



# LEGISLATIVE BRANCH ▪ CITY OF BINGHAMTON

City Council President  
City Clerk

**CITY COUNCIL WORK SESSION AGENDA**  
**City Council Work Room, 38 Hawley Street, Binghamton**  
**Monday August 3<sup>rd</sup>, 2015**

*The Work Session begins at 6:00pm. Times for RL(s)/Topics are approximate only and items may be considered earlier or later.*

Time	Committee	Chair	RL(s)/Topic	Pages	Presenter
6:00pm	Finance	Motsavage	<b>15-142</b> Contract renewal of Youth Bureau Summer Fun		Bill Barber
6:15pm	-----	-----	<b>Discussion:</b> SEQRA for carousel at Ross Park Zoo		Bill Barber; Ken Frank
6:30pm	-----	-----	<b>Discussion:</b> Adult Swim @ Webster Park Pools		Bill Barber
6:45pm	-----	-----	<b>Discussion:</b> LED Replacement		Gary Holmes
7:00pm	Finance	Motsavage	<b>15-143</b> Supplemental Agreement 2 for Front St construction at Clinton St		Gary Holmes
7:15pm	Finance	Motsavage	<b>15-144</b> Supplemental Agreement 3 for Exchange St bridge		Gary Holmes
7:30pm	Finance	Motsavage	<b>15-145</b> Increase Bond Ord 14-013 amount from \$1,585,000 to \$2,000,000 for Washington St Bridge		Chuck Shager, Gary Holmes
7:45pm	Finance	Motsavage	<b>15-147</b> Amending Bond Ord to reflect the increase in JSTP renovations		Chuck Shager
8:00pm	Finance	Motsavage	<b>15-146</b> NYSERDA Grant for Micro Grid		Jared Kraham
8:15pm	Finance	Motsavage	<b>15-115</b> An ordinance to reinstall a red light @ Oak and Leroy Sts		Jared Kraham
8:30pm	Finance	Motsavage	<b>15-148</b> Amending parking enforcement contract		Jared Kraham
8:45pm	MPA	Rennia	<b>15-149</b> Ordinance to provide one time amnesty to collect parking tickets prior to Jan 2015		Jared Kraham
9:00pm	MPA	Rennia	<b>Discussion:</b> Police Modernization Law		Sean Massey
	-----	-----	<b>Discussion:</b> Review of Committee Reports & Pending Legislation	-----	Council President Berg

**COMMITTEE REPORTS**

**Employees Committee: Motsavage, Webb, Papastrat**  
Sexual Harassment Policy Update

**Municipal & Public Affairs Committee: Rennia, Webb, Matzo**  
Police Modernization Law



# Legislative Branch

RL Number:

15-142

Date Submitted:

7/27/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.

### Applicant Information

Request submitted by: William M. Barber

Title/Department: Commissioner of Parks & Recreation

Contact Information: 772-7017

### RL Information

Proposed Title: Contract renewal of Youth Bureau Summer Fun

A Resolution Authorizing The Mayor to ---

Suggested Content: Enter into agreement with Broome County for reimbursement of expenses for the Summer Fun Youth Development Program in an amount not to exceed \$11,000

### Additional Information

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): R14-67

<b>OFFICE USE ONLY</b>	
Mayor:	<u>[Signature]</u>
Comptroller:	<u>[Signature]</u>
Corporation Counsel:	<u>[Signature]</u>
Finance <input checked="" type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>

# Office of the Broome County Executive

*"The People's Office"*

Debra A. Preston, County Executive

June 23, 2015

City of Binghamton  
Corporation Counsel  
38 Hawley St.  
Binghamton, NY 13901

RE: Contract Renewal - Youth Bureau - Summer Fun  
CA 65-172

Dear Contractor:

By Permanent Resolution No. 229, duly adopted on 6/18/15, the Broome County Legislature has authorized the undersigned to forward to you this letter agreement for the purpose of renewing the previous agreement between the parties dated 2/12/15 for an additional one year term from the date upon which the previous agreement would have terminated. All terms and conditions of the above agreement shall remain in full force and effect, with the following exceptions:

- A. Said agreement shall be modified to provide for a substitution of the term 1/1/15-12/31/15, for the previous term.
- B. Said agreement shall be modified to substitute the attached contract insurance specifications for the previous set.
- C. Said agreement shall be modified to provide for a substitution of the sum \$11,000.00 for the previous sum of \$9,700.00.

If you are in agreement with the terms of this letter, please execute where indicated, in the lower left-hand corner of the letter, and return the original to the **BROOME COUNTY ATTORNEY'S OFFICE**, Edwin L. Crawford County Office Building, Government Plaza, Binghamton, New York, 13901. An extra copy is enclosed for your records.

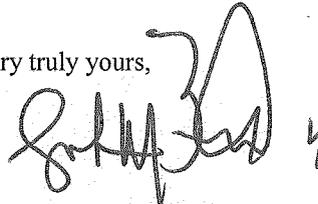
Enc.  
ACCEPTED:  
CITY OF BINGHAMTON

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Very truly yours,



JOHN M. BERNARDO  
Deputy County Executive

Intro No. 29  
Date 6/18/15  
Reviewed by  
Co. Attorney MS  
Date 5/28/15

**RESOLUTION**  
**BROOME COUNTY LEGISLATURE**  
BINGHAMTON, NEW YORK

Permanent No. 2015-229  
Date Adopted 6/18/15  
Effective Date 6/22/15

**Sponsored by:** Health & Human Services and Finance Committees

**Seconded by:** Hon. Scott D. Baker

**RESOLUTION AUTHORIZING THE APPLICATION FOR AND ACCEPTANCE OF STATE AID FOR THE YOUTH BUREAU'S YOUTH DEVELOPMENT PROGRAM AND AUTHORIZING AGREEMENTS WITH VARIOUS VENDORS TO ADMINISTER SAID PROGRAMS FOR 2015**

WHEREAS, this County Legislature, by Resolution 248 of 2014, authorized and approved the Application for State Aid and accepted funding in the amount of \$184,133 for the Youth Bureau's Youth Development Program, and authorized agreements with various vendors to administer said programs for the period January 1, 2014 through December 31, 2014, and

WHEREAS, it is desired to renew said application and accept State Aid for the Youth Bureau's Youth Development Program in the amount of \$184,133 and renew the agreement with the various vendors as listed on Exhibit "A" to continue to administer said programs for the period January 1, 2015 through December 31, 2015, now, therefore, be it

RESOLVED, that this County Legislature hereby authorizes the application and approves acceptance of \$184,133 from the New York State Office of Children and Family Services, North Building, Room 336, 52 Washington Street, Rensselaer, New York 12144 for the Youth Bureau's Youth Development Programs for the period January 1, 2015 through December 31, 2015, and be it

FURTHER RESOLVED, that this County Legislature hereby authorizes agreements with various vendors for the programs as listed on Exhibit "A" for the Youth Bureau's Youth Development Program for the period January 1, 2015 through December 31, 2015, and be it

FURTHER RESOLVED, that in consideration of said services, the County shall pay the Contractors at the amounts as listed on Exhibit "A" for the term of the agreement, and be it

FURTHER RESOLVED, that the payments hereinabove authorized shall be made from budget line 43010008.6004141 (Youth Services Program), and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative is hereby empowered to execute any such agreements, documents, or papers, approved as to form by the Department of Law, as may be necessary to implement the intent and purpose of this Resolution, and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative is hereby empowered (with the approval of the grantor agency) to reduce the time period of the grant provided there is no change in the grant budget or extend the terms of the grant agreement for the purpose of expending any unexpended grant funds, and be it

FURTHER RESOLVED, that the County Executive or her duly authorized representative (including the Director of Management and Budget and/or Comptroller) is hereby authorized to make any transfers of funds required within this grant budget provided that employee head count is not increased, the County's contribution is not increased, and the salary rate or salary total for a position is not changed.

COUNTY OF BROOME ) ss.  
STATE OF NEW YORK )

I, the undersigned, Clerk of the Legislature of the County of Broome, DO HEREBY CERTIFY that the above is an original resolution of such Legislature duly adopted on the 18th day of June, 2015, by a majority of the members elected to the Legislature of said County at a regular meeting of said Legislature.

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of fifteen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 19th day of June, 2015.

Date sent to County Executive June 19, 2015

Approved Robert Rosta  
County Executive

Date 6/22, 2015

[Signature]  
Clerk, County Legislature  
County of Broome

EXHIBIT "A"

Program name	Agency/Municipality	CA	2014		2015	
			State Aid Via Broome County		Broome County	
Teen Transitional Living (TTLP)	Catholic Charities	65-116	\$5,700.00	\$ 5,700.00	\$ 5,700.00	\$ 5,700.00
Gateway Center for Youth	Catholic Charities	65-64	\$17,300.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
LIFE House Runaway Homeless Youth	Bershire Farms	65-159	\$7,307.00	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00
OASIS Afterschool Program	Family & Childrens Society	65-114	\$7,000.00	\$ -	\$ -	\$ -
Haven Afterschool Program	Haven Afterschool	65-170	\$10,000.00	\$ -	\$ -	\$ -
Summer Fun	City of Binghamton Parks	65-172	\$9,700.00	\$ 11,000.00	\$ 11,000.00	\$ 11,000.00
Voices for Children - CASA	ACCORD	65-146	\$7,050.00	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00
Compeer Youth Mentoring	Mental Health Association	65-167	\$8,850.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Library Program - Vestal	Town of Vestal	65-173	\$1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00
Waterman Program - Vestal	Town of Vestal	65-173	\$2,209.00	\$ 2,209.00	\$ 2,209.00	\$ 2,209.00
Playground Program - Vestal	Town of Vestal	65-173	\$4,400.00	\$ 4,400.00	\$ 4,400.00	\$ 4,400.00
Summer in the Park	B&G or W. Broome	65-174	\$1,450.00	\$ 1,450.00	\$ 1,450.00	\$ 1,450.00
High School Equivalency Prep	Family Enrichment Network	65-175	\$7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00
Softball & Field Hockey - Colesville	Town of Colesville	65-176	\$1,200.00	\$ 3,100.00	\$ 3,100.00	\$ 3,100.00
Family Resource Center	Mothers & Babies	65-139	\$15,000.00	\$ 16,710.00	\$ 16,710.00	\$ 16,710.00
Port Dickenson Community Assoc.	Town of Dickenson	65-177	\$350.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Youth Flag Rugby	YMCA	new	\$0.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Vines Garden	Vines	new	\$0.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Youth Pregnancy Prevention	Mothers & Babies	new	\$0.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Village Pool	Village of Deposit	new	\$0.00	\$ 500.00	\$ 500.00	\$ 500.00
Finch Hollow Nature Center	Cornell Coop. Extension	new	\$0.00	\$ 27,500.00	\$ 27,500.00	\$ 27,500.00
Pathway Program	JC Schools	65-178	\$7,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00
General Recreation	B C Parks, Rec. & Youth Service	na	\$45,867.00	\$ 18,314.00	\$ 18,314.00	\$ 18,314.00
Personnel Service Chargeback	B C Parks, Rec. & Youth Service	na	\$25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
Total			\$184,133.00	\$ 184,133.00	\$ 184,133.00	\$ 184,133.00

State will reimburse 100% - No County Match  
 Agencies Exhibit A YD 2015

## Risk Management & Insurance Specifications

<b>Project Description or Contract Number</b>	Youth Summer Fun Programs
<b>Date Issued</b>	6/18/2015
<b>Vendor name ("Contractor")</b>	City of Binghamton Parks & Recreation
<b>County Department</b>	Parks

**Please read these specifications very carefully.** These specifications are part of your contract with Broome County. It is advisable that you forward a copy of these specifications to your insurance agent. Broome County's waiver of any requirement(s) set forth herein shall not constitute a waiver of any other contract provision.

### **Part I. General Provisions**

1. The Contractor shall procure and maintain during the term of this contract, at the Contractor's expense, the insurance policies listed in Part II with limits equal to or greater than the enumerated limits.
2. The contractor shall be solely responsible for any self-insured retention or deductible losses under each of the required policies.
3. Every required policy, including any required endorsements and any umbrella / excess policy, shall be primary insurance. Insurance carried by Broome County, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by the Contractor.
4. Every required coverage type shall be "occurrence basis".
5. The Contractor may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form).
6. All insurance certificates must be approved by the Office of Risk & Insurance Management. See section II for specific requirements regarding insurance proof.
7. The County reserves its right to request certified copies of any policy or endorsement thereto.
8. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-:VII" or better by A.M. Best (Current Rate Guide).
9. If the Contractor fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon Broome County may exercise any rights it has in law or equity, including but not limited to the following:
  - (a) immediate termination of the contract;
  - (b) withholding any / all payment(s) due under this contract or any other contract it has with the vendor (common law set-off); OR
  - (c) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith. All monies so paid by Broome County shall be repaid upon demand, or at the County's option, may be offset against any monies due to the Contractor.

**Part II. Required Insurance – Minimum coverage types and amounts**

1.

<b>Coverage Type</b>	<b>Minimum Limits</b>
<b>Commercial General Liability (CGL) including:</b> <ul style="list-style-type: none"> <li>➤ Products &amp; completed operations shall not be excluded.</li> <li>➤ Broome County shall be named additional insured. The additional insured endorsement for the insurance shall not contain any exclusion for bodily injury or property damage arising from completed operations.</li> <li>➤ <b>Proof of additional insured coverage shall be evidenced through a carrier issued endorsement. (ISO CG 20 10 11 85 or equivalent)</b></li> </ul>	1,000,000 / 2,000,000 Per occurrence / minimum annual aggregate limit
<b>Workers' Compensation and Employer's Liability</b> <input type="checkbox"/> If you have no employees (sole proprietor) you may provide an affidavit of exemption. (CE-200) if the box to the left is checked.	Statutory amount / 100,000
<b>Disability Insurance</b> <input type="checkbox"/> If you have no employees (sole proprietor) you may provide an affidavit of exemption. (CE-200) if the box to the left is checked.	Statutory limits

2. The certificate face shall:
  - indicate coverage(s) (other than Workers' Compensation & Disability) & minimum amounts required in part II.1
  - provide that the coverage(s) shall not be cancelled, terminated or materially changed (including an insurance limits reduction) unless **thirty (30) days** prior written notice has been given to the County Office of Risk & Insurance Management.
  - Disclose all policy exclusions
  - Disclose the amount of self-insured retention or deductibles.
  - Show Products & completed operation
  
3. Proof of Workers' Compensation Coverage must be provided on WCB form C-105.2 or U-26.3
  
4. Proof of NYS Disability Coverage must be provided on WCB form DB-120.1 OR DB-820/829 OR DB-155
  
5. The Additional Insured & Certificate Holder should read:
  - County Of Broome
  - Attn:** Office of Risk & Insurance Management
  - PO Box 1766 Binghamton, NY 13902-1766

### **Part III     Defense and Indemnification**

The following provisions concerning indemnification shall not be construed to indemnify the County for damages arising from bodily injury to persons or property contributed to, caused by or resulting from the sole negligence of the County or its employees.

