

MINUTES OF THE TOWN / SEWER BOARD MEETING OF DECEMBER 10, 2014

PRESENT: Supervisor Edward Fairbrother
 Council Bob Adams
 Lee Giammichele
 Andy Gillette
 Mike Saglibene
 Attorney Thomas Reilly
 Clerk Linda Cross

Supervisor Fairbrother called the Town Board meeting to order at 7:00 p.m., and requested those present to participate in the Pledge of Allegiance.

Eagle Scout Award – Joseph Scott completed his project at Speer Park here in the Town of Big Flats for the Rails to Trails. Supervisor Fairbrother, stated on behalf of the Town he declared a proclamation honoring Joseph Scott for achieving his rank of Eagle Scout.

PUBLIC HEARING: 7:00 P.M. Albee Timber Harvest Permit

Supervisor Fairbrother called the public hearing to order at 7:02 p.m., and read the legal notice duly advertised in the Elmira Star Gazette on October 15, 2014, to allow the consideration of the public comments regarding the Application of a Franchise Agreement with Empire Video Services Corporation to provide cable television services.

IN FAVOR: None

OPPOSITION: None

COMMENTS: None

Since there were no further comments, Supervisor Fairbrother closed the public hearing at 7:03 p.m.

CONCERNS OF THE PEOPLE

Supervisor Fairbrother stated, he is aware there will be comments and concerns on Fire District No.1, and that he has informational packets for the residents of Big Flats. Supervisor Fairbrother then stated there was a discussion by the members of the Town Board and they are trying to get an informational meeting set up, unfortunately it will be after the 1st of the year. Supervisor Fairbrother stated there was a resolution, giving the contract to Big Flats Fire Department that was approved, but was left off the November 19th Town Board minutes. Supervisor Fairbrother stated when we accept the minutes on the 29th of December we will make sure that resolution is added.

Mark Koehler (70 Pine Circle), stated his concerns about the Resolution for the Fire District 1 that was presented last week, and one of his primary concerns was response time and from where he lives it will take the Town of Big Flats Fire Department 12-15 minutes and Town & Country is less than 5 minutes away, and he was concerned about the number of first responders that are available. He stated that while it doesn't directly affect him, but it does effect a lot of residents of

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our community at Retirement Estates, and he had to believe that those people would want the fastest possible response time.

Dave Geinitz (910 Sing Sing Road), stated that his mother lives at 792 Sing Sing Road, and that he agrees with most of the same concerns that Mark Koehler expressed.

Supervisor Fairbrother then stated that the Town and Town & County Fire Department started negotiations September 3, 2014

- He informed both Fire Departments by email that on the 19th of November the Town Board will be openly discussing this issue. There was no comments received from anybody.
- A public hearing was held on December 10, 2014
- Mike Smith was here today from EMO regarding the ISO rating.

Mr. Geinitz then stated that his real concern was about the response time, and it would take Big Flats, 15 minutes to get to his resident instead of only 5 minutes for Town & Country. For someone having a heart attack, or a fire in their residence this could make a big difference on the outcome with this longer response time.

Cheryl Geinitz (792 Sing Sing Road), wondered where the area was that has been affected. Supervisor Fairbrother stated it is Fire Protection District No.1 which ran from Sing Sing creek to Hickory Grove toward Sing Sing. Ms. Geinitz stated since she was so close to Town and County she did not understand why the Town would take that little portion away. Ms. Geinitz stated she had not been notified of any meeting ahead of time. Supervisor Fairbrother stated a notice of the Public Hearing had been published in the Star Gazette.

Sara Poteet, General Manager at the Hilton Garden Inn, stated they have two hotels, the Hilton and the Hampton Inn, and said for several years they have had a great relationship with Town and Country Fire Department. Her concern was response time, not only for their hotel buildings but also for their hotel guests. She stated that Town and Country has had an impeccable response time, they know their property inside and out, so their concern was with the Big Flats Fire Department arriving at the hotels not knowing the fire panel and not knowing the ins and outs of their hotels like Town and Country does.

Bill Hirliman (27 Bell Lane), agreed with everything that was said, but he must have missed the notice of the prior meeting in the paper, and asked how this whole thing came about, with the Town of Big Flats Fire Department taking over from Town and Country. Supervisor Fairbrother replied, that if you read the memo that was put on the front of the packet you were given today, that we did start discussions on September 3, 2014. Town & Country came in to the Town and wanted a \$30,000.00 (Thirty Thousand) increase in their budget from the Town of Big Flats, and stated if they did not get this then service would be derogated, and response time would be longer, and their equipment would be getting older and their ISO (Insurance Service Organization) rating would change, which painted a bad picture for Town & Country without this increased contribution by the Town of Big Flats. Supervisor Fairbrother stated there is a difference between a Fire Department and a Fire District. Big Flats answers to them self with their budget with the office of the State Comptroller, not through the Town. The Fire District is

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a private company. For example if the Town went over the 1.56 percent, sales tax cap which [LJC1] the Governor set, it would be pushed out of the shared service grants, and right now in the Town's Water Department alone the Town is hoping to get over \$300,000.00 (Three hundred thousand) in Grants. The adopted Town budget has to meet a dead line, and be published and accepted with OSC (Office of the New York State Comptroller). At the last minute Town & Country came back with a lower amount, but never explained how they were going to budget that and what would happen with the dire picture they painted in September and wouldn't their service to the Fire District 1 be diminished. Mr. Fairbrother gave them all the opportunity to come in and do a presentation, Big Flats came and did a presentation, and we opened the meetings and Supervisor Fairbrother said several times if there is anything to say bring it out now. Both Big Flats and Town and Country were informed this was going to be discussed at the November 19th meeting, very openly. Town and Country is a good Fire Department, but he said we got caught in a bind and had to go forward as a board, and that's where we had to make a decision.

A Resident of Big Flats stated that maybe the Fire Departments can work together, residence who live within a certain radius would be responded to by Town & Country and Big Flats would respond to the rest. Supervisor Fairbrother stated that the Commissioners are here and the President from Town & Country is here at tonight's meeting. Supervisor Fairbrother asked Tim Lee and Ray Colewell if they would agree to get together. They both agreed, and Supervisor Fairbrother stated he wants the best for everybody. Town and Country is a good company, but he and the Board also had a problem when they wanted \$30,000.00 dollars more a year from Big Flats but yet Town and Country had given the Horseheads Fire Department a contract for zero percent increase for five years.

Ed Ryan (30 Bellaire Drive), stated he had the same concerns as everybody else: response time. Mr. Ryan mentioned that it took him 15 minutes to get to Big Flats at 40 mph, so they are not as close as Town & Country. He said they have had Town and Country respond many times and it took them 3-4 minutes. The response time is the biggest thing. Mr. Ryan then stated, we have always had a say before on who we were going to have or wanted for Fire Protection and this time nothing was asked.

Supervisor Fairbrother asked Tim Lee and Ray Colewell again if they would come in and sit down and work something out. Mr. Ryan stated, "what about the resident's, don't they have a say?" He said that in the past the town sent letters out asking if they had an opinion on who they wanted.

Leslie (Roy 784 Sing Sing Road), mentioned why is it that we can we get things from the Town about the Recreation but we cannot get a Newsletter in our district telling us about any changes pertaining to us so we can make sure we are at the meetings?

Supervisor Fairbrother stated, we talked about having a meeting and if the Board wants a meeting we will put one together. In the meantime, Fairbrother again asked if Tim Lee, and Ray Coldwell would come in and get with him to see what can be worked out. He would be out of Town the 19th – the 29th December.

