

A special meeting was held by the Sandy Creek Board of Trustees on August 26, 2019 at 10:00 AM in the Village Office, 11 Park Avenue, Lacona. The purpose of this meeting was to discuss the liquid damage portion of the water tower project. Those attending were Mayor Grant Rohrmoser, Trustees Kenney LaRue and Sharon Turo, and Clerk/Treasurer Jill Mattison. Also attending were Village Attorney Joseph Russell and Village Engineer Jack Dodson.

Mayor Rohrmoser opened the meeting and asked Jack Dodson to describe and explain liquidated damages. The contract, which Caldwell agreed to, stated that the "Contractor shall pay the Owner \$750.00 for each day that expires after the work is completed and ready for final payment". Jack figured there were 201 days. Therefore,  $201 \times \$750 = \$150,750.00$ . Jack also stated that letters were sent to Caldwell in advance of substantial completion indicating liquidated damages would be charged if the project was not completed on time.

Mr. Dodson spoke in detail that the tower was ready for painting according to the contractor's schedule -mid-July through mid-September 2018 with substantial completion November 15<sup>th</sup> and final completion December 15, 2018. Final painting did not happen until late April 2019 and finished in May, 2019. Substantial completion occurred June 5, 2019, final completion July 19, 2019. It was agreed by all that Caldwell could not use weather as an excuse for the delay because the weather was perfect for painting last summer. Caldwell was also told that the weather in northern New York changes rapidly in September and October so it would be very difficult to schedule painting during those months. No one believed that to be a valid excuse because they had every opportunity to meet their obligation.

At the August 13, 2019 construction meeting, liquidated damage were discussed with Caldwell representatives Eric Koetter and David Francis. They agreed that the company did not complete the project on time as per the contract. Mr. Francis stated that the painting subcontractor could not obtain or meet the insurance requirements of New York State due to the state changing their requirements. He further stated that it was difficult to find another contractor in the peak painting season. Mr. Koetter said the project would have been completed if it were not for the insurance issue. Caldwell understands that the Village incurred costs due to the failure of Caldwell to complete on time and were willing to pay the actual incurred costs. (Jack has estimated the actual cost to be approximately \$45,100). Mr. Davis said that if liquidated damages were charged by the Village, Caldwell would request arbitration.

Attorney Joe Russell explained to the board that the Village does not have to prove actual damages because that is the whole point of the liquidated damage provision. He further stated that if the contractor disagrees to the liquidated damages, the issue would be whether the Village contributed to the delay and then it would have to be determined how much of a delay was caused by the Village. At this time, his recommendation was to hold Caldwell to the contractual liquidated damages.

### **RESOLUTION 18 -FY 19/20**

#### **OF THE VILLAGE BOARD OF THE VILLAGE OF SANDY CREEK**

At a special meeting of the Village Board of the Village of Sandy Creek held at the Village offices, 11 Park Avenue, Lacona, New York, on August 26, 2019, at 10:00 a.m. there were:

PRESENT:

Grant Rohrmoser, Mayor

Kenny LaRue, Trustee

Sharon Turo, Trustee

ABSENT: None

**WHEREAS**, the Village Board of the Village of Sandy Creek (the "Village") has undertaken an improvement project to construct a 300,000 Gallon Elevated Water Storage Tank ("Water Tank"); and

**WHEREAS**, the Village entered into a Contract No. 5 (the "Contract") with Caldwell Tanks, Inc. (the Contractor") under which Contractor was to complete construction of Water Tower within specified dates; and

**WHEREAS**, the Substantial Completion date under the Contract was November 15, 2018 with a Final Completion date of December 15, 2018; and

**WHEREAS**, the actual Substantial Completion date was June, 5, 2019 and the Final completion date was July 19, 2019; and

**WHEREAS**, the Contract provides liquidated damages of \$750.00 per day beyond the dates set for Substantial Completion and Final Completion in the Contract;

NOW, THEREFORE, BE It

**RESOLVED**, that the Board of Trustees of the Village of Sandy Creek shall invoke liquidated damages under the Contract from Contractor for two hundred one (201) days delay in Substantial and Final Completion of the Water Tank in the amount of \$150,750.00; and

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

A motion to adopt the foregoing Resolution was made by Trustee Turo and seconded by Trustee LaRue, and upon a roll call vote of the Board was duly adopted as follows:

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

Grant Rohrmosher, Mayor	yes X	no__
Kenny LaRue, Trustee	yes X	no__
Sharon Turo, Trustee	yes X	no__

Dated: August 26, 2019

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Jill Mattison, Village Clerk

(Seal)