The Contractor agrees to indemnify and hold the County of Broome and any officer, employee and/or agent thereof free and harmless from any and all loss(es), penalty(ies), damages, settlement(s), cost(s), charge(s), professional fee(s) or other expense(s) or liability(ies) of every kind arising from or relating to any and all claim(s), lien(s), demand(s), obligation(s), action(s), proceedings or causes of action of any kind in connection with, or arising directly or indirectly from the negligent error(s) and/or omission(s) and/or act(s) of the Contractor (including Contractor's employees, agents or and/or subcontractors) in the performance of this agreement.

Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute (including specifically but not limited to New York State Labor Law §§ 200; 202; 240 & 241), ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by the Contractor, as aforesaid,.

### **Part IV     Safety**

Broome County specifically reserves the right to suspend or terminate all work under this contract whenever Contractor and/or contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of contractor's employees, subcontractor's employees, county employees or member(s) of the general public on county property. This reservation of rights by Broome County in no way obligates Broome County to inspect the safety practices of the Contractor.

If Broome County exercises its rights pursuant to this part, the contractor shall be given three days to cure the defect, unless Broome County, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to Broome County's legal obligation to continuously provide contractor's service to the public or Broome County's immediate need for completion of the Contractor's work. In such case, Contractor shall immediately cure the defect.

If the Contractor fails to cure the identified defect(s), Broome County shall have the right to immediately terminate this contract. In the event that Broome County terminates this contract, any payments for work completed by the Contractor shall be reduced by the costs incurred by Broome County in re-bidding the work and /or by the increase in cost that results from using a difference vendor.



# Legislative Branch

RL Number:  
15-143  
Date Submitted:  
7/28/15

**City Clerk, City Hall, Binghamton, NY 13901 607-772-7005**

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

Request submitted by: Gary R. Holmes, P.E.

Title/Department: Acting City Engineer - Engineering 

Contact Information: 772-7007

### RL Information

Proposed Title: Supplemental Agreement No. 2 for Shumaker Engineering on the Front St.

Reconstruction at Clinton St. Project, PIN 9752.74 for Additional Construction Inspection Time

Suggested Content: The contractor was unable to complete the work within the estimated time in

Supplemental Agreement No. 1. Therefore, Shumaker Engineering will require additional compensation

to complete the construction inspection of this project. This Supplemental Agreement No. 2 is ins the

amount of \$38,186.88. Funding in budget line H5120.525023.51809 - Front St. Recon at Clinton St.

**The contractor will reimburse the City for this additional amount.**  
**Additional Information**

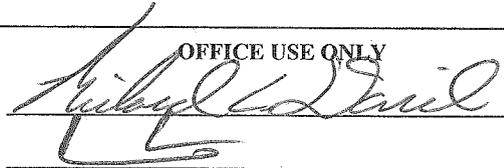
Does this RL concern grant funding? Yes  No

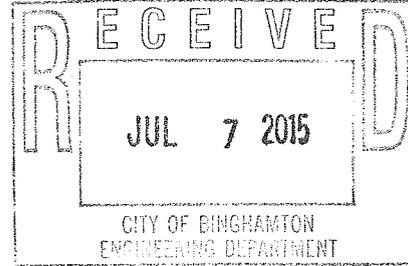
If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): R14-28

OFFICE USE ONLY	
Mayor:	
Comptroller:	
Corporation Counsel:	
Finance <input checked="" type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>



June 23, 2015

Mr. Richard Perkins, P.E.  
Acting City Engineer  
City of Binghamton  
38 Hawley Street, 3rd Floor  
Binghamton, NY 13901

**Re: PIN 9752.74 New York State Route 11  
Front Street at Clinton Street Intersection Reconstruction  
City of Binghamton, Broome County  
Construction Observation Services – Supplemental Agreement No. 2 (Revised)**

Dear Mr. Perkins:

As per our meeting of June 23, 2015, we are submitting, herewith, our revised Supplemental Agreement Request No.2 (SA#2) for PIN 9752.74, Construction Observation of Front Street Reconstruction. Shumaker Consulting Engineering and Land Surveying, D.P.C. (SCE) is requesting that SA #2 be authorized for the above referenced project. This request is justified due to the contractor not completing the work within the estimated time in Supplemental Agreement No. 1 (SA1). Therefore, SCE will require additional compensation to complete the project.

SA1 assumed that the contractor, G. DeVincentis & Son Construction Company (GDV), would complete construction by June 15, 2015. SCE had assumed their effort for this additional project duration to be a set number of hours based on the contractor diligently progressing the remaining work, including coordinating his sub-contractors, in an efficient manner. This has not been the case. Additionally GDV has not provided an updated schedule since March 2015. GDV had scheduled paving and stripping for the week of May 11<sup>th</sup>. We are over six (6) weeks beyond that date without a revised schedule or the scheduling of the pre-paving meeting.

It is estimated that GDV has four (4) weeks of work remaining from this date and will be completed by July, 17, 2015.

We have prepared this supplemental agreement request assuming an additional six (6) weeks of construction activities by GDV and their sub-contractors plus \$5,000 allowance for materials testing.

We are assuming that GDV will compensate the City for this additional effort as they are beyond their contractual completion date.

Please contact this office if you have any comments or questions regarding fees, contract, and/or the scope of services provided. If this is acceptable to you, please execute both copies of the attached supplemental agreement and return one (1) to this office at your earliest convenience.

Very truly yours,

**SHUMAKER CONSULTING ENGINEERING  
& LAND SURVEYING, D.P.C.**

A handwritten signature in black ink, appearing to read "Joseph Bayer", written in a cursive style.

Joseph Bayer, P.E.  
*Senior Managing Engineer*

Enclosures

JB/cdc

## Attachment A

### Architectural/Engineering Consultant Agreement Project Description and Funding

PIN: 9752.74

Term of Agreement  
Ends: December, 2015

BIN:

Main Agreement       Amendment to Agreement [add identifying #]

X Supplement to Agreement [Supplemental No. 2]

#### *Phase of Project Consultant to work on:*

P.E./Design       ROW Incidentals       ROW Acquisition

X Construction, C/I, & C/S

Dates or term of Consultant Performance:

Start Date: June 8, 2015

Finish Date: December, 2015

#### *PROJECT DESCRIPTION:*

Provide Construction Observation for the reconstruction of US 11/Front Street and Clinton Street intersection.

Project Location:

City of Binghamton; Broome County; Front Street/Clinton Street Intersection

Consultant Work Type(s): See Attachment B for more detailed Task List.

MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT.

\$38,186.88

**Attachment B**  
**SCOPE OF SERVICES**  
**Section 9 - Construction Inspection**

**9.01 Equipment**

The Municipality will furnish office space and basic office furnishings, laptop computers with Microsoft products (2), printer, copy machine, cell-phones (2), internet service, digital cameras (2) and supplies for the Consultant, as part of the contract.

The Consultant will furnish field supplies and equipment required to properly perform the inspection services listed below.

**9.02 Inspection**

The **Consultant** must provide, to the satisfaction of the **Municipality**, contract administration and construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining complete project records, processing payments, performing detailed inspection work and on-site field tests of all materials and items of work incorporated into the contract consistent with federal policies and the specifications and plans applicable to the project.

**9.03 Municipal Project Engineer**

The **Municipality** will assign a Project Engineer to the contract covered by this agreement. This Project Engineer will be the **Municipal's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Engineer.

**9.04 Ethics**

Prior to the start of work, the **Consultant** will submit to the **Municipality** a statement regarding conflicts of interest.

**9.05 Health and Safety Requirements**

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

**9.06 Staff Qualifications and Training**

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement.

**9.07 Scope of Services/Performance Requirements**

1. Quality

Attachment B  
SCOPE OF SERVICES  
Section 9 - Construction Inspection

The Consultant will enforce the specifications and identify in a timely manner to the **Municipality** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

2. Record Keeping & Payments to the Contractor
  1. All records must be kept in accordance with the directions of the **Municipality**. The **Consultant** must take all measurements and collect all other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.
  2. Any record plans, engineering data, survey notes or other data provided by the **Municipality** should be returned to the **Municipality** at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the **Consultant** will bear the endorsement of the **Consultant**. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.
  3. Unless otherwise modified by this agreement, the **Consultant** will check, and when acceptable, approve all shop drawings.
  4. The **Consultant** must submit the final estimate of the contract to the **Municipality** within four (4) weeks after the date of acceptance of the contract. All project records must be cataloged, indexed, packaged, and delivered to the **Municipality** within five (5) weeks after the date of the acceptance of the contract.
3. Health & Safety/Maintenance and Protection of Traffic
  1. The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per **NYSDOT** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety, and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.

Attachment B  
SCOPE OF SERVICES  
Section 9 - Construction Inspection

2. The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

4. Monitoring Equal Opportunity/Labor Requirements

The **Consultant** must assign to one individual the responsibility of monitoring the Contractor's adherence to Equal Opportunity and Labor requirements contained in the contract. The Consultant, when monitoring the Contractor's Equal Opportunity and Labor compliance, will utilize the guidance contained in the contract, standard specifications and the **Municipality's** policies.

**Attachment B**  
**SCOPE OF SERVICES**  
**Section 10 - Estimating & Technical Assumptions**

**10.01 Assumptions**

The following assumptions have been made for estimating purposes:

**Section 9** SCE assumes additional construction time of six (6) weeks based on contractors (G. DeVincentis Construction Inc.) assumed schedule.

SCE will provide a Resident Engineer (RE) NICET Level III/IV (or Equivalent) full time and an Inspector NICET Level II/III (or Equivalent) part-time to provide full time construction observation.

SCE assumes that the contractor will work five (5) eight (8) hour work days per week. SCE will be given additional compensation by the City of Binghamton for all hours worked by the RE and/or Inspector beyond 40 hours per week due to the contractor working over 40 hours per week. Compensation will be at 150% of regular hourly rate.

SCE will procure the required independent testing necessary to complete the construction work. Procurement of sub contractors under the LDSA program requires three independent estimates be received and evaluated. SCE has included a budgetary estimate of \$5,000.00 which includes estimated costs for subbase and asphalt compaction testing with nuclear density gauge and concrete testing for air content, slump and concrete cylinders. Field conditions, contractor schedule changes or additional testing may be required and necessitate additional compensation.

**Administration/Project Management**

1. SCE will attend a final inspection as required by FHWA and NYSDOT. SCE will be responsible for providing minutes of this meeting within 1 week form the date of the meeting.
2. SCE Project Manager shall make visits to the site at intervals appropriate to the various stages of construction, as SCE deems necessary, in order to observe the progress and adherence to the Contract Documents of the contractors work. It is anticipated that the Project Manager will visit the site a minimum of two visits every week for the duration of the construction.
3. Conduct weekly project progress meetings with all interested parties, and coordinate documentation of these meetings.

**Construction Observation**

1. The City will provide SCE with the following through the construction contract.

Attachment B  
SCOPE OF SERVICES  
Section 10 - Estimating & Technical Assumptions

Field office  
Complete computer system (2 laptop computers, printer, paper, software, etc.)  
2 Digital cameras  
Office supplies  
Other relevant supplies/equipment pertaining to the project  
Wireless internet service

Three (3) APPIA Software licenses (1 for City) will be included in SCE direct non-salary costs (pro-rated monthly).

**Resident Inspection**

1. Construction observation services will be provided by a full-time Resident Engineer (NICET III/IV or equivalent) and an Inspector (NICET II/III or equivalent) who will provide technical observation of construction activities, who will also:
  - a. Maintain a project Record in accordance with FHWA and NYSDOT requirements and the Manual of Uniform Record Keeping using APPIA software.
  - b. Complete, review, and verify requests for monthly and final payments for contractors.
  - c. Prepare, compile, and negotiate change order documentation with contractors to present to City of Binghamton.
  - d. SCE will contract with a qualified materials testing firm to conduct required materials testing throughout the project duration.
  - e. SCE will review schedules, guarantees, bonds and certificates of inspection, tests and approvals provided by the contractors.
  - f. Conduct an inspection to determine if the work is acceptable for final acceptance including a punch list.
  
2. Responsibilities/duties of Construction Observation Staff

In general, the on-site staff is responsible for monitoring construction activity on the project and documenting their observations in a formal project record. The formal project record for this project will be the web based APPIA software to include:

- a. Daily Diary
- b. Daily Reports
- c. Material Acceptance Reports
- d. Certifications and Testing records compilations
- e. Review sub-contractor approval forms
- f. Monitor work days charged
- g. Conduct project meetings
- h. Field measure quantities
- i. Preparation of contractor monthly payment requests
- j. Record deviations from the contract plans for preparation of record Drawings
- k. Preparation and review of Change Orders/Force Account Work

Attachment B  
SCOPE OF SERVICES  
Section 10 - Estimating & Technical Assumptions

- I. Coordination between contractors operations and property owners adjacent to the project limits.

Exhibit A, Page 1  
Salary Schedule

-----  
SHUMAKER CONSULTING ENGINEERING & LAND E

Project Name - SA #02 GDV SHARE  
PIN 9752.74 US 11/Front Street @ Clinton  
Street Intersection Reconstruction

JOB TITLE	ASCE (A) OR NICET (N)	GRADE	AVERAGE HOURLY RATES	
			Current January	Projected June
			2014	2014
Senior Managing Engineer	VIII (A)		\$56.00	\$56.00
Managing Engineer II	VII (A)		\$54.00	\$54.00
Resident Engineer	IV (A)		\$42.00	\$42.00
Resident Engineer Overtime	IV (A)		\$42.00	\$42.00
Sr. Inspector	III (N)		\$38.88	\$38.88
Sr. Inspector Overtime	III (N)		\$38.88	\$38.88
Inspector	II (N)		\$34.00	\$34.00
Inspector Overtime	II (N)		\$34.00	\$34.00
Jr. Inspector	I (N)		\$25.08	\$25.08
Jr. Inspector Overtime	I (N)		\$25.08	\$25.08

OVERTIME POLICY

Category A - No overtime compensation.

Category B - Overtime compensated at straight time rate.

Category C - Overtime compensated at straight time rate x 1.50

Overtime applies to hours worked in excess of the normal  
working hours of 40 hours per week

NOTES:

Hourly rates shall not exceed those shown above.

OVERTIME POLICY

-----  
Category A - No overtime compensation.

Category B - Overtime compensated at straight time rate.