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Mike Von Bevern (459 Bellwood Drive), stated he is a member of the Town and Country Fire Department and also a resident in the Town of Big Flats, Mr. Von Bevern was had just been handed a correspondence from a Board Member of his Fire Department, and it was an email from the Town of Big Flats Attorney, Thomas Reilly, that was sent to the Town & Country's Fire Department's Attorney Bryan Maggs, which was not contained in the packet that was passed out. He read the email and claimed that Mr. Reilly made it sound like the Town was not talking about the agreement anymore back on December 2nd.

Supervisor Fairbrother stated that Donny Fisher came to his office, and told him, my door is open come and talk to me let's get this moving forward, He handed him the original September proposal, he told him one of the members of the Town Board, that he had never seen the proposal, and he was taken aback by it. Supervisor Fairbrother said he said "Donny let's get things moving and let's move forward".

Kathy, of Glendale Drive, stated she came upon an accident on Interstate 86, and stated she watched the Town and County Firemen as they were doing CPR in the middle of the Highway, and cars where rushing by them. These firemen did not flinch one bit, and did what they needed to do. These are the firemen she wanted protecting me no matter how much it cost. She said we need to come to realize these men and women put their lives on the line every day. Supervisor Fairbrother responded I think that every volunteer firemen whether they are Big Flats, Horseheads, Town and Country do the same.

Supervisor Fairbrother stated the two Fire Companies said they will sit down and talk in January. He said his office door is open if anyone wants to come in and sit down or call him on the phone, He would be more than happy to talk to you at any time, your words are not taken lightly, this board does look at these things and it's a very open board.

Supervisor Fairbrother introduced Shawn Crater the Town's new Water Superintendent, and stated the Town is very pleased to have him. He comes with a lot of experience in management. Shawn and Supervisor Fairbrother attended a course Wednesday, December 10, 2014 at Cornell University with USDA to start looking at more grants to upgrade our Town's Water System. Supervisor Fairbrother mentioned the Town is looking at putting another pump station in, and mentioned that they will know tomorrow about another grant and if the Town was approved. They are hoping we will get it.

Shawn Crater mentioned there is a lot going on in the Water Department that interested him, Shawn stated his door is open, stop in and talk with me or Pam if you have any water issues.

Tammie Burlew, Higher Hope Service Auction Committee, requesting the Town Board authorize the use of the Big Flats Community Center as the venue for the Service Auction. After questions and further discussion this request was approved.

SEWER BOARD

Supervisor Fairbrother opened the sewer Board Meeting at 7:59 p.m.

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UNFINISHED BUSINESS

RESOLUTION NO. 270-14

A RESOLUTION TO APPROVE THE OUT-OF-DISTRICT SEWER USER AGREEMENT

Resolution by: Giammichele

Seconded by: Saglibene

WHEREAS Big Flats has constructed, and owns a public sanitary sewer system (the “Big Flats Sewer System”), which serves certain areas in the Town of Big Flats primarily located in the vicinity of Maple St., and is more fully described in the map, plan and report of MRB Group, entitled “Municipal Wastewater Collection System Planning and Formation of Town Sewer District No. 1“, Project No. 021104, dated January 2007 (the “District Extension Report”), and

WHEREAS Big Flats applied to and received from the New York State Comptroller’s Office approval for the formation of Town of Big Flats Sewer District No. 1, and

WHEREAS the new Guthrie Corning Hospital has constructed a sewer line running from the hospital to the Big Flats Sewer System and it is presently operational; and

WHEREAS Chemung County is now managing the Big Flats Sewer System and the Town and the County are desirous entering into an agreement with the Hospital whereby the Hospital agreed to construct this sewer line and dedicate it to the Big Flats Sewer System and agree to the means of payment for the use of the Big Flats Sewer System by the Hospital, and

WHEREAS an agreement to that effect has been drawn via negotiations with the Town, the County and the Hospital and has been approved by the Hospital; and

WHEREAS that agreement has been reviewed by the Board and is found to be fully satisfactory, and

BE IT THEREFORE RESOLVED the Town Board, hereby authorizes that the Town Supervisor sign said agreement which is titled OUT-OF-DISTRICT SEWER USER AGREEMENT.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother

NAYS: None

Supervisor Fairbrother closed the Sewer Board Meeting at 8:01p.m, and reopened the Town Board Meeting.

REPORTS

Supervisor Fairbrother stated the following reports for November 2014 have been received and are on file in the office of the Town Clerk:

Town Clerk’s Monthly Report, Supervisor’s Fund Balance Report, Youth Department Monthly Report, Department of Public Works Monthly Report, Assessor’s Monthly Report, Code and Planning Department Monthly Report ,Court’s Monthly Report, Dog Control’s Monthly Report, Code and Planning Department Monthly Report, Community Center Monthly Report.

UNFINISHED BUSINESS

RESOLUTION NO. 271-14
TIMBER HARVESTING APPLICATION FROM, SCHAEFER LOGGING, INC.,
TAX PARCEL #88.00-1-71, APPROVED

Resolution by: Giammichele

Seconded by: Adams

WHEREAS a Timber Harvesting Application has been received from Schaefer Logging Inc. to harvest ~96,000 board feet of timber from approximately 120 acres of land

WHEREAS the Town Board finds this action to be an Unlisted Action under SEQRA and to have no significant effect on the environment based on the following facts:

1. The timber harvesting will begin January 1, 2015;
2. All roads will be graded and water bars installed at completion
3. The landing areas, all skid roads and stream crossings will be smoothed and free of debris, also the landing and skid roads will be seeded with a conservation mix after the harvest is complete.

BE IT THEREFORE RESOLVED the application for a timber harvesting permit submitted by Schaefer Logging Inc. is approved as follows:

1. The logging operation, as proposed, will involve trucks using Coleman Ave., West Church St., West Water St., to I86. Trucks hauling logs will be required to display a valid safety inspection sticker on the windshield;
2. The transport of logs may only occur between the hours of 9:00am to 7:00pm daily with the exception that on days public schools are in session the transport of logs may not occur between the hours of 1:30 and 4:30PM.
3. All roads shall be kept free of dust and debris created by the logging operation. The roadway will be inspected and cleaned by the logger on a daily basis as needed and must be cleaned when required by the Code Enforcement Officer as a result of any inspections.

Prior to Obtaining Permit

4. A performance guarantee in the form of a certified check for \$2500 must be posted with the Code Enforcement Office before any timber harvesting may begin. The performance guarantee will be returned upon the satisfactory completion of all logging operations, compliance with conditions of this resolution, and a final inspection of the timber harvesting site by the Code Enforcement Officer, and a representative from Chemung County Soil and Water Conservation Service, if deemed necessary.

Prior to any Logging Operations

5. Proof of Vehicle, General Liability, and Workers Compensation Insurance with minimum liability coverage for personal injury or death of \$1,000,000 and for property damage of \$250,000 for logging operations, unless authorized by the Town Board and the Town Attorney. The Town of Big Flats must be listed as an additional insured and said proof must be filed with the Code Enforcement Office at least 48 hours before commencing any

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RESOLUTION NO. 271-14, TIMBER HARVESTING APPLICATION FROM, SCHAEFER LOGGING, INC., TAX PARCEL #88.00-1-71, APPROVED continued

6. logging operations. Said proof of insurance must be approved by the Town Attorney prior to commencement of work.
7. Notification, in the form of a letter and a copy of the map showing the approved logging area must be provided to all abutters.

