREAS, the proposed Local Law was on file for inspection at the Town Clerk’s office prior to the hearing and during the public review process;

WHEREAS, the proposed Local Law maintains the Town’s Planning Board and adds additional language concerning alternates serving to the Town’s Planning Board and serves to strengthen and protect the Town’s public safety, health and welfare;

WHEREAS, the Town Board has caused to be prepared a Short Environmental Assessment Form (EAF) pursuant to the mandates for the State Environmental Quality Review Act (ECL Article 8 and 6 NYCRR Part 617) for the proposed adoption of Local Law No.2 of 2012;

WHEREAS, the Town board has duly considered the contents of the EAF for the adoption of Local Law No. 2 of 2012 and completed Parts 2 and 3 thereof;

WHEREAS, the Town Board has identified the relevant areas of environmental inquiry and taken a hard look at them for the adoption of the proposed Local Law No.2 of 2012; and

WHEREAS, the Town Board has issued a negative declaration under SEQRA for the adoption of the proposed Local Law No. 2 of 2012 thereby complying with the mandates of the State Environmental Quality Review Act.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE TOWN BOARD OF WALTON, DELAWARE COUNTY, NEW YORK:

THAT THE Town Board of the Town of Walton hereby determines that proposed Local Law No. 2 of 2012, attached hereto and made a part hereof, is hereby adopted as a Local Law entitled a “To Reduce the Membership and Terms of the Town of Walton Planning Board” and;

IT IS FURTHER RESOLVED, that the Town Clerk and the Attorney for the Town are hereby directed to take such actions as are necessary to implement this resolution and effect adoption of the Local Law.

Town Board Member Govern so moved; Town Board Member Armstrong Seconded, and the Town Board voted as follows:

Supervisor <u>DOLPH</u>	<u>X</u>	_____
Board Member <u>ARMSTRONG</u>	<u>X</u>	_____
Board Member <u>GOVERN</u>	<u>X</u>	_____
Board Member <u>WOOD</u>	_____	_____ ABSENT
Board Member <u>RODRIGUEZ</u>	_____	_____ ABSENT

COMMITTEE REPORTS:

None Given

APPROVAL OF BILLS:

RESOLUTION #91

APPROVAL OF BILLS

A motion was made by Councilman, Armstrong seconded by Govern approving the vouchers as presented for payment. All in favor, motion carried.

General Fund A	# 217-236	\$ 7,578.72
General OV B	#101-109	\$13,753.76
General Hwy DA	#10-11	\$28,750.00
OV Hwy DB	#42-46	\$39,487.35

EXECUTIVE SESSION:

RESOLUTION #92

EXECUTIVE SESSION

A motion was made by Councilman Govern, seconded by Armstrong to enter into executive session for a specific employee disciplinary issue. All in favor motion carried.

Entered executive session at 7:05 p.m... Back in regular session at 7:40 p.m. with no further business before the Board, the meeting was adjourned.

Respectfully submitted,

Ronda Williams
Town Clerk