Category C - Overtime compensated at straight time rate x 1.50

Overtime applies to hours worked in excess of the normal  
working hours of 40 hours per week

Exhibit B, Page 1  
Staffing Table

SHUMAKER CONSULTING ENGINEERING & LAND SURVEYING, P. C.  
Project Name - SA #02 GDV SHARE  
PIN 9752.74 US 11/Front Street @ Clinton

JOB TITLE	ASCE (A) OR NICET (N) GRADE	Additional 1 Constrcut ion Observati	TOTAL DIRECT TECHNICAL	Straight Time Hours (1)	Premium Hours (2)	PROJECTED HOURLY Straight Time Rate (3)	PROJECTED HOURLY Premium Rate (4)	TOTAL DIRECT TECHNICAL	Premium Dollars (5)	TOTAL DIRECT TECHNICAL	Straight Time Dollars (6)
Senior Managing Engineer	VIII (A)	12	12	-	\$56.00	-	\$56.00	-	-	\$672.00	-
Managing Engineer II	VII (A)		-	-	\$54.00	-	\$54.00	-	-	\$0.00	-
Resident Engineer	IV (A)	240	240	-	\$42.00	-	\$42.00	-	-	\$10,080.00	-
Resident Engineer Overtime	IV (A)		-	-	\$42.00	-	\$42.00	-	-	\$0.00	-
Sr. Inspector	III (N)		-	-	\$38.88	-	\$38.88	-	-	\$0.00	-
Sr. Inspector Overtime	III (N)		-	-	\$38.88	\$19.44	\$38.88	\$19.44	\$0.00	\$0.00	\$0.00
Inspector	II (N)	40	40	-	\$34.00	-	\$34.00	-	-	\$1,360.00	-
Inspector Overtime	II (N)		-	-	\$34.00	\$17.00	\$34.00	\$17.00	\$0.00	\$0.00	\$0.00
Jr. Inspector	I (N)		-	-	\$25.08	-	\$25.08	-	-	\$0.00	-
Jr. Inspector Overtime	I (N)		-	-	\$25.08	\$12.54	\$25.08	\$12.54	\$0.00	\$0.00	\$0.00
TOTAL		292	292	0	\$389.92	0	\$389.92	0	\$0.00	\$12,112.00	\$

NOTES:

Exhibit C  
Summary

-----  
SHUMAKER CONSULTING ENGINEERING & LAND SURVEYING, P.C.

Project Name - SA #02 GDV SHARE

PIN 9752.74 US 11/Front Street @ Clinton

Item IA, Direct Technical  
Salaries (estimated)  
subject to audit \$ 12,112.00

Item IA times 2.74 Multiplier = \$ 33,186.88

Item IB, Direct Technical  
Salaries, Premium Portion  
of Overtime (estimated)  
subject to audit \$ -

Item II, Direct Non-  
Salary Cost (estimated)  
subject to audit \$ -

Item II Direct Non-  
Salary Cost (estimated)  
subject to audit  
(Subcontractor/Subconsultant Cost) \$ 5,000.00

Total Estimated Cost \$ 38,186.88  
-----  
=====



# Legislative Branch

RL Number:

15-144

Date Submitted:

7/28/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.

### Applicant Information

Request submitted by: Gary R. Holmes, P.E.

Title/Department: Acting City Engineer - Engineering

Contact Information: 772-7007

### RL Information

Proposed Title: Supplemental Agreement No. 3 for Delta Engineers on the Exchange St. Bridge Rehabilitation Project, PIN No. 9753.10 for Additional Construction Inspection Services.

Suggested Content: Delta Engineers to provide extra CI on the Exchange St Bridge Rehab Project, PIN No. 9753.10, due to the addition of a second inspector needed to cover the cleaning & painting operations. The amt of Supplemental No. 3 is \$39,750. The revised total is NTE \$375,793, which is up to 95% reimbursable by NYSDOT & FHW. Available budge Line H5120.525137.40914 - Exchange St. Brdg

### Additional Information

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): R14-45

<b>OFFICE USE ONLY</b>					
Mayor:	<u>[Signature]</u>				
Comptroller:	<u>[Signature]</u>				
Corporation Counsel:	<u>[Signature]</u>				
Finance <input checked="" type="checkbox"/>	Planning <input type="checkbox"/>	MPA <input type="checkbox"/>	PW/Parks <input type="checkbox"/>	Employees <input type="checkbox"/>	Rules/Special Studies <input type="checkbox"/>

**Galus, Kelly**

---

**From:** David Kennicutt [Dkennicutt@DELTAENGINEERS.COM]  
**Sent:** Wednesday, July 22, 2015 7:50 AM  
**To:** Holmes, Gary  
**Cc:** Galus, Kelly; Joseph Mieczkowski  
**Subject:** Supplemental construction inspection services - Exchange St. Bridge  
**Attachments:** Exchange SA 3 2015-07-22.pdf

Gary:

Rich Perkins and I discussed the need for additional hours on the subject project, and we also documented this need in progress and cost control reports submitted with our invoices. As of June 27, we have just over \$37,500 remaining in the budget for construction inspection and our charges have been running about \$5,000 per week, but this will increase due to second inspector (starting today) that we need to help cover the cleaning and painting operations. I'm estimating that our bill for the period ending on July 25 will run about \$24,000, which will include subcontractor charges for concrete testing. Remaining funds will carry us into early August.

I've attached a supplemental agreement for your review and approval the remaining construction inspection work.

Thank you for your consideration. Please contact me if you have any questions.

Dave

David L. Kennicutt, PE  
Senior Project Manager



ENGINEERS, ARCHITECTS, & LAND SURVEYORS

AN ISO 9001:2008 REGISTERED COMPANY

Tel: 607.231.6606 860 Hooper Road  
Fax: 607.231.6650 Endwell, NY 13760

*"We are a seamless extension of our clients' organizations"*

[www.deltaengineers.com](http://www.deltaengineers.com)

*This e-mail, along with any attached files, may contain confidential information for the sole use of the intended recipient(s). If you are not an intended recipient we apologize for this inconvenience and kindly request that you delete this message without forwarding or printing.*

July 22, 2015

Mr. Gary Holmes, PE, Acting City Engineer  
City of Binghamton  
38 Hawley Street, 3<sup>rd</sup> Floor  
Binghamton, NY 13901-3776

**RE: PIN 9753.10 Exchange Street over Susquehanna River  
BIN 2226160  
Supplemental Agreement No. 3  
Delta Project No.: 2008.160.001**

Dear Mr. Holmes:

This supplemental agreement for the reference project modifies the original agreement approved by the City of Binghamton on October 5, 2009, as modified by Supplemental Agreement No. 1 signed on March 11, 2013 and Supplemental Agreement No. 2 signed on August 6, 2014 as follows:

Delta Engineers, Architects & Land Surveyors, PC proposes to provide the following extra work as described and in accordance with Attachments A, B & C:

- Supplemental construction inspection services for an amount of \$39,750.
- The total (Not to Exceed) amount for this contract will increase from the current amount of \$336,043 to \$375,793.

Please have one copy of this letter signed by an authorized representative of the City of Binghamton and returned to us.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Respectfully,  
DELTA ENGINEERS, ARCHITECTS, & LAND SURVEYORS, P.C.



David L. Kennicutt, PE  
Senior Project Manager

*Enc.*

Attachment A  
Architectural/ Engineering Consultant Agreement  
Project Description and Funding

PIN: 9753.10

*Term of Agreement*

*Ends: December 31, 2015*

BIN: 2226160

- Main Agreement                       Amendment to Agreement [add identifying #]  
 Supplement to Agreement

***Phase of Project Consultant to work on:***

- P.E./Design    ROW Incidentals    ROW Acquisition    Construction Support  
 Construction Inspection

Dates or term of Consultant Performance:

Start Date: August 1, 2015

Finish Date: December 31, 2015

***PROJECT DESCRIPTION:***

The extra work under this supplemental agreement includes construction inspection services.

Project Location:

City of Binghamton, Broome County

Consultant Work Type(s): See Attachment B for more detailed Task List.  
Construction Inspection

**MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:**

\$39,750

Footnotes:

## **ATTACHMENT B**

### **Supplemental Agreement No. 3**

**Delta Engineers, Architects & Land Surveyors, PC**

PIN 9753.10, BIN 2226160  
Exchange Street over Susquehanna River  
City of Binghamton, Broome County

### **Scope of Services**

#### **Section 9 – Construction Inspection**

Supplemental agreement no. 2 assumed that construction would be performed in 2014 with a duration of 14 weeks. The construction contractor negotiated with the City a revised schedule that provided for work beginning on April 1, 2015 with a substantial completion date of August 31, 2015. The approved schedule has final completion on September 15, 2015, or 24 weeks from project start. Therefore, the Consultant will be required to expend additional hours to satisfactorily observe and document the construction work.

Due to the limited scope of services and the short duration of work for inspection assistance required during painting operations, Ravi Engineering & Land Surveying, PC (DBE subconsultant) is not able to provide the construction inspection support on this project (see attached letter). The Consultant will provide the additional support required.

#### **Section 10 - Estimating & Technical Assumptions**

##### **10.01 Estimating Assumptions**

The following assumptions have been made for estimating purposes:

Section 9) Estimate no more than 400 hours of additional field inspection will be required.

David L. Kennicutt, PE  
Senior Project Manager  
Delta Engineers, Architects & Land Surveyors  
860 Hooper Road  
Endwell, NY 13760  
Tel: 607.231.6606  
[Dkennicutt@DELTAENGINEERS.COM](mailto:Dkennicutt@DELTAENGINEERS.COM)

RECEIVED

JUL 10 2015

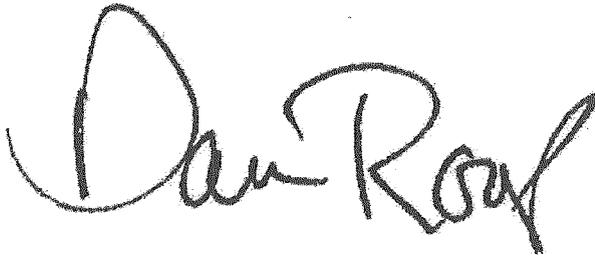
Delta Engineers, Architects,  
& Land Surveyors

Mr. Kennicutt,

This letter is to confirm our telephone conversation of June 17, 2015. RE&LS has had great difficulty in providing the project staff requested by Delta Engineers, Architects & Land Surveyors for the Exchange St. Bridge assignment in Binghamton N.Y. RE&LS takes no exception with Delta Engineers, Architects & Land Surveyors providing said staff in house in lieu of utilizing RE&LS for this project.

It would be our request that, if possible Delta Engineers, Architects & Land Surveyors utilize our firm on a future Region 9 Local Project where DBE requirements and schedule provide a better fit for both firms.

Regards,



Daniel Roop  
Manager of Construction Services  
Ravi Engineering and Land Surveying ,P.C.  
2110 S. Clinton Ave, Suite 1  
Rochester, New York 14618  
585-223-3660 (Ext 313)  
Direct: 585-697-2055  
Cell: 585-613-6786  
Fax : 585-223-4250  
Email: [droop@ravieng.com](mailto:droop@ravieng.com)



**ATTACHMENT C**

**Fee Summary**

DELTA ENGINEERS, ARCHITECTS, & LAND SURVEYORS, P.C.  
 Exchange Street Bridge Rehabilitation  
 PIN 9753.10  
 CONSTRUCTION INSPECTION

	DESIGN SERVICES	CONSTRUCTION SERVICES
Technical Labor Cost		39,750
Technical Labor Premium Portion of overtime		
Direct Non-Salary Cost (estimated)		
Sub-Consultant Cost		
Inspection support		
Direct Non-Salary Cost (Sub-Contractor Cost) (Estimated)		
Overhead Currently Estimated at:		
148.00% Office		
120.00% Field		
Fixed Fee / Profit		
Total Estimated Cost		\$39,750





# Legislative Branch

RL Number:  
15-145  
 Date Submitted:  
7/29/15

**City Clerk, City Hall, Binghamton, NY 13901 607-772-7005**

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

**Request submitted by:** Chuck Shager , Gary Holmes  
**Title/Department:** Comptroller/Engineering  
**Contact Information:** 607-772-7011

### RL Information

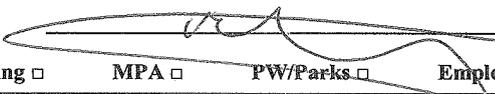
**Proposed Title:** Increase bond ordinance 14-013 amount on the Washington St Bridge  
**Project.**

**Suggested Content:** Increase the original bond ordinance from 1,585,000 to 2,000,000 an increase of \$415,000

### Additional Information

- Does this RL concern grant funding? Yes  No
- If 'Yes', is the required RL Grant Worksheet attached? Yes  No
- Is additional information related to the RL attached? Yes  No
- Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): 014-13

<b>OFFICE USE ONLY</b>	
<b>Mayor:</b>	<u></u>
<b>Comptroller:</b>	<u></u>
<b>Corporation Counsel:</b>	<u></u>
Finance <input type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>



# Legislative Branch

RL Number:  
15-145  
 Date Submitted:  
7/29/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

Request submitted by: Chuck Shager , Gary Holmes  
 Title/Department: Comptroller/Engineering  
 Contact Information: 607-772-7011

### RL Information

Proposed Title: Increase bond ordinance 14-013 amount on the Washington St Bridge Project.

Suggested Content: Increase the original bond ordinance from 1,585,000 to 2,000,000 an increase of \$415,000

### Additional Information

Does this RL concern grant funding? Yes  No   
 If 'Yes', is the required RL Grant Worksheet attached? Yes  No   
 Is additional information related to the RL attached? Yes  No   
 Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): 014-13

OFFICE USE ONLY	
Mayor:	<u>[Signature]</u>
Comptroller:	<u>[Signature]</u>
Corporation Counsel:	<u>[Signature]</u>
Finance <input type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>



# Legislative Branch

RL Number:  
15-147  
 Date Submitted:  
7/31/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.

### Applicant Information

Request submitted by: Chuck Shager

Title/Department: Comptroller

Contact Information: 607-772-7011

### RL Information

Proposed Title: Amending Bond Ordinance of the City to reflect an increase in the cost of the construction of various improvements to the sewage treatment plant jointly owned by the City of

Binghamton and the Village of Johnson City from \$131,000,000 to 206,000,000 and to authorize the  
~~ISSUANCE OF ADDITIONAL SERIAL BONDS BY THE CITY TO FINANCE THE CITY'S LOCAL SHARE~~

Suggested Content: It has been determined by GHD Engineering review that the estimated total cost of the improvements is \$206,000,000 and it is in the best interests of the city to further amend the Bond

Ordinance duly adopted on September 4, 2001, as previously amended, to reflect such increased cost

and to authorize the issuance of additional serial bonds to finance the City's local share of such cost,  
~~WHICH IS 54.8% OF THE TOTAL COSTS. THE CONSTRUCTION OF THE IMPROVEMENTS ARE MADE PURSUANT TO CONSENT ORDERS OF THE NYS DEPT OF ENVIRONMENTAL CONSERVATION.~~

### Additional Information

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): 012-42

OFFICE USE ONLY	
Mayor:	<u>[Signature]</u>
Comptroller:	<u>[Signature]</u>
Corporation Counsel:	<u>[Signature]</u>
Finance <input checked="" type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>



# Legislative Branch

RL Number:  
15-146  
Date Submitted:  
7/29/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.

### Applicant Information

Request submitted by: Jared M. Kraham

Title/Department: Office of the Mayor

Contact Information: X7001

### RL Information

Proposed Title: A Resolution authorizing the Mayor to enter into a grant agreement with the

New York State Energy Research and Development Authority (NYSERDA) for NY PRIZE RFP 3044

State 1 Feasibility Assessment in the amount of \$100,000. - FOR MICROGRID

Suggested Content: To be drafted by Corporation Counsel.