During Harvesting Activity

1. The logger shall notify the Code Enforcement Officer within five days of completion to Coordinate onsite inspections.
2. The logging site shall be subject to periodic inspections by the Code Enforcement Officer, and Chemung County Soil & Water Conservation Service Representatives at any time during the course of the operation. These inspections will be done between 10:00am and 4:00pm.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother
NAYS: None

RESOLUTION NO. 272-14

LOAN OF \$200,000 FROM HUD BLOCK GRANT MONIES TO Empire Long Distance Corporation d/b/a EMPIRE ACCESS APPROVED

Resolution by: Gillette
Seconded by: Saglibene

WHEREAS Empire Long Distance Corporation d/b/a Empire Access is desirous of obtaining a loan in the amount of \$200,000 from the Town of Big Flats HUD block grant monies in order to facilitate the extension of fiber optic cable rollout into the Town of Big Flats, and

WHEREAS negotiations have been had between the Town Supervisor and Attorney and Empire Long Distance Corporation d/b/a Empire Access that has led to the loan proposal set forth below:

“Big Flats - Broadband Proposal

Request to Borrow \$200,000

Empire Long Distance Corporation d/b/a Empire Access is proposing to construct a state of the art fiber optic network in the Town of Big Flats and deliver internet, voice, video and security services to the businesses and residences in the Town of Big Flats. Broadband services have become important to communities for economic development.

The total project investment is \$1.1 million with a network investment of \$503,000. The investments will be made over a 3 year time frame with the initial investment of approximately \$250,000 to build out the central office and the STN fiber purchase and the Hillview neighborhood and Goss Road neighborhood. The balance of the neighborhoods will be built over the next 3 years or when the sales prospects reach 20% of the homes in those neighborhoods.

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RESOLUTION NO. 272-14, LOAN OF \$200,000 FROM HUD BLOCK GRANT MONIES TO Empire Long Distance Corporation d/b/a EMPIRE ACCESS APPROVED continued

Empire Long Distance Corporation d/b/a Empire Access will add an additional sales rep and a technician to help drive new sales, install new services and take care of our customer base.

Empire Long Distance Corporation d/b/a Empire Access would like a \$200,000 loan with an interest rate of .5% in year 1 & 2, .75% in year 3 & 4, 1.00% year 5 & 6 and 1.5% in years 7 – 10. The loan will be secured by the network equipment and fiber optic network that Empire Long Distance Corporation d/b/a Empire Access is building in the Town of Big Flats. It is understood that the Town of Big Flats will have a second position to any loans Empire Long Distance Corporation d/b/a Empire Access may have with other lending institutions. The repayment of the loan would start at the commencement of the 4th year from the date a check in the amount of this loan is mailed to Empire Long Distance Corporation d/b/a Empire Access and be completely repaid in 10 years.

The benefits to the community of Big Flats include a fiber network that will enhance economic development, make fiber to the home available and create an additional competitor to Time Warner Cable and Verizon. Empire Long Distance Corporation d/b/a Empire Access will offer internet speeds up to 1 Gig, far faster than the current speeds being offered by the incumbent carriers. Residential customers can save up to \$60/month, creating an enormous economic boost for Big Flats, up to \$180,000 in saving for the community. The Town itself will save \$277/month (34%) by moving the Town's telecommunication services to Empire Long Distance Corporation d/b/a Empire Access.” and

WHEREAS the request for this loan and its terms has been submitted to the Revolving Loan Fund Committee established with regard to the HUD block grant funds per Town

Board Resolution No. 13-092502 adopted on September 25, 2002, and

WHEREAS the value of establishing fiber optic services in the form of internet, video, phone and security services to the residents of the Town of Big Flats and all the businesses therein are not only obvious but cost saving and will make the Town of Big Flats far more attractive to businesses desirous of locating therein, and

WHEREAS the implementation of a fiber optic service will result in cost savings to residents and the Town of Big Flats immediately, and

WHEREAS in order to commence similar services other communities throughout the United States have had to obtain bonds in the amount of several million dollars, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6 NYCRR, Part 617.5(c) (25) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Town Supervisor sign a loan agreement with Empire Long Distance Corporation d/b/a Empire Access on the terms requested

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RESOLUTION NO. 272-14, LOAN OF \$200,000 FROM HUD BLOCK GRANT MONIES TO Empire Long Distance Corporation d/b/a EMPIRE ACCESS APPROVED continued

above and to loan Empire Long Distance Corporation d/b/a Empire Access the sum of no more than \$200,000 from the HUD block grant monies currently held by the Town of Big Flats.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother
NAYS: None

RESOLUTION NO. 273-14
SPEED LIMIT INVESTIGATION ON CR17 (SING SING ROAD) BEGINNING AT KAHLER ROAD TO AIRPORT ROAD APPROVED

Resolution by: Adams
Seconded By: Giammichele

WHEREAS the Town of Big Flats has received a TE9a request from Andy Avery, Chemung County Commissioner to reduce the speed limit from 45mph to 30 mph in the stretch of CR17 (Sing Sing Road), from Kahler Road to Airport Road in the Town of Big Flats, and

WHEREAS the Town Board does not have the authority to designate a speed zone for this area, and

WHEREAS for environmental review purposes, this a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Town Clerk to request that the NYSDOT lower the speed limit from 45mph to 30mph in this stretch of CR17 (Kahler Road to Airport Road, in the Town of Big Flats.

CARRIED: AYES: Gillette, Saglibene, Fairbrother
NAYS: Giammichele, Adams

RESOLUTION NO. 274-14
PART-TIME CLERK TO THE JUSTICE APPROVED

Resolution by: Saglibene
Seconded by: Adams

WHEREAS the Town Justice have conducted interviews and necessary background checks and recommends the Town Board appoint, Amy Lorenz for the position of clerk to the Justice, Part-time, and

WHEREAS for environmental review purpose, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (4) and as such no further action is necessary regarding the same,

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RESOLUTION NO. 274-14, PART-TIME CLERK TO THE JUSTICE APPROVED continued

WHEREAS the candidate Amy Lorenz, has to serve a probation term of twenty six weeks, starting 11/24/2014, ending on 05/25/2015, now

BE IT THEREFORE RESOLVED the Town Board authorizes the appointment of Amy Lorenz, as the Clerk to the Justice, Part-time effective November 24, 2014 at the rate of \$12.00 per hour, and not to exceed 20 hours a week.

CARRIED: AYES: Gillette, Saglibene, Fairbrother
NAYS: Giammichele, Adams

RESOLUTION NO. 275-14
VOID CHECKS APPROVED

Resolution by:
Seconded by:

WHEREAS a memorandum was received from the Bookkeeper, dated December 3, 2014 requesting authorization to void a specific check, and

WHEREAS a memorandum was received from the Tax Collector, dated December 4, 2014 requesting authorization to void a specific check, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Bookkeeper to void check number 13593 payable to Beam Mack Sales & Services Inc. for \$218,380.16 due to duplicate payment and authorize the deletion of Voucher #s 4003965,4003970 & 4003971, also void check number 453 payable to RE ONE LLC for \$109.43 due to duplicate payment.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother
NAYES: None

RESOLUTION NO. 276-14
TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS
FOR SERVICES APPROVED

Resolution by: Gillette
Seconded by: Giammichele

WHEREAS section 104b of the General Municipal Law (GML) requires every government to adopt internal policies and procedures governing all procurement of goods and services not subject to the bidding requirements of GML Section 103 or any other law, and

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

WHEREAS comments have been solicited from those offices of the Town of Big Flats involved with procurement, now

BE IT THEREFORE RESOLVED that the Town of Big Flats does hereby adopt the following procurement policies and procedures:

**TOWN OF BIG FLATS
PROCUREMENT POLICY**

PART A. GENERAL RULE REGARDING PURCHASES NOT REQUIRING PRIOR AUTHORIZATION OF THE BOARD

PART I. PURPOSE

PART II. DEFINITIONS

PART III. GENERAL PROVISIONS

PART IV. PROCUREMENT FOR PURCHASE CONTRACTS

PART V. PROCUREMENT FOR PUBLIC WORKS

PART VI. PROCUREMENT OF PROFESSIONAL SERVICES

PART VII. SOLE SOURCE PROCUREMENT

PART VIII. EMERGENCY PROCUREMENT

PART IX. EQUIPMENT LEASES

Part X. PROCUREMENT LOBBYING

PART XI. MWDBE REQUIREMENTS

PART XII. PROPOSAL AND BID OPENINGS

PART XIII. RESPONSIBILITY DETERMINATIONS

PART XIV. PIGGYBACKING

PART XV. BEST VALUE

PART XVI. RECORDKEEPING

PART XVII. PROCUREMENT MANUAL

PART XVIII. INDIVIDUALS RESPONSIBLE FOR PURCHASING

PART XIX. STATUTORY AUTHORIZATIONS

PART XX EFFECTIVE DATE

PART A. GENERAL RULE REGARDING PURCHASES NOT REQUIRING PRIOR AUTHORIZATION OF THE BOARD AND RULE REQUIRING THAT, OTHER THAN THE FOLLOWING PURCHASES, ALL PURCHASES OVER \$999.99 REQUIRE PRIOR BOARD APPROVAL

1. IN ALL MATTERS THE TOWN SUPERVISOR IS AUTHORIZED TO APPROVE PURCHASES OR SERVICES DURING EMERGENCIES WITHOUT PRIOR BOARD APPROVAL THAT EXCEED THE SUM OF \$999.99.

2. The Town Supervisor is authorized to perform the following:

- Make purchases up to \$5,000.00 for parts, services, and other equipment for use in the Department of Public Works, as necessary, provided they are covered in the budget, and
- To advertise for bids on tires, salt, cinders, sand, parts and tools, as needed, and
- To accept State and County bids for any and all items under State and County bid system,

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

provided they are covered in the Highway budget; with the exception that any bid for vehicles and equipment shall be subject to prior Town Board approval, and

- Hiring of people from temporary agencies be pre-approved by the Town Board, or Town Supervisor, where applicable. (Per Board Resolution 30-14)

The Town Supervisor is authorized to pay the Five Star Bank Visa, Sam's Club accounts, any other authorized credit cards, debt service payments and utility bill as they become due without prior approval of the Town Board (Per Board Resolution 20-14).

OTHER THAN AS SET FORTH ABOVE, THE TOWN BOARD MUST APPROVE, PRIOR TO OBTAINING SERVICES, PARTS AND OTHER EQUIPMENT INCLUDING ENGINEERING, **ALL PURCHASES OVER \$999.99**. (Per Board Resolution 15-14).

PART I. PURPOSE

Pursuant to General Municipal Law §104-b, "so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption" the following Procurement Policy is applicable to the procurement of goods and services **not** subject to competitive bidding and certain rules that are applicable to procurement subject to competitive bidding as set forth under General Municipal Law §103.

PART II. DEFINITIONS

A. Best Value.

Means the basis for awarding contracts for services to the Town that optimizes quality, cost and efficiency, among responsive and responsible bidders. Non-price factors can be considered in awarding a purchase contract. The basis for a best value award shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders that are small businesses or certified minority- or women-owned business enterprises, as defined in Executive Law §300 (1), (7), (15) and (20), to be used in evaluation of offers for awarding of contracts for services. *See State Finance Law §163(1)(j)*. In awarding a contract or purchase on the basis of best value, the Town must be prepared to show that (1) the bidder is responsive and responsible and (2) that the Town applied objective and quantifiable standards, when possible, to determine that the offer optimizes quality, cost and efficiency. If the award is based on criteria that are not objective and quantifiable then there should be written justification for the award kept in the records.

B. Commodities.

As used in this Policy, unless stated otherwise, means material goods, supplies, products, construction items or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange. *See State Finance Law §160(3)*.

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

C. Contract Administrator.

Refers to the staff member who assists with or handles procurement matters also referred to herein as the procurer.

D. Professional Services.

Are a subset of the general category Services, further defined in Part VI of this Policy.

E. Public Work.

Refers to §103 of the General Municipal Law and encompasses contracts for services, labor or construction.

F. Public Improvement.

Means projects involving the erection, construction, reconstruction or alteration of Town facilities, including but not limited to buildings, grounds and roads.

G. Purchase Contract.

As used in General Municipal Law, this means a contract for goods, commodities and equipment, including technology.

H. Service or Services.

Means the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. *See State Finance Law §160(7).*

I. Technology.

Means either a good or a service or a combination thereof, resulting in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used. *See State Finance Law §160(10).*

PART III. GENERAL PROVISIONS

A. Applicability of Policy

1. Applicability and Funding Source Requirements. **Unless the funding source (i.e. a state or federal grant) for a purchase requires otherwise**, procurements not subject to competitive bidding under General Municipal Law §103 must be made in accordance with this Policy. **If funding source guidelines conflict with or are more stringent than this policy**, Contract Administrators should confer with the Town Attorney prior to soliciting or acquiring the commodity, equipment or service.

2. Applicability by Procurement Methods

Parts IV and V of this policy are not applicable if a procurement is made:

☞ through Preferred Sources pursuant to State Finance Law §162 (However, an explanation of Preferred Source requirements as applied to Purchase Contracts and Public Works can be found in Parts IV and V, respectively.);

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

- ✍ through the New York State Office of General Services pursuant to General Municipal Law §104;
- ✍ through another New York county's contract pursuant to General Municipal Law §103(3);
- ✍ in an emergency pursuant to General Municipal Law §103(4) and Part VIII of this Policy;
- ✍ as a Professional Service pursuant to Part VI of this Policy;
- ✍ as a Sole Source pursuant to Part VII of this Policy;
- ✍ through federal, New York State, or New York political subdivisions, districts or public benefit corporations when the purchase is surplus or second-hand supplies, material or equipment pursuant to General Municipal Law 103(6) or the purchase of from another New York municipality services provided by that municipality in an effort to share services between municipalities ;
- ✍ through certain federal General Services Administration schedules pursuant to General Municipal Law §103(1-b) or §104(2);
- ✍ through "piggybacking" on other federal, state or local government contracts for certain goods and services pursuant to General Municipal Law §103(16) and Part XIV of this policy; or
- ✍ through other exemptions as may be authorized by the laws of the State of New York.

B. Determining Whether a Procurement is Subject to Competitive Bidding

Before any solicitation occurs, procurers need to first determine whether the intended procurement is subject to competitive bidding under General Municipal Law §103. Competitive bidding is required if the reasonably expected countywide **aggregate** will exceed the threshold amounts of \$20,000 for "purchase contracts" (commodities and technology when services are not the predominant portion of the procurement) or \$35,000 for "public works" (services, exclusive of professional services) within 12 months of the date of the planned purchase. Submission of items put out for bid or RFPs will be done by the Town **electronically** via its web site as much as possible as well as by print methods as required. "Sealed bids" or "sealed offers" may also be submitted in an electronic format and they must also contain the statement of non-collusion required by Section 103(d) of the General Municipal Law. Submission in electronic format may, for technology contracts only, may be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

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Under General Municipal Law §103(1), aggregates must be examined in two ways:

1. By Commodity or Service – Procurers must determine the reasonably expected aggregate amount of all purchases of the same commodities, services or technology that will be made within 12 months of the date of the planned purchase. This means that if your department is purchasing janitorial services for \$1,000 on October 13, you need to evaluate whether it is reasonably expected that the entire Town will purchase over \$35,000 in janitorial services within 12 months of October 13. If it is reasonable to expect this, the \$1,000 in janitorial services for your department must be competitively bid pursuant to General Municipal Law §103. Artificial division of purchases of commodities, technology or services to avoid the thresholds is prohibited by General Municipal Law §103(1); and

2. By Vendor – Procurers must also determine whether the reasonably expected aggregate amount of all purchases of the same commodities, services or technology within 12 months of the date of the planned purchase will be made from the same vendor. Therefore, if your department is purchasing \$500 in software from XYZ Corp. on February 7, you need to evaluate whether it is reasonably expected that the entire Town will purchase over \$20,000 in similar goods from that same vendor within 12 months of February 7. If it is reasonable to expect this, the \$500 in software must be competitively bid pursuant to General Municipal Law §103. GML §103 (1) does not permit change orders to or renewals of contracts that were not competitively bid initially because they did not meet the \$20,000 threshold if the change order or renewal would bring the reasonably expected 12-month aggregate amount of purchases from the same vendor over the \$20,000 threshold. Therefore, if you need additional software in November from the same vendor, i.e., XYZ Corp., you must first determine whether the vendor already has over \$20,000 in contracts with the County before you prepare and submit a change order or renewal of the initial contract on February 7. If the aggregate amount exceeds \$20,000, a change order to or renewal of the initial contract would not be legal and the additional software purchase must be bid.

While it is not easy to examine or guarantee the accuracy of aggregates, the following methods may be useful:

- ☞ reviewing past use of that commodity, technology, service or vendor, both from general knowledge and by querying; other sources;
 - ☞ conferring with the other departments that are known to use similar commodities, technology, services or vendors to determine their reasonably expected procurements for
- RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

the 12 months after your purchase; or

- ☞ noting grant awards or significant projects (e.g. when they are announced in other meetings) that may involve major purchases that could be similar to yours.

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PART IV. PROCUREMENT FOR PURCHASE CONTRACTS

A. General Provisions for Purchase Contracts

Except in emergency situations, if items required for a Purchase Contract are available from a Preferred Source in the form, function and utility required by the procurer, the items must be purchased through a Preferred Source Provider and is not subject to competitive bidding. Preferred sources have been set by the State of New York by statute. *See immediately following Section B of this Part IV for more information on Preferred Source procurement for Purchase Contracts.*

B. Preferred Source Exception for Purchase Contracts

Except in emergency situations, when commodities or goods are available from a Preferred Source in the form, function and utility required by the procurer, they must be purchased from one of the Preferred Source providers identified on the list below in descending order **prior to** any solicitation from any other vendor. *See NYS Finance Law §162 for updates to this list and any changes to order of priority.*

1. The New York State Department of Corrections, Correctional Industries Program (CORCRAFT)

2. Approved charitable non-profit-making agencies for the blind

3. Qualified non-profit-making agencies for other severely disabled persons, a qualified special employment program for mentally ill persons or a qualified veterans' workshop

Consult the Preferred Source Guidelines on the Office of General Services website, currently available at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf> for details on the process for Preferred Source acquisitions, including the 10-day notice requirement to Preferred Sources if your procurer determines that the commodity offered on the List of Preferred Source Offerings does not meet the form, function and utility you require (e.g. a Preferred Source offers staplers but not the kind of staplers that meet your form, function and utility requirements). *State laws and regulations governing Preferred Source procurement shall control over any conflicting provisions in this Policy.*

C. Other Expedited Procurement Methods for Purchase Contracts

If a procurement is not an emergency or if the items cannot be purchased through a Preferred Source, you may consider other expedited procurement methods, including purchasing through the following entities:

1. New York State contracts per General Municipal Law §104. Certain State contracts for procurement of commodities, equipment, materials, supplies, services, technology and food products are made available to local governments through the New York State Office of General Services (GSA) and are accessible at www.ogs.ny.gov and orders should be made directly with the contractors listed, using the Town's purchase order and having on the purchase order and the original invoice presented for payment the State contract number. For price sensitive commodities subject to volatile market conditions OGS has an online "fixed requirements" database to assist procurers. Please pay attention to the rules regarding these commodities and the purchases thereof.

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2. Other counties' contracts per General Municipal Law §103(3). Any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases, or may contract for services, other than services subject to article eight or nine of the labor law, when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law; provided that the political subdivision or district for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor or contractor. All purchases and all contracts for such services shall be subject to audit and inspection by the political subdivision or district for which made. Prior to making such purchases or contracts the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have been considered. No officer, board or agency of a political subdivision or of any district therein shall make any purchase or contract for any such services through the county in which the political subdivision or district is located or through any county within the state when bids and offers have been received for such purchase or such services by such officer, board or agency, unless such purchase may be made or the contract for such services may be entered into upon the same terms, conditions and specifications at a lower price through the county.

3. A group purchasing organization, if your unit of government is eligible, per General Municipal Law §103(8)

4. Surplus or second-hand supplies, materials or equipment from the federal government, the state of New York, or from any other New York political subdivision, district or public benefit corporation per General Municipal Law §103(6)

5. Certain Federal GSA Schedules, if the procurement involves the applicable type of goods per General Municipal Law §103(1-b) or §104(2) and/or GSA "Schedule 70."

6. "Piggybacking" on other federal, state or local government contracts which have been extended to apply to local governments for purchase of "apparatus, materials, equipment and supplies" per General Municipal Law §103(16) or

7. Other applicable entities pursuant to any New York State law enacted as an exemption to the requirements of General Municipal Law §103.

Any orders placed directly with contractors included in the above expedited methods should have on the order and the original invoice presented for payment the nature of the expedited procurement method used.

If you aren't using any of the expedited methods then the general policy described in this Part applies to the Purchase Contract.

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D. The following guidelines apply to all purchase contracts where the purchase of the goods, commodities or technology is not an emergency and procurement cannot be made through a Preferred Source or other expedited procurement method.

For Purchase Contracts **They may be purchased:**
estimated to cost as follows for purchases under \$10,000:

Under \$100	At the discretion of the procurer.
\$100-499	By soliciting 2 verbal quotes.
\$500-\$999	By soliciting 3 verbal quotes.
\$1,000-\$4,999	By soliciting 2 written quotes.
\$5,000-\$19,999	By soliciting 3 written quotes.

For Purchase Contracts estimated to cost over \$20,000:

\$20,000 and up by sealed competitive bids or Best Value procurement in conformance with General Municipal Law §103 and Part XIX of this Policy, as applicable at the time of purchase.

Awards for purchase contracts estimated to cost less than \$20,000 may be made to the responsive and responsible potential vendor submitting the lowest price and if considered the best value. In any case, if the award is given to someone other than the lowest bidder, and the basis of award was **not** Best Value in accordance with Part XV of this Policy, then General Municipal Law §104-b requires that the Department justify and document in writing the basis for awarding the contract to an individual or entity other than the lowest bidder. The written justification must state how such an award: furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption. Unless delegated otherwise in writing by the Town Supervisor, all goods, equipment and commodities shall be procured through the Town of Big Flats Procurement Policy. Compliance with this Policy and any related procedures for such purchases will be the responsibility of the procurer or his/her designee.

PART V. PROCUREMENT FOR PUBLIC WORKS

A. General Provisions for Public Works Contracts

Except in emergency situations or when procuring professional services, if services required for a Public Works contract are available in the form, function and utility required by the Procurer from a Preferred Source, the services must be purchased through a Preferred Source Provider. *See Section B of this Part V for more information on Preferred Source procurement of services.* The following guidelines apply to the procurement of all Public Works, absent an emergency, purchase through a preferred source or other expedited procurement method.

For Public Works They may be purchased:
estimated to cost under \$20,000:

Under \$1,000	At the discretion of the procurer.
\$1,000- \$4,999	By soliciting 2 verbal quotes.
\$5,000-\$9,999	By soliciting 2 written quotes.
\$10,000-\$34,999	By soliciting 3 written quotes.