### Additional Information

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): \_\_\_\_\_

<b>OFFICE USE ONLY</b>	
Mayor:	<u>Jared M. Kraham</u>
Comptroller:	<u>[Signature]</u>
Corporation Counsel:	<u>[Signature]</u>
Finance <input checked="" type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>



# Legislative Branch

---

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

---

## GRANT APPLICATION WORKSHEET

*The Request for Legislation must include the project title and the purpose of the grant.  
Please provide the following additional information.*

Agency providing the grant: New York State Energy Research and Development Authority

Total project cost: \$100,000

Total amount of grant: \$100,000

Local match (if any): N/A

If local match is monetary, provide the budget line and title: N/A

If local match is "in kind", provide the anticipated personnel and hours to be dedicated to the project:

\_\_\_\_\_

Disbursement of grant (upfront, reimbursable?): \_\_\_\_\_

If reimbursable, source of funds pending reimbursement: \_\_\_\_\_

Grant project manager: \_\_\_\_\_

Anticipated date of project completion: January 2016

Special project completion requirements (if any): \_\_\_\_\_

**Attach any required form of Resolution from the Agency providing the grant.**

Please provide any additional information in the space provided below, including any other government agency or private partner participating in the grant, along with a description of such participation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**New York State Energy Research and Development Authority  
("NYSERDA")**

**NY PRIZE RFP 3044 Stage 1 Feasibility Assessment**

**AGREEMENT**

1. Agreement Number: 66639
2. Contractor: City of Binghamton
3. Project Director: Richard C. David
4. Effective Date: June 10, 2015
5. Total Amount of Award: \$100,000
6. Project Period: June 10, 2015 – February 28, 2016
7. Commitment Terms and Conditions

This Agreement consists of this form plus the following documents:

- Exhibit A, Statement of Work;
- Exhibit B, General Contract Provisions, Terms and Conditions;
- Exhibit C, Standard Terms and Conditions; and
- Exhibit D, Prompt Payment Policy Statement.

8. ACCEPTANCE. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNLESS EXECUTED BELOW BY NYSERDA.

**CITY OF BINGHAMTON**

**NEW YORK STATE ENERGY RESEARCH  
AND DEVELOPMENT AUTHORITY**

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Jeffrey J. Pitkin  
Treasurer

Title \_\_\_\_\_

**EXHIBIT A**  
**STATEMENT OF WORK**  
**Feasibility Assessment**

Contract Title: **City of Binghamton Community Microgrid Feasibility Study**  
Contractor: City of Binghamton  
Project Number: 66639

---

**DEFINITIONS**

---

**1. The Project** is defined as:

In this feasibility study, the City of Binghamton, along with its partners, Keystone Associates, ASI Energy, Earthkind Energy, GE Energy Consulting, and New York State Electric and Gas, will provide an assessment of microgrid options for the City of Binghamton. The microgrid facilities to be evaluated in the feasibility study will be the city hall, a police station, two (2) fire stations, the water and sewer building, a hotel, two (2) community recreational centers, a housing complex, three (3) commercial buildings, and a parking complex.

**2. The Project Objectives** are defined as:

The goal of the proposed project is to study the feasibility of building and operating a community microgrid for the purpose of maintaining electric services for the participating customers/facilities and the community at large in the City of Binghamton area at times when weather events or other emergencies severely disrupt the capacity of the local distribution and transmission system to serve essential community needs. The proposed project will consist of four (4) phases. The first is the initial planning phase of the microgrid configuration to define normal and emergency loads and identify distributed energy resources and demand response needs. The second phase will be the microgrid technical and cost designs, this will include the distributed energy resources sizing, quantity, and location; identification of electrical and equipment configuration; performance of steady state and transient voltage studies; impact of any renewable or distributed generation; system protection strategy, failure mode analysis, optimization analyses; and specification of microgrid controls with the preparation of cost estimates, system drawings and specifications for the microgrid's distributed energy resources, electric distribution, load management and microgrid controls components. Finally, the last two (2) phases will include an assessment of the business and commercial feasibility, along with the project's benefit and cost analysis.

**3. Contractor** is defined as:

City of Binghamton  
City Hall  
38 Hawley St. #4  
Binghamton, NY 13901

**4. Subcontractors** are defined as:

Keystone Associates  
Earthkind Energy  
GE Energy Consulting  
ASI Energy

Additions and/or Substitutes are allowed subject to written approval of Project Manager and formal modification to this Agreement.

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**PROJECT MANAGEMENT AND PROGRESS REPORTING**

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**Task 0 – Project Management and Progress Reporting**

**0.0 Responsibility**

The Contractor shall provide all project management activities necessary for the performance of this Statement of Work, which shall include the following activities:

- a. Coordinate the work of the contractor's employees and those of sub-contractors and equipment vendors that are undertaking tasks described in this Statement of Work;
- b. Ensure control over the project budget and adherence to the project schedule; and
- c. Provide all project reporting to NYSERDA as specified in this Statement of Work.

**0.1 Progress Reporting**

The Contractor shall submit **monthly** progress reports to NYSERDA's Project Manager no later than the 15th of the month following each reporting period. The Progress Reports shall include information on the following subjects, in the order indicated, with appropriate explanation and discussion:

- a. Name of Contractor;
- b. Title of the project;
- c. Agreement number;
- d. Reporting period;
- e. Project progress including a summary of progress, findings, data, analyses, results and field-tests results from all tasks carried out in the covered period;
- f. Planned work for the next reporting period;
- g. Identification of problems;
- h. Planned or proposed solutions to identify problems described in (f) above;
- i. Ability to meet Milestone Payment Schedule, reasons for slippage in schedule;
- j. Milestone Payment Schedule-percentage completed and projected percentage of completion of performance by calendar quarter-may be presented as a bar chart or milestone chart; and
- k. Milestone Payment Schedule- analysis of actual costs incurred in relation to the Milestone Payment Schedule.

**Deliverable(s):** Written Periodic Progress Reports.

**0.2 Project Kick-off Meeting**

The Contractor shall hold a project kick-off meeting **within fifteen days** from the contract execution date. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place. The Contractor is encouraged to invite representatives of sub-contractors and equipment vendors, if applicable. The purpose of this meeting shall be to finalize the strategies for accomplishing the objectives of this work. In a timely manner, the Contractor shall submit to NYSERDA's Project Manager a brief report summarizing the issues discussed and decisions made, if any, during this meeting.

**Deliverable(s):** A brief report regarding the project kickoff meeting.

**0.3 Project Completion Meeting**

The Contractor shall conduct a project completion meeting, which shall occur within a time period covering **15 days prior to and 15 days following** the submission of the draft Final Written Document. The Contractor shall coordinate with NYSERDA's Project Manager to arrange the meeting at a mutually convenient time and place.

**Deliverable(s):** A brief report regarding the project completion meeting.

**0.4 Project Metrics Reporting**

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented. Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **two (2)** consecutive calendar years after the project is completed. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

**Deliverable(s):** Written Annual Metrics Report

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**PROJECT TASKS**

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The feasibility assessment must fully address a multitude of questions as delineated in the work tasks identified below. The technical analyses shall calculate the energy impacts through sound engineering practices such as modeling (please specify software) or spreadsheets. NYSERDA requires access to view assumptions used in the energy analysis. If utilizing proprietary software or spreadsheets please discuss with NYSERDA an appropriate solution to sharing assumptions and results.

**Task 1 Description of Microgrid Capabilities**

**Sub Task 1.1 Minimum Required Capabilities**

The Contractor shall demonstrate that the proposed microgrid has the following minimum required capabilities:

- Serves at least one (1) but preferably more, physically separated critical facilities located on one (1) or more properties.
- The primary generation source capacity cannot be totally diesel fueled generators.
- A combination of generation resources must provide on-site power in both grid-connected and islanded mode.
- Must be able to form an intentional island.
- Must be able to automatically separate from grid on loss of utility source and restore to grid after normal power is restored.

- Must comply with manufacturer’s requirements for scheduled maintenance intervals for all generation; plan on intermittent renewable resources that will be utilized toward overall generation capacity only if paired with proper generation and/or energy storage that will allow 24 hrs per day and seven (7) days per week utilization of the power produced by these resources.
- Generation must be able to follow the load while maintaining the voltage and frequency when running parallel connected to grid. It also needs to follow system load and maintain system voltage within American National Standards Institute (ANSI) c84-1 standards when islanded.
- Include a means for two-way communication and control between the community microgrid owner/operator and the local distribution utility through automated, seamless integration. Include processes to secure control/communication systems from cyber-intrusions/disruptions and protect the privacy of sensitive data.
- Provide power to critical facilities and a diverse group of customers connected directly to the microgrid—diversity should apply to customer type (e.g. residential, small commercial, industrial, institutional, etc.) and overall demand and load profile.
- Must include an uninterruptible fuel supply or minimum of one (1) week of fuel supply on-site.
- Demonstrate that critical facilities and generation are resilient to the forces of nature that are typical to and pose the highest risk to the location/facilities in the community grid. Describe how the microgrid can remain resilient to disruption caused by such phenomenon and for what duration of time.
- Provide black-start capability.

**Sub Task 1.2 Preferable Microgrid Capabilities**

The Contractor shall indicate to what degree the microgrid includes the following preferred capabilities:

- Integrate and demonstrate operation of advanced, innovative technologies in electric system design and operations, including, but not limited to, technologies that enable customer interaction with the grid such as, Microgrid Logic Controllers, Smart Grid Technologies, Smart Meters, Distribution Automation, Energy Storage;
  - Include an active network control system that optimizes demand, supply and other network operation functions within the microgrid;
  - Include energy efficiency and other demand response options to minimize new microgrid generation requirements;
  - Address installation, operations and maintenance and communications for the electric system to which interconnection is planned ( e.g., underground networks, overhead loops, radial overhead systems);
  - Coordinate with the Reforming the Energy Vision (REV) work to provide a platform for the delivery of innovative services to the end use customers;
  - Take account of a comprehensive cost/benefit analysis that includes, but is not limited to, the community, utility and developer’s perspective;
  - Leverage private capital to the maximum extent possible as measured by total private investment in the project and the ratio of public to private dollars invested in the project;

- Involve clean power supply sources that minimize environmental impacts, including local renewable resources, as measured by total percentage of community load covered by carbon-free energy generation;
  - Demonstrate tangible community benefits, including but not limited to, (e.g. jobs created, number of customers served, number of buildings affected, scale of energy efficiency retrofits, etc.)
- Incorporate innovation that strengthens the surrounding power grid and increases the amount of actionable information available to customers—providing a platform for customers to be able to interact with the grid in ways that maximize its value.

**Deliverables:** Documentation of the work conducted under each sub-task under Task 1: Description of Microgrid Capabilities, organized by sub-task.

## **Task 2: Develop Preliminary Technical Design Costs and Configuration**

The Contractor shall conduct a preliminary assessment of the technical design and system configuration for the proposed community microgrid in accordance with the following sub tasks:

**Note: Estimation of the costs and benefits at this stage of the NY Prize Community Grid Competition (Feasibility) is likely to be accurate within +/- 30%. The emphasis at this stage of analysis is on establishing a reasonable basis for competing for funding for a detailed, audit-grade engineering and business case analysis at a subsequent stage of the NY Prize Community Grid Competition.**

### **Sub Task 2.1 Proposed Microgrid Infrastructure and Operations**

The Contractor shall:

- Provide a simplified equipment layout diagram and a simplified one-line diagram of the proposed microgrid, include location of the distributed energy resources (DER) and utility interconnection points. Identify new and existing infrastructure that will be a part of the microgrid.
- Provide a brief narrative describing how the proposed microgrid will operate under normal and emergency conditions. Include description of normal and emergency operations.

### **Sub Task 2.2 Load Characterization**

The Contractor shall:

- Fully describe the electrical and thermal loads served by the microgrid when operating in islanded and parallel modes: Peak KW, Average KW, annual/monthly/weekly KWh, annual/monthly/weekly BTU( consumed and recovered) and identify the location of the electrical loads on the simplified equipment layout and one-line diagrams.
- Provide hourly load profile of the loads included in the microgrid and identify the source of the data. If hourly loads are not available, best alternative information shall be provided.

- Provide a written description of the sizing of the loads to be served by the microgrid including a description of any redundancy opportunities (ex: n-1) to account for equipment downtime.

### **Sub Task 2.3 Distributed Energy Resources Characterization**

The Contractor shall:

- Provide the following information regarding Distributed Energy Resources (DER) and thermal generation resources that are a part of the microgrid:
  - (i) Type (distributed generation (DG), combined heat and power (CHP), photovoltaic (PV), boiler, solar water heater etc.),
  - (ii) rating (KW/BTU), and,
  - (iii) Fuel (gas, oil etc.).
- If new DER or other thermal generation resources are a part of the microgrid, provide a written description of the approximate location and space available. Identify the DERs on the simplified equipment layout and one-line diagrams. Differentiate between new and existing resources.
- Provide a written description of the adequacy of the DERs and thermal generation resources to continuously meet electrical and thermal demand in the microgrid.
- Describe how resilient the DERs and thermal generation resources will be to the forces of nature (severe weather) that are typical to and pose the highest risk to their operation (example, reduced or zero output due to snow cover over PV panels, potential flooding of low lying areas, etc.)?
- Provide a description of the fuel sources for DER. Describe how many days of continuous operation of the microgrid can be achieved with current fuel storage capability? If additional fuel storage is required, provide a written description of needs required for this.
- Provide a written description of the capability of DERs including, but not limited to the following capabilities; black start, load-following, part-load operation, maintain voltage, maintain frequency, capability to ride-through voltage and frequency events in islanded mode, capability to meet interconnection standards in grid-connected mode.

### **Sub Task 2.4 Electrical and Thermal Infrastructure Characterization**

The Contractor shall:

- Provide a high-level written description of the electrical infrastructure (feeders, lines, relays, breakers, switches, current and potential transformers (CTs and PTs) and thermal infrastructure (steam, hot water, cold water pipes) that are a part of the microgrid. Identify the electrical and thermal infrastructure on the simplified equipment layout (with approximate routing) and one-line diagrams (electrical only). Differentiate between new, updated and existing infrastructure.
- Describe how resilient the electrical and thermal infrastructure will be to the forces of nature that are typical to and pose the highest risk to the location/facilities. Describe how the microgrid can

remain resilient to disruption caused by such phenomenon and for what duration of time. Discuss the impact of severe weather on the electrical and thermal infrastructure.

- Provide a written description of how the microgrid will be interconnected to the grid. Will there be multiple points of interconnection with the grid. What additional investments in utility infrastructure may be required to allow the proposed microgrid to separate and isolate from the utility grid. Provide a written description of the basic protection mechanism within the microgrid boundary.

#### **Sub Task 2.5 Microgrid and Building Controls Characterization**

The Contractor shall:

- Provide a high-level written description of the microgrid control architecture and how it interacts with DER controls and Building Energy Management Systems (BEMS), if applicable. Identify the locations of microgrid and building controls on the simplified equipment layout diagram. Differentiate between new and existing controls.
- Provide a brief written description of the services that could be provided by the microgrid controls including, but not limited to the following:
  - Automatically connecting to and disconnecting from the grid
  - Load shedding schemes
  - Black start and load addition
  - Performing economic dispatch and load following
  - Demand response
  - Storage optimization
  - Maintaining frequency and voltage
  - PV observability and controllability; forecasting
  - Coordination of protection settings
  - Selling energy and ancillary services
  - Data logging features
  - How resilient are the microgrid and building controls? Discuss the impact of severe weather on the microgrid and building controls.

#### **Sub Task 2.6 Information Technology (IT)/Telecommunications Infrastructure Characterization**

The Contractor shall:

- Provide a high-level written description of the IT/Telecommunications Infrastructure (wide area networks, access point, ethernet switch, cables etc.) and protocols. Identify the IT and telecommunications infrastructure on the simplified equipment layout diagram. Differentiate between new and existing infrastructure.
- Provide a written brief description of communications within the microgrid and between the microgrid and the utility. Can the microgrid operate when there is a loss in communications with the utility? How resilient are the IT and telecommunications infrastructure?

**Deliverables:** Documentation of the work conducted under each sub-task under Task 2: Develop Preliminary Technical Design Costs and Configuration, organized by sub-task.

### **Task 3: Assessment of Microgrid's Commercial and Financial Feasibility**

The Contractor shall conduct an assessment of the commercial and financial feasibility of the proposed microgrid project in accordance with the following requirements.

#### **Sub Task 3.1 Commercial Viability – Customers**

The Contractor shall describe the commercial terms/relationship between participants in the microgrid project, products expected to be produced by the microgrid and arrangements for sharing of benefits by addressing no less than the following items below:

- Identify the number of individuals affected by/associated with critical loads should these loads go unserved (e.g. in a storm event with no microgrid).
- Identify any direct/paid services generated by microgrid operation, such as ancillary services, or indirect benefits, such as improved operation, to the utility or New York Independent System Operator (NYISO)? If yes, what are they?
- Identify each of the microgrid's customers expected to purchase services from the microgrid.
- Identify other microgrid stakeholders; what customers will be indirectly affected (positively or negatively) by the microgrid.
- Describe the relationship between the microgrid owner and the purchaser of the power.
- Indicate which party/customers will purchase electricity during normal operation. During islanded operation? If these entities are different, describe why.
- What are the planned or executed contractual agreements with critical and non-critical load purchasers?
- How does the applicant plan to solicit and register customers (i.e. purchasers of electricity) to be part of their project?
- Are there any other energy commodities (such as steam, hot water, chilled water) that the microgrid will provide to customers?

#### **Sub Task 3.2 Commercial Viability - Value Proposition**

The Contractor shall describe the value the microgrid is expected to provide directly to its participants, to the community at large, the local electric distribution utility and the State of New York by addressing no less than the following items below:

- What benefits and costs will the community realize by the construction and operation of this project?
- How would installing this microgrid benefit the utility? (E.g. reduce congestion or defer upgrades)? What costs would the utility incur as a result of this project?

- Describe the proposed business model for this project. Include an analysis of strengths, weaknesses, opportunities and threats (SWOT) for the proposed business model.
- Are there any characteristics of the site or technology (including, but not limited to, generation, storage, controls, information technology (IT), automated metering infrastructure (AMI), other, that make this project unique?
- What makes this project replicable? Scalable?
- What is the purpose and need for this project? Why is reliability/resiliency particularly important for this location? What types of disruptive phenomenon (weather, other) will the microgrid be designed for? Describe how the microgrid can remain resilient to disruption caused by such phenomenon and for what duration of time.
- Describe the project's overall value proposition to each of its identified customers and stakeholders, including, but not limited, the electricity purchaser, the community, the utility, the suppliers and partners, and NY State.
- What added revenue streams, savings, and/or costs will this microgrid create for the purchaser of its power?
- How does the proposed project promote state policy objectives (e.g. NY REV, Renewable Portfolio Standard (RPS))?
- How would this project promote new technology (including, but not limited to, generation, storage, controls, IT, AMI, other)? What are they?

### **Sub Task 3.3 Commercial Viability - Project Team**

The Contractor shall address no less than each of the following items below in describing the structure of the project team and the roles, strengths and resources of its members and other necessary partners.

- Describe the current status and approach to securing support from local partners such as municipal government? Community groups? Residents?
- What role will each team member (including, but not limited to, applicant, microgrid owner, contractors, suppliers, partners) play in the development of the project? Construction? Operation?
- Are public/private partnerships used in this project? If yes, describe this relationship and why it will benefit the project.
- Describe the financial strength of the applicant. If the applicant is not the eventual owner or project lead, describe the financial strength of those entities.
- For identified project team members, including, but not limited to, applicant, microgrid owner, contractors, suppliers, partners, what are their qualifications and performance records?
- Are the contractors and suppliers identified? If yes, who are they, what services will each provide and what is the relationship to the applicant? If no, what types of team members will be required and what is the proposed approach to selecting and contracting?

- Are the project financiers or investors identified? If yes, who are they and what is their relationship to the applicant? If no, what is the proposed approach to securing proposed financing? Will other members of the project team contribute any financial resources?
- Are there legal and regulatory advisors on the team? If yes, please identify them and describe their qualifications. If no, what is the proposed approach to enlisting support in this subject area?

### **Sub Task 3.4 Commercial Viability - Creating and Delivering Value**

The Contractor shall describe the mechanics of ensuring that expected value is delivered to project participants, by addressing no less than the following items below:

- How were the specific microgrid technologies chosen? Specifically discuss benefits and challenges of employing these technologies.
- What assets does the applicant and/or microgrid owner already own that can be leveraged to complete this project?
- How do the design, technology choice, and/or contracts ensure that the system balances generation and load?
- What permits and/or special permissions will be required to construct this project? Are they unique or would they be required of any microgrid? Why?
- What is the proposed approach for developing, constructing and operating the project?
- How are benefits of the microgrid passed to the community? Will the community incur any costs? If so, list the additional costs.
- What will be required of the utility to ensure this project creates value for the purchaser of the electricity and the community?
- Have the microgrid technologies (including but limited to: generation, storage, controls) been used or demonstrated before? If yes, describe the circumstances and lessons learned.
- Describe the operational scheme, including, but not limited to, technical, financial, transactional and decision making responsibilities that will be used to ensure this project operates as expected.
- How does the project owner plan to charge the purchasers of electricity services? How will the purchasers' use be metered?
- Are there business/commercialization and replication plans appropriate for the type of project?
- How significant are the barriers to market entry microgrid participants?
- Does the proposer demonstrate a clear understanding of the steps required to overcome these barriers?

### **Sub Task 3.5 Financial Viability**

The Contractor shall describe the case for financial viability for development and operation of the microgrid by addressing no less than the following items below:

- What are the categories and relative magnitudes of the revenue streams and/or savings that will flow to the microgrid owner? Will they be fixed or variable?
- What other incentives will be required or preferred for this project to proceed? How does the timing of those incentives affect the development and deployment of this project?
- What are the categories and relative magnitudes of the capital and operating costs that will be incurred by the microgrid owner? Will they be fixed or variable?
- How does the business model for this project ensure that it will be profitable?
- Describe the financing structure for this project during development, construction and operation.

#### **Sub Task 3.6 Legal Viability**

The Contractor shall describe the legal terms and conditions and other requirements necessary to develop and operate the microgrid by addressing no less than the items below:

- Describe the proposed project ownership structure and project team members that will have a stake in the ownership.
- Has the project owner been identified? If yes, who is it and what is the relationship to the applicant? If no, what is the proposed approach to securing the project owner?
- Does the project owner (or owners) own the site(s) where microgrid equipment/systems are to be installed? If not, what is the plan to secure access to that/those site(s)?
- What is the approach to protecting the privacy rights of the microgrid's customers?
- Describe any known, anticipated, or potential regulatory hurdles, as well as their implications that will need to be evaluated and resolved for this project to proceed. What is the plan to address them?

**Deliverable:** Documentation of the work conducted under each sub-task under Task 3: Assessment of Microgrid's Commercial and Financial Feasibility, organized by sub-task.

#### **Task 4: Develop Information for Benefit Cost Analysis**

The Contractor shall develop and provide the information for the data capture and facility questionnaire information sheets required to support an independent evaluation of project costs and benefits for this stage of analysis.

##### **Sub Task 4.1 Facility and Customer Description**

The Contractor shall list and describe all facilities that will be served by the microgrid. For each facility the Contractor shall:

- Indicate the rate class to which the facility belongs (i.e., residential, small commercial/industrial, large commercial/industrial).
- Indicate the economic sector to which the facility belongs (e.g., manufacturing, wholesale and retail trade, etc.).

- Indicate whether multiple ratepayers are present at the facility (e.g., multi-family apartment buildings).
- Indicate the facility's average annual electricity demand (MWh) and peak electricity demand (MW). For facilities with multiple ratepayers, indicate average annual and peak demand per customer, rather than for the facility as a whole.
- Indicate the percentage of the facility's average demand the microgrid would be designed to support during a major power outage.
- In the event of a multi-day outage, indicate the number of hours per day, on average, the facility would require electricity from the microgrid.

#### **Sub Task 4.2 Characterization of Distributed Energy Resources**

The Contractor shall describe the distributed energy resources (DER) the microgrid would incorporate, including for each the items below:

- Energy/fuel source.
- Nameplate capacity.
- Estimated average annual production (MWh) under normal operating conditions.
- Average daily production (MWh/day) in the event of a major power outage.
- For fuel-based DER, fuel consumption per MWh generated (MMBtu/MWh).

#### **Sub Task 4.3 Capacity Impacts and Ancillary Services**

The Contractor shall provide estimates of the following services/value the microgrid is expected to provide, as applicable:

- The impact of the expected provision of peak load support on generating capacity requirements (MW/year).
- Capacity (MW/year) of demand response that would be available by each facility the microgrid would serve.
- Associated impact (deferral or avoidance) on transmission capacity requirements (MW/year).
- Associated impact (deferral or avoidance) on distribution capacity requirements (MW/year).
- Ancillary services to the local utility (e.g., frequency or real power support, voltage or reactive power support, black start or system restoration support)
- Estimates of the projected annual energy savings from development of a new combined heat and power (CHP) system relative to the current heating system and current type of fuel being used by such system
- Environmental regulations mandating the purchase of emissions allowances for the microgrid (e.g., due to system size thresholds)
- Emission rates of the microgrid for CO<sub>2</sub>, SO<sub>2</sub>, NO<sub>x</sub>, and Particulate Matter (emissions/MWh).

#### **Sub Task 4.4 Project Costs**

The Contractor shall provide the following cost information for the microgrid:

- Fully installed costs and engineering life span of all capital equipment.
- Initial planning and design costs.
- Fixed operations and maintenance (O&M) costs (\$/year).

- Variable O&M costs, excluding fuel costs (\$/MWh).
- What is the maximum amount of time each DER would be able to operate in islanded mode without replenishing its fuel supply? How much fuel would the DER consume during this period?

#### **Sub Task 4.5 Costs to Maintain Service during a Power Outage**

For each facility the microgrid would serve, the Contractor shall describe its current backup generation capabilities, if any, by providing the following information:

- Fuel/energy source of each existing backup generator.
- Nameplate capacity of each existing backup generator.
- The percentage of nameplate capacity at which each backup generator is likely to operate during an extended power outage.
- Average daily electricity production (MWh/day) for each generator in the event of a major power outage, and the associated amount of fuel (MMBtu/day) required to generate that electricity.
- Any one-time costs (e.g., labor or contract service costs) associated with connecting and starting each backup generator.
- Any daily costs (\$/day) (e.g., maintenance costs) associated with operating each backup generator, excluding fuel costs.
- Given a widespread power outage (i.e., a total loss of power in the surrounding area), describe and estimate the costs of any emergency measures that would be necessary for each facility to maintain operations, preserve property, and/or protect the health and safety of workers, residents, or the general public. Please include costs for one-time measures (e.g., total costs for connecting backup power) and any ongoing measures (expressed in terms of average costs per day). Specify these costs for two scenarios: (1) when the facility is operating on backup power, if applicable, and (2) when backup power is not available.

#### **Sub Task 4.6 Services Supported by the Microgrid**

For facilities that provide fire, emergency medical, hospital, police, wastewater, or water services, the Contractor shall:

- Estimate the population served by each facility.
- Describe how a power outage would impact each facility's ability to provide services. If possible, estimate a percentage loss in the facility's ability to serve its population during a power outage, relative to normal operations (e.g., 20% service loss during a power outage), both when the facility is operating on backup power and when backup power is not available.

For residential facilities, the Contractor shall:

- Describe the type of housing the facility provides (e.g., group housing, apartments, dormitory, nursing home, assisted living, etc.).
- Estimate the number of residents that would be left without power during a power outage.

**Deliverable:** Documentation of the work conducted under each sub-task under Task 4: Develop Information for Benefit Cost Analysis, organized by sub-task.

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**PROJECT RESULTS – FINAL DOCUMENTATION**

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**Task 5- Final Written Documentation**

**5.0** The Contractor shall prepare a detailed Final Written Document in the form of a report covering all aspects of the work performed under this Agreement.

- a. The report shall include information on the following subjects and synthesize all information into understandable and actionable findings. Reports must also include a description of assumptions or manipulations to calculations/projections performed and/or a summary of input data for any modeling performed:
  1. Discussions of the observations and findings and recommendations, if any, from all tasks, and avenues for further improvements, as appropriate;
  2. Discussions of the project results and lessons learned regarding configuration, capabilities, and benefits of the Project; and
  3. Environmental, and economic benefits, and implementation scenarios associated with such.
- b. The report shall be provided in Draft and Final form as follows:
  1. A Draft Version of the Final Written Document in the form of a report shall be submitted to NYSERDA's Project Manager **no later than the date specified** in the Milestone Schedule of the NYSERDA Agreement for this task. NYSERDA will comment on the draft version within 30 working days after receipt of such draft.
  2. A Final Version of the Final Written Document in the form of a report shall be submitted **within 30 working days** after receipt of NYSERDA's comments. The Contractor shall:
    - a. prepare the final version of the Final Written Document to reflect careful consideration of NYSERDA's comments to the satisfaction of NYSERDA;
    - b. submit electronic copy of the final version of the Final Written Document.

**Deliverable(s):**

1. A draft version of the Final Written Document.
2. An accepted final version of the Final Written Document

## Milestone Payment Schedule

Milestone Number	Project # 66639 Milestone Description	Month Completion	NYSERDA	
			Milestone Payment	External Cost Share
0	Project Management and Reporting	On-going		
1	Develop Microgrid Capabilities	2	\$ 15,000	\$ 40,000
2	Develop Technical Design Costs & Configuration	4	\$ 40,000	\$ 70,000
3	Assessment of Microgrid Commercial & Financial Feasibility	5	\$ 10,000	\$ 40,000
4	Develop Information for Costs & Benefit Analysis	6	\$ 15,000	\$ 40,000
5	Accepted Final Written Document	8	\$ 20,000	\$ 22,000
	<b>Total</b>		\$ 100,000	\$212,000
		<b>Total Cost</b>	<b>312,000</b>	

ATTACHMENT A-1

## Metrics Reporting Guide

### Information Dissemination

On an annual basis, the Contractor shall submit, to NYSERDA's Project Manager, a prepared analysis and summary of metrics addressing the anticipated energy, environmental and economic benefits that are realized by the project. All estimates shall reference credible sources and estimating procedures, and all assumptions shall be documented.

Reporting shall commence the first calendar year after the contract was executed. Reports shall be submitted by January 31st for the previous calendar years activities (i.e. reporting period). Reports shall continue to be submitted for **two** consecutive calendar years after the project is completed. The Contractor shall make every effort to quantify and document benefits and incorporate them into the Final Report and technology transfer activities as required in this agreement.