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For Emergencies There is no restriction except as set out below.

For insurance and professional services RFPs may be solicited at the discretion of the procurer.

For Public Works estimated to cost over \$35,000: \$35,000 and up by sealed competitive bids or Best Value procurement in conformance with General Municipal Law §103 and Part XIX of this Policy, as applicable at the time of purchase.

Awards for public works contracts estimated to cost less than \$35,000 may be made to the responsive and responsible potential vendor submitting the lowest price and/or best value. If the award is given to someone other than the lowest bidder and the basis of award was not Best Value in accordance with Part XV of this Policy, then General Municipal Law §104-b requires that the Department justify and document in writing the basis for awarding the contract to an individual or entity other than the lowest bidder. The written justification must state how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased services are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption. The procurement of services for each unit of Town government shall be the responsibility of that unit of government. The Town Supervisor reserves the right to solicit and procure services of any type for all or several units of government in the aggregate and all such units of government shall be required to use the aggregate contract once the current term of any unit's contract for the same service expires. Each Department Head or his or her written designee or the designated procurer shall be responsible for and maintain appropriate documentation to demonstrate his or her unit's compliance with this Policy and any related procedures. Procurers responsible for procurement activities must be designated in writing by the Department Head, which shall be maintained on file with the Town Clerk and shall be updated as changes occur.

B. Preferred Source Exception for Public Works Contracts

Pursuant to State Finance Law §162 and except in emergency situations, when Services are available in the form, function and utility required by a Procuring Agency, those services MUST be purchased from the following Preferred Source Providers, according equal priority to:

1. Approved, charitable, non-profit-making agencies for the blind;
2. Approved, charitable, non-profit-making agencies for other severely disabled persons;
3. Qualified special employment programs for mentally ill persons; and
4. Qualified veterans' workshops.

See NYS Finance Law §162 for updates and any changes to the order of this list.

If multiple sources meet the specifications, cost shall be the determining factor in selection.

Consult the Preferred Source Guidelines on the NYS Office of General Services website, currently available at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf>, for details on the process for Preferred Source acquisitions, including the 10-day notice requirement to Preferred Sources of your Department's need for services that appear on the List of Preferred Source Offerings (i.e. if you need janitorial services and janitorial services is on the List of Preferred Source Offering, those Preferred Sources must be notified of your form, function and utility requirements.)

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State laws and regulations governing Preferred Source procurement shall control over any conflicting provisions in this Policy.

C. Other Expedited Procurement Methods for Public Works

If a procurement is not a Professional Service, an emergency or if the services cannot be purchased through a Preferred Source, you may consider other expedited procurement methods, including purchasing through the following entities:

1. New York State contracts per General Municipal Law §104
2. Other counties' contracts, except those involving services subject to Article 9 of the New York State Labor Law, per General Municipal Law §103(3)
3. A group purchasing organization, if your unit of government is eligible, per General Municipal Law §103(8)
4. Federal GSA Schedules if the procurement involves the applicable type of services per General Municipal Law §103(1-b) or §104(2)
5. "Piggybacking" on other federal, state or local government contracts for "services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies" per General Municipal Law §103(16) or
6. Other applicable entities pursuant to any New York State law enacted as an exemption to the requirements of General Municipal Law §103.

If you aren't using any of the expedited methods then the general policy described in this Part applies to all purchase contracts.

PART VI. PROCUREMENT OF PROFESSIONAL SERVICES

A. Determination of Professional Services

"Professional Services" are defined in New York case law and Comptroller opinions. As a general guideline, "Professional Services" require specialized or technical skills or expertise, training, licensing or certifications, exercise of professional judgment or discretion or a high degree of creativity and/or a relationship of personal trust and confidence. Some examples of Professional Services include but are not limited to, services provided by: physicians, nurses, therapists, engineers, surveyors, attorneys, designers, publicity agents, laboratories, and insurance or financial service firms. Consult the Town Attorney prior to any solicitation with any questions regarding the Professional Services exemption.

Procurements that involve both the acquisition of Professional Services and Goods (e.g. equipment or computer software that needs to be customized for the Town) may not be subject to competitive bidding if there is an "inextricable integration of scientific and technical skills" required with the purchase of the Goods. *Burroughs Corp. v. New York State Higher Education Services Corp.*, 458 N.Y.S.2d 702 (3 Dept. 1983). This integration analysis also applies to procurements that involve the acquisition of Professional with other Services (e.g. design work with printing). To determine whether the procurement is subject to competitive bidding, you should look to whether the other Services are predominant or merely incidental. If you have questions or are uncertain whether the procurement is exempt from competitive bidding, consult the Town Attorney prior to soliciting any such procurements.

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B. Solicitation of Professional Services

Unless exempted under Part VI.C:

If the estimated cost of a particular Professional Service contract is \$75,000 or more, the Procuring Agency may issue a Request for Proposals (RFP) that, at a minimum, requires submission of pricing and qualifications by potential service providers so long not prohibited by any State or Federal law or regulation.

When quotes or proposals are required for Professional Services and a contract is not awarded to the lowest priced quote or proposal submitted, General Municipal Law §104-b(e) requires that the procurer justify and document in writing the reasons for awarding the contract. The written justification must generally address how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption.

C. Exemptions from Solicitation for Professional Services²

Certain types of professional services may be exempt from any RFP process upon approval of the Town Supervisor. Such an exemption might apply to contracts for services with set rates for classes of vendors or for contracts where the Town was mandated to use certain vendors by State or Federal laws, regulations or grant requirements. Examples of such contracts include, but are not limited to:

- a.) Contracts with third-party agencies hired by the State to pass-through funds for or implement certain State programs;
- b.) Contracts at rates set by federal, state or local agencies, statute and/or regulation;
- c.) Sub-grants, inter-municipal and similar agreements for professional services provided in relation to a State or Federal grant for which the Town is the responsible Grantee and the contracted party was identified in the grant application.
- d.) Funding agreements with not-for-profit corporations and other service organizations that provide a unique service that advances the public good. Where more than one such organization provides the same services, as Determined by the Town Supervisor or his designee, then such funding agreement may be subject to a Request for Applications (RFA).
- e.) Contracts with former employees for transitional consulting services
- f.) Contracts to fund entities that operate emergency and transitional housing
- g.) Contracts to implement a program that is jointly funded by the Town and an outside agency or entity; i.e., a program in which both the Town and/or the outside agency or entity contributes funding or in-kind services.
- h.) Contracts for existing projects that require the continuity of professional services to ensure proper completion of the project

All requests for exemptions, except those on the basis of a – c above, require that the procurer provide written justification for the request to the Town Supervisor. The written justification must generally address how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption.

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D. Advertising for Professional Services Solicitations

It is recommended **but not required** that RFPs be advertised in the official paper(s) and/or be made available on the Department's website and/or any website consistently used by the Town for solicitation, for at least five (5) days, commencing with the date after the day of publication and not including the proposal opening date (let date).

E. Award of Professional Services RFP's

It is important to keep in mind that the award of a RFP must be made in accordance with the evaluation criteria specified in the RFP.