A form will be provided to you to submit the following metrics:

### Information Dissemination

<b>Name of Presentation or Event</b>	<i>Names of the presentation or event where information was communicated about the product, company or research</i>
<b>Organization that hosted the event</b>	<i>Name of the organization that hosted the event</i>
<b>Type of event</b>	<i>The type of event where information was communicated about your company, product or research (e.g. conference, workshop, media event, etc.)</i>

### Publications

<b>Publication Date</b>	<i>Date information is published (month &amp; year)</i>
<b>Publication Title</b>	<i>Name of publication written as a result of research performed under contract with NYSERDA</i>
<b>Publication Type</b>	<i>Examples: Citation, Final/Technical Report, Newsletter, Trade Publication etc.</i>
<b>Periodical Name</b>	<i>Name of periodical the publication appeared in (if applicable)</i>
<b>Policy Development</b>	<i>State if this publication been cited in government policy development</i>
<b>Names of Authors</b>	<i>Author First &amp; Last Names</i>

## EXHIBIT B

### GENERAL CONTRACT PROVISIONS, TERMS AND CONDITIONS

#### Article I

#### Definitions

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined below shall have, for all purposes of this Agreement, the respective meanings set forth below, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

(a) General Definitions:

Agreement: This Agreement shall consist of Page One and Exhibits noted therein, all of which are made a part hereof as if set forth here in full.

Budget: The Budget set forth at Exhibit A hereto.

Cash-based Expenses: Those obligations of Contractor that shall be settled in cash.

Contract Administrator: NYSERDA's Director of Contract Management, Cheryl M. Glanton, or such other person who may be designated, in writing, by NYSERDA.

Contract Information: Recorded information regardless of form or characteristic first produced in the performance of this Agreement, that is specified to be compiled under this Agreement, specified to be delivered under this Agreement, or that is actually delivered in connection with this Agreement, and including the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable.

Proprietary Information: Recorded information regardless of form or characteristic, produced or developed outside the scope of this Agreement and without NYSERDA financial support, provided that such information is not generally known or available from other sources without obligation concerning their confidentiality; has not been made available by the owner to others without obligation concerning its confidentiality; and is not already available to NYSERDA without obligation concerning its confidentiality. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, if applicable, be considered Proprietary Information.

Person: An individual, a corporation, an association or partnership, an organization, a business or a government or political subdivision thereof, or any governmental agency or instrumentality.

Statement of Work: The Statement of Work attached hereto as Exhibit A.

Subcontract: An agreement for the performance of Work by a Subcontractor, including any purchase order for the procurement of permanent equipment or expendable supplies in connection with the Work.

Subcontractor: A person who performs Work directly or indirectly for or on behalf of the Contractor (and whether or not in privity of contract with the Contractor) but not including any employees of the Contractor or the Subcontractors.

Work: The Work described in the Exhibit A (including the procurement of equipment and supplies in connection therewith) and the performance of all other requirements imposed upon the Contractor under this Agreement.

## Article II

### Performance of Work

Section 2.01. Manner of Performance. Subject to the provisions of Article XII hereof, the Contractor shall perform all of the Work described in the Statement of Work, or cause such Work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Contractor shall perform the Work in accordance with the current professional standards and with the diligence and skill expected for the performance of work of the type described in the Statement of Work. The Contractor shall furnish such personnel and shall procure such materials, machinery, supplies, tools, equipment and other items as may reasonably be necessary or appropriate to perform the Work in accordance with this Agreement.

Section 2.02. Project Personnel. It is understood and agreed that the Project Director identified at Item 3, Page One of this Agreement shall be responsible for the overall supervision and conduct of the Work on behalf of the Contractor and that the persons described in the Statement of Work shall serve in the capacities described therein. Any change of Project Director by the Contractor shall be subject to the prior written approval of NYSERDA. Such approval shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty (30) days after receipt of request for approval by NYSERDA, the requested change in Project Director shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to thirty (30) days.

## Article III

### Deliverables

Section 3.01. Deliverables. All deliverables shall be provided in accordance with the Exhibit A, Statement of Work.

## Article IV

### Payment

Section 4.01. Payment Terms. It is understood and agreed that NYSERDA and the Contractor are sharing the costs for the Work to be performed. In consideration for this Agreement and as NYSERDA's full payment for the costs of the performance of all Work, and in respect of all other direct and indirect costs, charges or expenses incurred in connection therewith, NYSERDA shall pay to the Contractor amounts not to exceed the maximum amount set forth in Item 5, Page One of this Agreement, subject to the provisions and restrictions contained herein, including, without limitation, the Prompt Payment Policy Statement attached hereto as Exhibit D.

Subject to any applicable provisions set forth in Exhibit A, Statement of Work, at the completion of each Milestone Event so identified, the Contractor may submit invoices, including documentation reasonably sufficient to demonstrate completion, requesting payment by NYSERDA of the amounts corresponding to the amounts indicated in Exhibit A, Statement of Work, including evidence of the Contractor's cost share, if applicable.

#### Section 4.02. Progress Payments.

(a) Invoicing: The Contractor may submit invoices for Milestone payments no more than once each month and no less than once each calendar quarter for Work performed during such period. Invoices shall be addressed to NYSERDA, "Attention: Accounts Payable," or submitted electronically to [invoices@nyserda.ny.gov](mailto:invoices@nyserda.ny.gov). Such invoices shall make reference to the Agreement number shown at Item 1 on page 1 of this Agreement. Invoices shall be inclusive of the total project costs incurred, delineated into NYSERDA's Funding share and the Cost-Share and Other Co-funding share, if applicable.

Section 4.03. Final Payment. Upon final acceptance by NYSERDA of all deliverables contained in Exhibit A, Statement of Work, pursuant to Section 6.02 hereof, the Contractor shall submit an invoice for final payment with respect to the Work, together with such supporting information and documentation as, and in such form as, NYSERDA may require. All invoices for final payment hereunder must, under any and all circumstances, be received by NYSERDA within six (6) months following Acceptance of Work pursuant to Section 6.02 hereof. In accordance with and subject to the provisions of NYSERDA's Prompt Payment Policy Statement, attached hereto as Exhibit D, NYSERDA shall pay to the Contractor within the prescribed time after receipt of such invoice for final payment, the total amount payable pursuant to Section 4.01 hereof, less all progress payments/milestone payments previously made to the Contractor with respect thereto and subject to the maximum commitment set forth in Section 4.06 hereof.

Section 4.04. Release by the Contractor. The acceptance by the Contractor of final payment shall release NYSERDA from all claims and liability that the Contractor, its representatives and assigns might otherwise have relating to this Agreement.

Section 4.05. Maintenance of Records. The Contractor shall keep, maintain, and preserve at its principal office throughout the term of the Agreement and for a period of three years after acceptance of the Work, full and detailed books, accounts, and records pertaining to this Agreement, including without limitation, all bills, invoices, payrolls, time records, expense reports, subcontracting efforts and other data evidencing, or in any material way related to, the direct and indirect costs and expenses incurred by the Contractor in the course of its performance under this Agreement.

Section 4.06. Maximum Commitment. The maximum aggregate amount payable by NYSERDA to the Contractor shall be the amount appearing at Item 5 of page one of this Agreement. NYSERDA shall not be liable for any costs or expenses in excess of such amount incurred by the Contractor in the performance and completion of the Work.

Section 4.07. Audit. NYSERDA shall have the right from time to time and at all reasonable times during the term of this Agreement and for the maintenance period set forth in Section 4.05 hereof to inspect and audit any and all books, accounts and records related to this Agreement or reasonably necessary to the performance of an audit at the office or offices of the Contractor where they are then being kept, maintained and preserved pursuant to Section 4.05 hereof. Any payment made under the Agreement shall be subject to retroactive reduction for amounts included therein which are found by NYSERDA on the basis of any audit of the Contractor by NYSERDA, the State of New York or an agency of the United States not to constitute an allowable charge or cost hereunder.

## Article V

### Assignments, Subcontracts and Purchase Orders

Section 5.01. General Restrictions. Except as specifically provided otherwise in this Article, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of the Contractor's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of NYSERDA shall be void and of no effect as to NYSERDA.

Section 5.02. Subcontract Procedures. Without relieving it of, or in any way limiting, its obligations to NYSERDA under this Agreement, the Contractor may enter into Subcontracts for the performance of Work or for the purchase of materials or equipment. Except for a subcontractor or supplier specified in a team arrangement with the Contractor in the Contractor's original proposal, and except for any subcontract or order for equipment, supplies or materials from a single subcontractor or supplier totaling less than \$50,000, the Contractor shall select all subcontractors or suppliers through a process of competitive bidding or multi-source price review. A team arrangement is one where a subcontractor or supplier specified in the Contractor's proposal is performing a substantial portion of the Work and is making a substantial contribution to the management and/or design of the Project. In the event that a competitive bidding or multi-source price review is not feasible, the Contractor shall document an explanation for, and justification of, a sole source selection. The Contractor shall document the process by which a subcontractor or supplier is selected by making a record summarizing the

nature and scope of the work, equipment, supplies or materials sought, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or fee bid, and the basis for selection of the subcontractor or supplier. An explanation for, and justification of, a sole source selection must identify why the work, equipment, supplies or materials involved are obtainable from or require a subcontractor with unique or exceptionally scarce qualifications or experience, specialized equipment, or facilities not readily available from other sources, or patents, copyrights, or proprietary data. All Subcontracts shall contain provisions comparable to those set forth in this Agreement applicable to a subcontractor or supplier, and those set forth in Exhibit C to the extent required by law, and all other provisions now or hereafter required by law to be contained therein. Each Subcontract shall make express reference to this Agreement, and shall state that in the event of any conflict or inconsistency between any Subcontract and this Agreement, the terms and conditions of this Agreement shall control as between Subcontractor and Contractor. If this Agreement includes a provision requiring Contractor to make Payments to NYSERDA for the Sale or Licensing of a Product, each Subcontract shall include the provisions of Section 8.02, suitably modified to identify the parties. The Contractor shall submit to NYSERDA's Contract Administrator for review and written approval any subcontract(s) specified in the Statement of Work as requiring NYSERDA approval, including any replacements thereof.

Section 5.03. Performance. The Contractor shall promptly and diligently comply with its obligations under each Subcontract and shall take no action that would impair its rights thereunder. The Contractor shall take no action, and shall take all reasonable steps to prevent its Subcontractors from taking any action, that would impair NYSERDA's rights under this Agreement. The Contractor shall not assign, cancel or terminate any Subcontract without the prior written approval of NYSERDA's Contract Administrator as long as this Agreement remains in effect. Such approval shall not be unreasonably withheld and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval by NYSERDA, the requested assignment, cancellation, or termination of the Subcontract shall be considered approved by NYSERDA. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty (30) days of receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to sixty (60) days.

## Article VI

### Schedule; Acceptance of Work

Section 6.01. Schedule. The Work shall be performed as expeditiously as possible in conformity with the schedule requirements contained herein and in the Statement of Work. The draft and final versions of all deliverables shall be submitted by the dates specified in the Exhibit A Schedule. It is understood and agreed that the delivery of the draft and final versions of such deliverables by the Contractor shall occur in a timely manner and in accordance with the requirements of the Exhibit A Schedule.

Section 6.02. Acceptance of Work. The completion of the Work shall be subject to acceptance by NYSERDA in writing of all deliverables as defined in Exhibit A, Statement of Work.

## Article VII

### Force Majeure

Section 7.01. Force Majeure. Neither party hereto shall be liable for any failure or delay in the performance of its respective obligations hereunder if and to the extent that such delay or failure is due to a cause or circumstance beyond the reasonable control of such party, including, without limitation, acts of God or the public enemy, expropriation or confiscation of land or facilities, compliance with any law, order or request of any Federal, State, municipal or local governmental authority, acts of war, rebellion or sabotage or damage resulting therefrom, fires, floods, storms, explosions, accidents, riots, strikes, or the delay or failure to perform by any Subcontractor by reason of any cause or circumstance beyond the reasonable control of such Subcontractor.

## Article VIII

### Rights in Information; Confidentiality

Section 8.01. Rights in Contract and Proprietary Information; Confidentiality.

(a) NYSERDA shall have the right to use, duplicate, or disclose Contract Information, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Contractor shall have the right to use Contract Information for its private purposes, subject to the provisions of this Agreement.

(c) NYSERDA shall have no rights to any Proprietary Information.

(d) No information shall be treated by NYSERDA as confidential unless such information is clearly so marked by Contractor at the time it is disclosed to NYSERDA; see Exhibit C, Section 7 regarding NYSERDA's obligations under the Freedom of Information Law. Under no circumstances shall any information included in the Final Report delivered by Contractor pursuant to Exhibit A, Statement of Work, be considered confidential or Proprietary Information.

(e) The Contractor agrees that to the extent it receives or is given any information from NYSERDA or a NYSERDA contractor or subcontractor, the Contractor shall treat such data in accordance with any restrictive legend contained thereon, unless another use is specifically authorized by prior written approval of the NYSERDA Project Manager. Contractor acknowledges that in the performance of the Work under this Agreement, Contractor may come into possession of personal information as that term is defined in Section 92 of the New York

State Public Officers Law. Contractor agrees not to disclose any such information without the consent of NYSERDA.

## Article IX

### Warranties and Guarantees

Section 9.01. Representations. The Contractor represents that:

(a) all information provided and all representations made by Contractor as a part of the proposal, if any, submitted to NYSERDA in order to obtain or in application for this Agreement were, to the best of Contractor's knowledge, complete, true and accurate when provided or made;

(b) as of the Effective Date, it is financially and technically qualified to perform the Work, and is qualified to do business and is in good standing in all jurisdictions necessary for Contractor to perform its obligations under this Agreement;

(c) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(d) the design, supervision and workmanship furnished with respect to performance of the Work shall be in accordance with sound and currently accepted professional standards;

(e) neither the Contractor nor any of its employees, agents, representatives or servants has actual knowledge of any patent issued under the laws of the United States or any other matter which could constitute a basis for any claim that the performance of the Work or any part thereof infringes any patent or otherwise interferes with any other right of any Person;

(f) to the best of Contractor's knowledge, there are no existing undisclosed or threatened legal actions, claims, or encumbrances, or liabilities that may adversely affect the Work or NYSERDA's rights hereunder;

(g) it has no actual knowledge that any information or document or statement furnished by the Contractor in connection with this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading, and that all facts have been disclosed that would materially adversely affect the Work;

(h) all information provided to NYSERDA with respect to State Finance Law Sections 139-j and 139-k is complete, true and accurate;

(i) Contractor is familiar with and will comply with NYSERDA's Code of Conduct for Contractors, Consultants, and Vendors with respect to the performance of this Agreement.

Article X

Intentionally Deleted

Article XI

Intentionally Deleted

Article XII

Stop Work Order; Termination

Section 12.01. Stop Work Order.

(a) NYSERDA may at any time, by written Order to the Contractor, require the Contractor to stop all or any part of the Work called for by this Agreement for a period of up to ninety (90) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an Order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Order during the period of work stoppage consistent with public health and safety. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, NYSERDA shall either:

- (i) by written notice to the Contractor, cancel the Stop Work Order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- (ii) terminate the Work covered by such order as provided in the Termination Section of this Agreement.

(b) If a Stop Work Order issued under this Section is cancelled or the period of the Order or any extension thereof expires, the Contractor shall resume Work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Agreement, and
- (ii) the Contractor asserts a claim for such adjustments within 30 days after the end of the period of Work stoppage; provided that, if NYSERDA decides the facts

justify such action, NYSERDA may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

(c) If a Stop Work Order is not cancelled and the Work covered by such Order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed by equitable adjustment or otherwise.

(d) Notwithstanding the provisions of this Section 12.01, the maximum amount payable by NYSERDA to the Contractor pursuant to this Section 12.01 shall not be increased or deemed to be increased except by specific written amendment hereto.

#### Section 12.02. Termination.

(a) This Agreement may be terminated by NYSERDA at any time during the term of this Agreement with or without cause, upon ten (10) days prior written notice to the Contractor. In such event, payment shall be paid to the Contractor for Work performed and expenses incurred prior to the effective date of termination in accordance with the provisions of the Article hereof entitled Payment and in reimbursement of any amounts required to be paid by the Contractor pursuant to Subcontracts; provided, however, that upon receipt of any such notice of termination, the Contractor shall cease the performance of Work, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by NYSERDA, through termination of subcontracts containing provisions therefor). Articles VIII, IX, and X shall survive any termination of this Agreement, and Article XVI shall survive until the payment obligations pursuant to Article VIII have been met.

(b) NYSERDA specifically reserves the right to terminate this agreement in the event that the certification filed by the Contractor in accordance with State Finance Law Sections 139-j and 139-k is found to have been intentionally false or intentionally incomplete, or that the certification filed by the Contractor in accordance with New York State Tax Law Section 5-a is found to have been intentionally false when made. Terminations under this subsection (b) will be effective upon Notice.

(c) Nothing in this Article shall preclude the Contractor from continuing to carry out the Work called for by the Agreement after receipt of a Stop Work Order or termination notice at its own election, provided that, if the Contractor so elects: (i) any such continuing Work after receipt of the Stop Work Order or termination notice shall be deemed not to be Work pursuant to the Agreement, and (ii) NYSERDA shall have no liability to the Contractor for any costs of the Work continuing after receipt of the Stop Work Order or termination notice.

### Article XIII

#### Independent Contractor

Section 13.01. Independent Contractor. (a) The status of the Contractor under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance

with such status, the Contractor, the Subcontractors, and their respective officers, agents, employees, representatives and servants, including the Project Director, shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of NYSERDA nor make any claim, demand or application for any right or privilege applicable to NYSERDA, including, without limitation, vicarious liability, professional liability coverage or indemnification, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit. It is understood and agreed that the personnel furnished by Contractor to perform the Work shall be Contractor's employee(s) or agent(s), and under no circumstances are such employee(s) to be considered NYSERDA's employee(s) or agent(s), and shall remain the employees of Contractor, except to the extent required by section 414(n) of the Internal Revenue Code.

(b) Contractor expressly acknowledges NYSERDA's need to be advised, on an immediate basis, of the existence of any claim or event that might result in a claim or claims against NYSERDA, Contractor and/or Contractor's personnel by virtue of any act or omission on the part of NYSERDA or its employees. Accordingly, Contractor expressly covenants and agrees to notify NYSERDA of any such claim or event, including but not limited to, requests for accommodation and allegations of harassment and/or discrimination, immediately upon contractor's discovery of the same, and to fully and honestly cooperate with NYSERDA in its efforts to investigate and/or address such claims or events, including but not limited to, complying with any reasonable request by NYSERDA for disclosure of information concerning such claim or event even in the event that this Agreement should terminate for any reason.

#### Article XIV

##### Compliance with Certain Laws

Section 14.01. Laws of the State of New York. The Contractor shall comply with all of the requirements set forth in Exhibit C hereto.

Section 14.02. All Legal Provisions Deemed Included. It is the intent and understanding of the Contractor and NYSERDA that each and every provision of law required by the laws of the State of New York to be contained in this Agreement shall be contained herein, and if, through mistake, oversight or otherwise, any such provision is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either NYSERDA or the Contractor, promptly be amended so as to comply strictly with the laws of the State of New York with respect to the inclusion in this Agreement of all such provisions.

Section 14.03. Other Legal Requirements. The references to particular laws of the State of New York in this Article, in Exhibit C and elsewhere in this Agreement are not intended to be exclusive and nothing contained in such Article, Exhibit and Agreement shall be deemed to modify the obligations of the Contractor to comply with all legal requirements.

## Article XV

### Notices, Entire Agreement, Amendment, Counterparts

#### Section 15.01. Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by facsimile transmission;
- (iii) by personal delivery;
- (iv) by expedited delivery service; or
- (v) by e-mail, return receipt requested.

Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

#### ***NYSERDA***

Name: Cheryl M. Glanton

Title: Director of Contract Management

Address: 17 Columbia Circle, Albany, New York 12203

Facsimile Number: (518) 862-1091

E-Mail Address: [Cheryl.Glanton@nyserda.ny.gov](mailto:Cheryl.Glanton@nyserda.ny.gov)

Personal Delivery: Reception desk at the above address

#### ***City of Binghamton***

Name: Richard C. David

Title: Mayor

Address: 38 Hawley Street , Attn: Amelia LoDolce , Binghamton, NY,13901

Facsimile Number: 607-772-7001

E-Mail Address: [rcdavid@cityofbinghamton.com](mailto:rcdavid@cityofbinghamton.com)

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties

for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 15.02. Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between NYSERDA and the Contractor and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be changed, waived, discharged or terminated only by an instrument in writing, signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

Section 15.03. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

## Article XVI

### Publicity

#### Section 16.01. Publicity.

(a) The Contractor shall collaborate with NYSERDA's Director of Communications to prepare any press release and to plan for any news conference concerning the Work. In addition the Contractor shall notify NYSERDA's Director of Communications regarding any media interview in which the Work is referred to or discussed.

(b) It is recognized that during the course of the Work under this Agreement, the Contractor or its employees may from time to time desire to publish information regarding scientific or technical developments made or conceived in the course of or under this Agreement. In any such information, the Contractor shall credit NYSERDA's funding participation in the Project, and shall state that "NYSERDA has not reviewed the information contained herein, and the opinions expressed in this report do not necessarily reflect those of NYSERDA or the State of New York." Notwithstanding anything to the contrary contained herein, the Contractor shall have the right to use and freely disseminate project results for educational purposes, if applicable, consistent with the Contractor's policies.

(c) Commercial promotional materials or advertisements produced by the Contractor shall credit NYSERDA, as stated above, and shall be submitted to NYSERDA for review and recommendations to improve their effectiveness prior to use. The wording of such credit can be approved in advance by NYSERDA, and, after initial approval, such credit may be used in subsequent promotional materials or advertisements without additional approvals for the credit, provided, however, that all such promotional materials or advertisements shall be submitted to NYSERDA prior to use for review, as stated above. Such approvals shall not be unreasonably withheld, and, in the event that notice of approval or disapproval is not received by the Contractor within thirty days after receipt of request for approval, the promotional materials or advertisement shall be considered approved. In the event that NYSERDA requires additional time for considering approval, NYSERDA shall notify the Contractor within thirty days of

receipt of the request for approval that additional time is required and shall specify the additional amount of time necessary up to 180 days. If NYSERDA and the Contractor do not agree on the wording of such credit in connection with such materials, the Contractor may use such materials, but agrees not to include such credit.

## EXHIBIT C

REVISED 5/12

### STANDARD TERMS AND CONDITIONS FOR ALL NYSERDA AGREEMENTS

(Based on Standard Clauses for New York State Contracts and Tax Law Section 5-a)

The parties to the Agreement agree to be bound by the following clauses which are hereby made a part of the Agreement:

1. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is an Agreement for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. If this is a building service Agreement as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second subsequent violation.

2. WAGE AND HOURS PROVISIONS. If this is a public work Agreement covered by Article 8 of the Labor Law or a building service Agreement covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent

to payment by NYSERDA of any NYSERDA-approved sums due and owing for work done upon the project.

3. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 2878 of the Public Authorities Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to NYSERDA a non-collusive bidding certification on Contractor's behalf.

4. INTERNATIONAL BOYCOTT PROHIBITION. If this Agreement exceeds \$5,000, the Contractor agrees, as a material condition of the Agreement, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify NYSERDA within five (5) business days of such conviction, determination or disposition of appeal. (See and compare Section 220-f of the Labor Law, Section 139-h of the State Finance Law, and 2 NYCRR 105.4).

5. SET-OFF RIGHTS. NYSERDA shall have all of its common law and statutory rights of set-off. These rights shall include, but not be limited to, NYSERDA's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to NYSERDA with regard to this Agreement, any other Agreement, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to NYSERDA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

6. PROPRIETARY INFORMATION. Notwithstanding any provisions to the contrary in the Agreement, Contractor and NYSERDA acknowledge and agree that all information, in any format, submitted to NYSERDA shall be subject to and treated in accordance with the NYS Freedom of Information Law ("FOIL," Public Officers Law, Article 6). Pursuant to FOIL, NYSERDA is required to make available to the public, upon request, records or portions thereof which it possesses, unless that information is statutorily exempt from disclosure. Therefore, unless the Agreement specifically requires otherwise, Contractor should submit information to NYSERDA in a non-confidential, non-proprietary format. FOIL does provide that NYSERDA may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." [See Public Officers Law, § 87(2)(d)]. Accordingly, if the Agreement specifically requires submission of information in a format Contractor considers a proprietary and/or confidential trade secret, Contractor shall fully identify and plainly label the information "confidential" or "proprietary" at the time of disclosure. By so marking such information,

Contractor represents that the information has actual or potential specific commercial or competitive value to the competitors of Contractor. Without limitation, information will not be considered confidential or proprietary if it is or has been (i) generally known or available from other sources without obligation concerning its confidentiality; (ii) made available by the owner to others without obligation concerning its confidentiality; or (iii) already available to NYSERDA without obligation concerning its confidentiality. In the event of a FOIL request, it is NYSERDA's policy to consider records as marked above pursuant to the trade secret exemption procedure set forth in 21 New York Codes Rules & Regulations § 501.6 and any other applicable law or regulation. However, NYSERDA cannot guarantee the confidentiality of any information submitted. More information on FOIL, and the relevant statutory law and regulations, can be found at the website for the Committee on Open Government (<http://www.dos.state.ny.us/coog/foil2.html>) and NYSERDA's Regulations, Part 501 (<http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx>).

7. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. As a condition to NYSERDA's obligation to pay any invoices submitted by Contractor pursuant to this Agreement, Contractor shall provide to NYSERDA its Federal employer identification number or Federal social security number, or both such numbers when the Contractor has both such numbers. Where the Contractor does not have such number or numbers, the Contractor must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by Contractor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

8. CONFLICTING TERMS. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit C, the terms of this Exhibit C shall control.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

10. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily required) without the NYSERDA's written consent, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law and Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSERDA's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify NYSERDA, in writing, of each and every change of address to which service of process can be made. Service by NYSERDA to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

12. CRIMINAL ACTIVITY. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of any allegation previously unknown to it that the Contractor or any of its principals is under indictment for a felony, or has been, within five (5) years prior to submission of the Contractor's proposal to NYSERDA, convicted of a felony, under the laws of the United States or Territory of the United States, then NYSERDA may exercise its stop work right under this Agreement. If subsequent to the effectiveness of this Agreement, NYSERDA comes to know of the fact, previously unknown to it, that Contractor or any of its principals is under such indictment or has been so convicted, then NYSERDA may exercise its right to terminate this Agreement. If the Contractor knowingly withheld information about such an indictment or conviction, NYSERDA may declare the Agreement null and void and may seek legal remedies against the Contractor and its principals. The Contractor or its principals may also be subject to penalties for any violation of law which may apply in the particular circumstances. For a Contractor which is an association, partnership, corporation, or other organization, the provisions of this paragraph apply to any such indictment or conviction of the organization itself or any of its officers, partners, or directors or members of any similar governing body, as applicable.

13. PERMITS. It is the responsibility of the Contractor to acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers and permissions of every nature necessary to perform the work.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this Agreement will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by NYSERDA.

15. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7th Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.esd.ny.gov>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractors certify that whenever the total amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**16. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of

discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

17. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

18. PROCUREMENT LOBBYING. To the extent this Agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this Agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, NYSERDA may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

19. COMPLIANCE WITH TAX LAW SECTION 5-a. The following provisions apply to Contractors that have entered into agreements in an amount exceeding \$100,000 for the purchase of goods and services:

- a) Before such agreement can take effect, the Contractor must have on file with the New York State Department of Taxation and Finance a Contractor Certification form (ST-220-TD).
- b) Prior to entering into such an agreement, the Contractor is required to provide NYSERDA with a completed Contractor Certification to Covered Agency form (Form ST-220-CA).
- c) Prior to any renewal period (if applicable) under the agreement, the Contractor is required to provide NYSERDA with a completed Form ST-220-CA.

Certifications referenced in paragraphs (b) and (c) above will be maintained by NYSERDA and made a part hereof and incorporated herein by reference.

NYSERDA reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor in accordance with Tax Law Section 5-a was false when made.

20. IRANIAN ENERGY SECTOR DIVESTMENT. In accordance with Section 2879-c of the Public Authorities Law, by signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law (See [www.ogs.ny.gov/about/regs/ida.asp](http://www.ogs.ny.gov/about/regs/ida.asp)).

## EXHIBIT D

### NYSERDA PROMPT PAYMENT POLICY STATEMENT

**504.1. Purpose and Applicability.** (a) The purpose of this Exhibit is to provide a description of Part 504 of NYSERDA's regulations, which consists of NYSERDA's policy for making payment promptly on amounts properly due and owing by NYSERDA under this Agreement. The section numbers used in this document correspond to the section numbers appearing in Part 504 of the regulations. (This is only a summary; the full text of Part 504 can be accessed at: ( <http://www.nyserda.ny.gov/About/New-York-State-Regulations.aspx> ) )

(b) This Exhibit applies generally to payments due and owing by the NYSERDA to the Contractor pursuant to this Agreement. However, this Exhibit does not apply to Payments due and owing when NYSERDA is exercising a Set-Off against all or part of the Payment, or if a State or Federal law, rule or regulation specifically requires otherwise.

**504.2. Definitions.** Capitalized terms not otherwise defined in this Exhibit shall have the same meaning as set forth earlier in this Agreement. In addition to said terms, the following terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Date of Payment" means the date on which NYSERDA requisitions a check from its statutory fiscal agent, the Department of Taxation and Finance, to make a Payment.

(b) "Designated Payment Office" means the Office of NYSERDA's Controller, located at 17 Columbia Circle, Albany, New York 12203.

(c) "Payment" means payment properly due and owing to Contractor pursuant to Article IV, Exhibit B of this Agreement.

(d) "Prompt Payment" means a Payment within the time periods applicable pursuant to Sections 504.3 through 504.5 of this Exhibit in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(e) "Payment Due Date" means the date by which the Date of Payment must occur, in accordance with the provisions of Sections 504.3 through 504.5 of this Exhibit, in order for NYSERDA not to be liable for interest pursuant to Section 504.6.