PART VII. SOLE OR SINGLE SOURCE PROCUREMENT

Sole or single source procurement is an exception to the general rules and policies stated herein, governing the procurement of goods and/or services. Sole or single source procurement may only be used in rare and extraordinary cases where the goods or services sought and required are manufactured, sold or performed by only one entity and/or individual. Generally, this will only apply in the following situations:

- ✍ Only one company in the world makes and sells a certain good or provides a certain service.
- ✍ Only one company in the world can service or maintain the equipment without voiding the warranty. (Note: This only applies during the warranty period so you can not continue to use the sole source exemption after warranty expiration. After warranty expiration, repairs and maintenance must be bid.)
- ✍ Leasing equipment like postal machines or copiers that have a certain type of consumable component (e.g. ink cartridges) that must be used to avoid breaching a warranty or a maintenance provision of a lease.
- ✍ It is a service performed by companies that traditionally have territories (e.g., cable TV or certain types of equipment dealerships).
- ✍ Software licensing and/or maintenance contracts specific to the software.

In determining whether a purchase qualifies for a Sole or Single Source exemption, the procurer must document, at a minimum:

- a. The unique benefits to the Town of the product or service as compared to other products or services available in the marketplace;
- b. That no other product or service provides substantially equivalent or similar benefits;
- c. That, considering the benefits received, the cost of the product or service is reasonable in comparison to other products or services in the marketplace;
- d. That there is little or no possibility of competition from competing dealers or distributors.

No Sole or Single Source purchase will be approved by the Town Attorney without written justification from the procurer responding to points (a) through (d) above and supporting documentation on the letterhead of the entity providing the good, equipment, commodity or service that they are the sole source.

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PART VIII. EMERGENCY PROCUREMENT

General Municipal Law §103 defines a "public emergency" as "arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants" of the Town "require immediate action which cannot await competitive bidding". Procurement in emergency situations is exempt from competitive bidding. However, when practicable you should make every effort to obtain three (3) written quotes for the required goods or services or, if not practicable, three (3) verbal quotes. If three (3) quotes, written or verbal, are not practicable in light of the emergency, then you should make every effort to obtain two (2) written quotes, if practicable, or if not, two (2) verbal quotes. If it is not practicable to obtain any written or verbal quotes based upon the conditions and needs created by the emergency, then no quotes are necessary. Nevertheless, procurements in emergency circumstances should be justified in writing by the procurer or his or her designee, and approved in writing by the Town Supervisor or his/her designee.

PART IX. EQUIPMENT LEASES

True Leases* of equipment require quotations from at least three (3) separate potential vendors, if available. Procurers are reminded to consider the cost of consumable items (e.g. print cartridges for printers) when comparing potential vendors. Even if equipment is leased, the purchase of consumable items for the leased equipment is still subject to the applicable provisions of this Policy and may require that the consumable items be subject to competitive bidding or other applicable procurement methods.

* True leases include leases that do not contain or refer to installment plans, purchase options or the ownership of the leased equipment at the expiration of the lease. Please contact the Town Attorney if you have questions regarding true leases.

PART X. PROCUREMENT LOBBYING

A. Solicitation Requirements and Contacts During the Restricted Period

State Finance Law §139-j prohibits "Contacts" (verbal, written or electronic) that are intended to influence the Town's conduct or decision regarding a "Governmental Procurement" during the "Restricted Period." This period begins when the earliest written notice, advertisement or solicitation of a purchase and/or service procurement occurs and ends when the final contract is awarded and approved.

A Governmental Procurement involves a "Procurement Contract" which is a procurement involving an estimated annualized expenditure in excess of \$15,000 including any amendment, extension, renewal or change order. This includes all goods and services contracts as well as sale, lease, acquisition or granting of an interest in real property and revenue contracts where the Town is granting a concession or franchise. *See State Finance Law §139-j1(e) and (g) and §139-k1(e) and (g).* Grants, intergovernmental agreements and utility relocation project agreements, among other statutory exceptions, are not considered Procurement Contracts.

Every Request for Quotes (RFQ), Request for Proposals (RFP) or Request for Bids (RFB) for a Procurement Contract, must designate a person or persons who may be contacted by Offerors or Bidders in relation to the Procurement Contract. *State Finance Law §139-j(2)(a).*

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The following types of contacts are permissible exceptions during the Restricted Period:

- ✍ Submissions of Quotes, Proposals or Bids
- ✍ Questions submitted for question and response under the RFQ, RFP, or RFB
- ✍ Participation in conferences open to all Offerors or Bidders;
- ✍ Complaints to the County Attorney that the designated individual of the Procuring Agency has failed to respond in a timely manner to authorized contacts;
- ✍ Negotiation of contracts with Offerors or Bidders who have been notified of a tentative award;
- ✍ Offerors or Bidders contacting the designated individual(s) to request review of an award;
- ✍ Contacts by Offerors or Bidders in protests, appeals or other review proceedings or, complaints of alleged improper conduct to the District Attorney *See State Finance Law §139-j(3)(a)*.

Every solicitation (RFQ, RFP or RFB) for a Procurement Contract, as defined in this Part XI, must include a summary of the policy and prohibitions regarding permissible contacts, a copy of any guidelines, rules and regulations regarding permissible contacts and must also require a written affirmation from the Offeror or Bidder as to their understanding of and agreement to comply with the Town's procedures relating to permissible contacts. *See State Finance Law §139-j(6)(a) & (b)*.

Every solicitation for a Procurement Contract must also require Bidders or Offerors to disclose findings of non-responsibility due to violations of the permissible contacts provisions within the previous four years by any governmental entity where the prior finding of non-responsibility was due to violation State Finance Law §139-j or the intentional provision of false or incomplete information to a governmental entity. *State Finance Law §139-k(2)*. Furthermore, the solicitation must also require Bidders or Offerors to certify that all information provided with respect to this disclosure requirement is complete, true and accurate. *State Finance Law §139-k(5)*.

For any Contact during the restricted period, the procurer must obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact is a Bidder or Offeror or was retained, employed or designated by or on behalf of a Bidder or Offeror to appear before or contact the procurer about the procurement. All such Contacts must be included in the Procurement Record. *State Finance Law §139-k(4)*. However, any communications received by a Procuring Agency from members of the state legislature, or state legislative staff, when acting in their official capacity, shall not be considered to be a Contact and shall not be recorded by the Procuring Agency. *State Finance Law §139-k(6)*.

B. Violations and Investigations

Any officer or employee of the Town who becomes aware that a Bidder or Offeror has violated the restrictions on permissible contacts shall immediately notify the Town Supervisor or Town Attorney. *See State Finance Law §139-j(8)*.

Upon notice of any allegation of a violation of the restricted contacts provisions, the Town Supervisor shall immediately cause an investigation of the allegation to be initiated and, if sufficient cause exists to believe it is true, give the Bidder or Offeror reasonable notice of the investigation and an opportunity to be heard. *State Finance Law §139-j(10)(a)*. If a violation is found to be knowing and willful, the Bidder or Offeror shall be deemed non-responsible and the

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Director of Operations and Cost Control must notify the New York State Office of General Services of any such finding of non-responsibility. *State Finance Law §139-j(10)(b)*.

In the event of a knowing and willful employee violation, the Director of Operations and Cost Control shall report the employee's violation of this Policy and procedures to the Procuring Agency's head. *State Finance Law §139-j(10)(b) and (c)*.

PLEASE SEE STATE FINANCE LAW SECTION 139-J FOR COMPLETE PROVISIONS REGARDING THIS COMPLEX LAW.

PART XI. MWDBE REQUIREMENTS

All solicitations shall be performed and contracts prepared in compliance with any applicable state or federal laws, regulations, grant requirements, Town policies and procedures governing and/or relating to Minority, Women and/or Disadvantaged Business Enterprises.

PART XII. PROPOSAL AND BID OPENINGS

Prior to awarding a quote, bid or proposal, the individual making the award must have a written designation authorizing that individual to make such award on file with the Town Supervisor. The Town Supervisor shall have the discretion to approve such designations, which shall be made and maintained by the procurers. Designations may be made with regard to the type of procurement, dollar thresholds, etc. as the procurer in consultation with the Town Supervisor, shall see fit.

PART XIII. RESPONSIBILITY DETERMINATIONS

In addition to the responsibility determination required for Procurement Contracts under Part XII of this Policy and applicable state laws and regulations, the procurer must determine that any Bidder awarded a contract pursuant to General Municipal Law §103 is responsible and responsive. It is also recommended, though not required, that responsibility determinations be made with regard to vendors, consultants or contractors under all other types of solicitations. Responsible Bidders or Offerors are those that have the financial ability, legal capacity, integrity, and past experience to perform the contract. *See State Finance Law §163(c)*. Responsive Bidders or Offerors are those that meet the minimum specifications or requirements set forth in the solicitation for the procurement. *See State Finance Law §163(d)*. Bidders or Offerors who do not meet these standards may be declared non-responsible. Before declaring a Bidder or Offeror non-responsible, the procurer, in consultation with the Town Attorney, must provide the Bidder or Offeror notice that he or she may be declared non-responsible and an opportunity to be heard in accordance with procedures for all such hearings by any procurer as established by the and approved by the Town Attorney and Town Supervisor.

PART XIV. PIGGYBACKING³

General Municipal Law §103(16) allows procurement of certain goods (including apparatus, materials, equipment and supplies) and services through contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein, if such contract was let in a manner consistent with competitive bidding, and has been made available for use by other governmental agencies. Approval for the use of "piggybacking" will be through the Department of General Services in collaboration with the County Attorney.

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

PART XV. BEST VALUE

Pursuant to General Municipal Law § 103(1) purchase contracts or public works contracts (except those subject to New York State Labor Law Article 8) may be awarded on the basis of the Best Value to the Offeror that optimizes quality, cost and efficiency, among responsive and responsible Offerors. Best Value solicitations shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. The Basis of Award of the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a Procuring Agency in its determination of Best Value. The evaluation may also identify a quantitative factor for small businesses or certified minority- or women-owned business enterprises, as defined in Executive Law §300 (1), (7), (15) and (20). The Basis of Award shall reflect, wherever possible, objective and quantifiable analysis. Documentation in the Procurement Record shall, where practicable, include a quantification of the application of the evaluation criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that Best Value will be achieved.

If Best Value is authorized as a procurement method eligible for piggybacking consideration, then any potential piggyback contract should be evaluated for substantial compliance with the above. All procurements based upon Best Value are subject to review and/or approval by the Town Supervisor or his designee. This supersedes and replaces Board Resolution No. 94-14 (Setting Best Value Award Policy).

PART XVI. RECORDKEEPING

In addition to any further recordkeeping requirements promulgated by the Town Supervisor and any federal or state law or funding source requirements, procurers shall maintain a written record for every procurement, which contains the following information, **as applicable**:

- ✍ Written determination of whether the procurement is subject to competitive bidding.
- ✍ Preferred Source Solicitation documentation.
- ✍ Documentation from Preferred Source, Town official or other government surplus programs, or group purchasing organizations and/or their distributors pertaining to purchases made through those entities.
- ✍ Solicitation documentation appropriate to the procurement method used (Request for Quotes/Bids/Proposals; advertising and other records of public distribution; contact records required by the Procurement Lobbying Law, the quotes, bids or proposal received, etc.).
- ✍ Award documentation (score sheets or other written analysis of the quotes, bids or proposals, the award decision, notice of award, etc.).
- ✍ Purchase Order or Contract documentation (purchase order or contract with all attachments, appendixes, business associate agreements, insurance, etc.).
- ✍ Contract Administration documentation (performance reports, invoices, payroll certifications, payment records, records of disputes, etc.).

RESOLUTION NO. 276-14, TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS FOR SERVICES APPROVED continued

PART XVII. INDIVIDUALS RESPONSIBLE FOR PURCHASING.

Certain designated individuals are procurers and are responsible for purchasing decisions. However no contract is binding on the Town until approved and executed by the Town Supervisor and or Town Board. Also pursuant to Chapter 402 of the Laws of 2007, effective January 1, 2009, as required under Section 104-b of the NYS General Municipal Law, the Town is including the municipal positions responsible for purchasing decisions, as follows (THIS LIST MUST BE REVIEWED BIENNIALLY):

Town Supervisor
Town Council
Town Attorney
Town Justice
Bookkeeper
Commissioner of DPW
Highway Supervisor
Water Supervisor
Town Clerk & Receiver of Taxes and Fees
Planning & Code Enforcement
Youth Coordinator
Director of Recreation
Assessor

PART XVIII. PROCUREMENT MANUAL

The Town Supervisor is authorized to promulgate procedures to implement this Policy. For complete procedures outlining specifics of the entire procurement process in more detail.

PART XIX. STATUTORY AUTHORIZATIONS

All procurement under this Policy related to federal or state statutory citations shall be made in accordance with the current version of the statute at the time of procurement, notwithstanding the specific language of this Policy. Procurements may also be made in accordance with any additional statutory authorizations, existing or future, regardless of whether they are mentioned in this Policy.

PART XXI. EFFECTIVE DATE

The effective date of this Policy as modified and reaffirmed shall immediately.

This policy shall go into effect on December 4, 2014, and will be reviewed annually.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother
NAYES: None

MINUTES OF THE TOWN / SEWER BOARD MEETING OF DECEMBER 10, 2014

RESOLUTION NO. 277-14
COMMUNICATION LOG FOR DECEMBER 10, 2014 APPROVED

Resolution by: Giammichele
Seconded by: Adams

BE IT RESOLVED that the following communications were received, accepted and filed by the Town Clerk of the Town of Big Flats and referred to the appropriate Department Head for information and/or action:

November 19, 2014

Time Warner Cable – RE: November 19, 2014 Programming Notice Changes (CNY/JT).
Referred to: Town Board and Town Clerk for filing.

December 4, 2014

Time Warner Cable – RE: December 3, 2014 Programming Notice Changes (CNY/JT).
Referred to: Town Board and Town Clerk for filing.

CARRIED: AYES: Gillette, Giammichele, Adams, Saglibene, Fairbrother
NAYES: None

Supervisor Fairbrother also reported on:

- Sales tax down by 28.35% in October
- Fiber update – we should be seeing Fiber the 1st quarter in 2015
- USDA – Supervisor Fairbrother attended Broadband seminar today, along with Water Supervisor Shawn Crater who attended the Water seminar in Ithaca.
- Water with SRBC on target, we have a good report from them
- Supervisor Fairbrother will be on vacation from December 19-29th.
- Next Town Board meeting will be December 29, 2014 at 4:30 p.m.
- Larchmont meeting went well, signs

Supervisor Fairbrother thanked Tammy Stein, and Terri O'Rourke for a job well done with the Welcome Flags in front of the Town Hall.

Motion to approve the use of the Big Flats Community Center by Love Church.
Motion made By Supervisor Fairbrother, Second by Councilperson Giammichele.

Motion to grant the Love Church permission to use the Big Flats Community Center to raise money and contributions for their building fund for a church in the Town of Big Flats. This motion is a one-time grant for this use in 2015. All fees will pertain to the use of the center for the weekend use of the center for the fund raiser. All in favor, motion carried.

Councilperson Giammichele stated that Pat Kane would be singing at the Community Center on Wednesday, December 17, 2014, and to make sure you get your tickets.

MINUTES OF THE TOWN / SEWER BOARD MEETING OF DECEMBER 10, 2014

Councilperson Saglibene made a motion, seconded by Councilperson Giammichele to adjourn the Town Board meeting at 8:41 P.M. All in favor, motion carried.

Date approved: _____

Linda J. Cross
Town Clerk