(f) "Proper Invoice" means a written request for Payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property or services delivered or rendered, in such form, and supported by such other substantiating documentation, as NYSERDA may reasonably require, including but not limited to any requirements set forth in Exhibits A or B to this Agreement; and addressed to NYSERDA's Controller, marked "Attention: Accounts Payable," at the Designated Payment Office.

(g)(1) "Receipt of an Invoice" means:

(i) if the Payment is one for which an invoice is required, the later of:

(a) the date on which a Proper Invoice is actually received in the Designated Payment Office during normal business hours; or

(b) the date by which, during normal business hours, NYSERDA has actually received all the purchased goods, property or services covered by a Proper Invoice previously received in the Designated Payment Office.

(ii) if the Agreement provides that a Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice the 30th calendar day, excluding legal holidays, before the date so specified or predetermined.

(2) For purposes of this subdivision, if the Agreement requires a multifaceted, completed or working system, or delivery of no less than a specified quantity of goods, property or services and only a portion of such systems or less than the required goods, property or services are working, completed or delivered, even though the Contractor has invoiced NYSERDA for the portion working, completed or delivered, NYSERDA will not be in Receipt of an Invoice until the specified minimum amount of the systems, goods, property or services are working, completed or delivered.

(h) "Set-off" means the reduction by NYSERDA of a payment due a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to NYSERDA.

**504.3. Prompt Payment Schedule.** Except as otherwise provided by law or regulation or in Sections 504.4 and 504.5 of this Exhibit, the Date of Payment by NYSERDA of an amount properly due and owing under this Agreement shall be no later than thirty (30) calendar days, excluding legal holidays, after Receipt of a Proper Invoice.

**504.4. Payment Procedures.**

(a) Unless otherwise specified in this Agreement, a Proper Invoice submitted by the Contractor to the Designated Payment Office shall be required to initiate payment for goods, property or services. As soon as any invoice is received in the Designated Payment Office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by NYSERDA.

(b) NYSERDA shall notify the Contractor within fifteen (15) calendar days after Receipt of an Invoice of:

(1) any defects in the delivered goods, property or services;

(2) any defects in the invoice; or

(3) suspected improprieties of any kind.

(c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 504.3 until any such defects or improprieties are corrected or otherwise resolved.

(d) If NYSERDA fails to notify a Contractor of a defect or impropriety within the fifteen (15) calendar day period specified in subdivision (b) of this section, the sole effect shall be that the number of days allowed for Payment shall be reduced by the number of days between the 15th day and the day that notification was transmitted to the Contractor. If NYSERDA fails to provide reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the Payment Due Date shall be calculated using the original date of Receipt of an Invoice.

(e) In the absence of any defect or suspected impropriety, or upon satisfactory correction or resolution of a defect or suspected impropriety, NYSERDA shall make Payment, consistent with any such correction or resolution and the provisions of this Exhibit.

**504.5. Exceptions and Extension of Payment Due Date.** NYSERDA has determined that, notwithstanding the provisions of Sections 504.3 and 504.4 of this Exhibit, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the Payment Due Date:

(a) If this Agreement provides Payment will be made on a specific date or at a predetermined interval, without having to submit a written invoice, if any documentation, supporting data, performance verification, or notice specifically required by this Agreement or other State or Federal mandate has not been submitted to NYSERDA on a timely basis, then the Payment Due Date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to NYSERDA and the date when NYSERDA has actually received such matter.

(b) If an inspection or testing period, performance verification, audit or other review or documentation independent of the Contractor is specifically required by this Agreement or by other State or Federal mandate, whether to be performed by or on behalf of NYSERDA or another entity, or is specifically permitted by this Agreement or by other State or Federal provision and NYSERDA or other entity with the right to do so elects to have such activity or documentation undertaken, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when any such activity or documentation has been completed, NYSERDA has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.

(c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to Payment, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date

when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised NYSERDA of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.

(d) If appropriated funds from which Payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to NYSERDA, then the Payment Due Date shall be extended by the number of calendar days from the date of Receipt of an Invoice to the date when such funds are made available to NYSERDA.

**504.6. Interest Eligibility and Computation.** If NYSERDA fails to make Prompt Payment, NYSERDA shall pay interest to the Contractor on the Payment when such interest computed as provided herein is equal to or more than ten dollars (\$10.00). Interest shall be computed and accrue at the daily rate in effect on the Date of Payment, as set by the New York State Tax Commission for corporate taxes pursuant to Section 1096(e)(1) of the Tax Law. Interest on such a Payment shall be computed for the period beginning on the day after the Payment Due Date and ending on the Date of Payment.

**504.7. Sources of Funds to Pay Interest.** Any interest payable by NYSERDA pursuant to Exhibit shall be paid only from the same accounts, funds, or appropriations that are lawfully available to make the related Payment.

**504.8. Incorporation of Prompt Payment Policy Statement into Contracts.** The provisions of this Exhibit shall apply to all Payments as they become due and owing pursuant to the terms and conditions of this Agreement, notwithstanding that NYSERDA may subsequently amend its Prompt Payment Policy by further rulemaking.

**504.9. Notice of Objection.** Contractor may object to any action taken by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to NYSERDA. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be addressed to the Vice President, New York State Energy Research and Development Authority, at the notice address set forth in Exhibit B to this Agreement. The Vice President of NYSERDA, or his or her designee, shall review the objection for purposes of affirming or modifying NYSERDA's action. Within fifteen (15) working days of the receipt of the objection, the Vice President, or his or her designee, shall notify the Contractor either that NYSERDA's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed thirty (30) working days.

**504.10. Judicial Review.** Any determination made by NYSERDA pursuant to this Exhibit that prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure specified in Section 504.9 of this Exhibit or any other review procedure that may be specified in this Agreement or by other law, rule, or regulation.

**504.11. Court Action or Other Legal Processes.**

(a) Notwithstanding any other law to the contrary, the liability of NYSERDA to make an interest payment to a Contractor pursuant to this Exhibit shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.

(b) With respect to the court action or other legal processes referred to in subdivision (a) of this section, any interest obligation incurred by NYSERDA after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.

RL 15-115

Legal Counsel Approval \_\_\_\_\_

Introductory No. \_\_\_\_\_

RL15-115

Permanent No. \_\_\_\_\_



**THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK**

Date: July 8, 2015

Sponsored by Council Members: Webb, Rennia, Motsavage, Berg

Introduced by Committee: Public Works/Parks & Recreation

**ORDINANCE**

*entitled*

AN ORDINANCE REPEALING AN ORDER OF  
THE BINGHAMTON TRAFFIC BOARD TO  
INSTALL STOP SIGNS AT THE INTERSECTION  
OF OAK AND LEROY STREET AND ORDERING  
THE RE-INSTALLATION OF A TRAFFIC  
SIGNAL AT SAID INTERSECTION

WHEREAS, pursuant to § 400-26 of the Code of the City of Binghamton, entitled *Authority of Council to amend or repeal orders, rules and regulations*, the Council of the City of Binghamton has the authority to enact ordinances to repeal or amend any order, rule, or regulation adopted by the Binghamton Traffic Board; and

WHEREAS, on August 21, 2014, the Binghamton Traffic Board adopted an order to install four permanent stops signs with "4 way" on the sign, change the parking spaces as needed and install all necessary painting on the streets; and

WHEREAS, City Council wishes to repeal such order.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Council of the City of Binghamton does hereby repeal the order of the Traffic Board adopted on August 21, 2014, authorizing the installation of four permanent stops signs with "4 way" on the sign, changing the parking spaces as needed and the installation of all necessary painting on the streets.

Section 2. That the Council of the City of Binghamton does hereby order that the traffic light at the intersection of Oak and Leroy Street be reinstalled. **FUNDING?**

Section 3. That this Ordinance shall take effect immediately.





# Legislative Branch

RL Number: 15-148  
 Date Submitted: 7/31/15

City Clerk, City Hall, Binghamton, NY 13901 607-772-7005

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

Request submitted by: Pauline Penrose

Title/Department: City Treasurer

Contact Information: (607) 772-7039

### RL Information

Proposed Title: Resolution authorizing the Mayor to enter into an amendment to the City Of Binghamton's contract with Complus

Suggested Content: amendment to the contract for parking enforcement and management between the City of Binghamton and complus data Innovations. Collections for Parking Ticket revenue that are outside the 30 day period

### Additional Information

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): \_\_\_\_\_

<b>OFFICE USE ONLY</b>	
Mayor:	<u>[Signature]</u>
Comptroller:	<u>[Signature]</u>
Corporation Counsel:	<u>[Signature]</u>
Finance <input type="checkbox"/>	Planning <input type="checkbox"/> MPA <input type="checkbox"/> PW/Parks <input type="checkbox"/> Employees <input type="checkbox"/> Rules/Special Studies <input type="checkbox"/>

January 7, 2015

AMENDMENT

**THIS AGREEMENT CONSTITUTES AN AMENDMENT TO THE CONTRACT EFFECTIVE OCTOBER 31, 2013 FOR PARKING ENFORCEMENT AND MANAGEMENT BY AND BETWEEN THE CITY OF BINGHAMTON AND COMPLUS DATA INNOVATIONS, INC.**

Fees due Complus by the City of Binghamton will be:

- **12.5% of all In-State and Out-of-State CLIENT Parking Ticket revenues collected on tickets that have not been placed in collection.**
- **34.5% of all In-State and Out-of-State CLIENT Parking Ticket revenues collected on tickets that have been placed in collection.**
- **Reimbursement for postage costs on delinquent notices sent by Complus on behalf of the CLIENT.**

The Term and Conditions of the Agreement of October 31, 2013 will remain in effect for a period of THREE (3) years from the date (the "Effective Date") on which Complus signs this Amendment. On the third anniversary of the Effective Date, and on each anniversary date thereafter, this Agreement will automatically renew for a one-year period upon the same terms and conditions. If either the CLIENT or Complus does not wish for any such renewal, it must notify the other party in writing of its intention not to renew no later than ninety (90) days prior to any such anniversary date, in which case this Agreement shall terminate on such anniversary date. In the event of termination, CLIENT will return to Complus within ten (10) days of the termination of the Agreement all handhelds and other equipment, peripherals, manuals and all other materials provided to CLIENT, all of which shall be returned to Complus in good working order. In the event of termination, and providing that there are no outstanding invoices and the CLIENT has returned all equipment in good working order, the CLIENT would be provided with a computer file at no cost.

The signing of the enclosed copy and return to Complus Data Innovations, Inc. will indicate The City of Binghamton's acceptance of this Amendment and the Terms and Conditions contained therein.

Accepted:

\_\_\_\_\_  
Jeff G. Grossman  
President  
Complus Data Innovations, Inc.

\_\_\_\_\_  
Date

Accepted:

\_\_\_\_\_  
City of Binghamton

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



# Legislative Branch

RL Number: 15-149
Date Submitted: 7/31/15

**City Clerk, City Hall, Binghamton, NY 13901 607-772-7005**

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

**Request submitted by:** Jared M. Kraham

**Title/Department:** Office of the Mayor

**Contact Information:** X7001

### RL Information

**Proposed Title:** An Ordinance to provide a one-time amnesty program to assist in collection of parking ticket fines prior to Jan. 1, 2015.

**Suggested Content:** To be drafted by Corporation Counsel.

### Additional Information

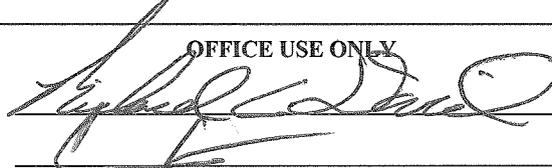
Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): RL 07-12A

<b>OFFICE USE ONLY</b>					
<b>Mayor:</b>					
<b>Comptroller:</b>	_____				
<b>Corporation Counsel:</b>					
Finance <input type="checkbox"/>	Planning <input type="checkbox"/>	MPA <input checked="" type="checkbox"/>	PW/Parks <input type="checkbox"/>	Employees <input type="checkbox"/>	Rules/Special Studies <input type="checkbox"/>

For a period from Sept. 1, 2015 through Sept. 30, 2015, the City of Binghamton offers an amnesty program for parking tickets issued prior to Jan. 1, 2015. The total cost of any ticket, including any penalties and late fees, may be paid at seventy-five percent (75%) of the outstanding balance due and owing. All payments must be made payable to the City of Binghamton and delivered to the Treasurer's Office, City Hall, 38 Hawley Street, Binghamton, NY 13901 on or before September 30, 2015. This Ordinance will automatically expire on September 30, 2015, and will be of no further force or effect.



IN  
THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK

Dated: April 2, 2007

Sponsored by Councilmember(s): Cordisco, Gerchman, Russo, Weslar, Rennia, Kramer

Introduced by Committee(s) on: Finance

**ORDINANCE**  
*entitled*

**ONE-TIME PARKING TICKET AMNESTY PROGRAM**

WEREAS, the face value of uncollected parking tickets in the City of Binghamton from 2003 through 2005 is approximately \$39,000 and with added late fees is approximately \$78,000; and

WHEREAS, while the City of Binghamton collects parking fines at above the New York State average, the City desires to provide for a one-time amnesty program to assist in collection of these fines and late fees.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. The Code of the City of Binghamton, Vehicles and Traffic, Article VII, Stopping, Standing and Parking § 400-89. Penalties for violations of article, is hereby amended to add paragraph D as follows:

D. For the period from May 1, 2007, through May 31, 2007, the City of Binghamton offers an amnesty program for parking tickets issued in 2003, 2004, and 2005. The total cost of any ticket, including any penalties and late fees, may be paid at seventy-five percent (75%) of the outstanding balance due and owing. All payments must be made payable to the City of Binghamton and delivered to the Treasurer's Office, City Hall, 38 Hawley Street, Binghamton, NY 13901 on or before May 31, 2007. This Ordinance will automatically expire on May 31, 2007, and will be of no further force or effect.

Section 2. That this ordinance shall take effect immediately.

**ORDINANCE**

Intro. No. Ord. 07-9 as amended

Perm. No. Ord. 07-13

Sponsored by Council Members

Cordisco, Gerchman, Russo, Westar, Rennia, Kramer

**ONE-TIME PARKING TICKET AMNESTY PROGRAM**

The within Ordinance was adopted by the Council of the City of Binghamton.

April 2, 2007 (Date)

Shain Kattman City Clerk

Date Presented April 3, 2007 to the Mayor

Date Approved 4/4/07  
Matthew R. [Signature] Mayor

	AYES	NAYS	ABSENT
MASSAR	V		
WESTAR	V		
RENNIA	V		
GERCHMAN	V		
PAPASTRAT	V		
KRAMER	V		
RUSO	V		
COLLINS	V		
CORDISCO	V		
TOTAL	9	0	

Adopted  Defeated

9 Ayes 0 Nays      Abstained      Absent



# Legislative Branch

RL Number:

Date Submitted:

**City Clerk, City Hall, Binghamton, NY 13901 607-772-7005**

## REQUEST FOR LEGISLATION

*Requests for Legislation (RLs) may be submitted to the City Clerk's Office for consideration at City Council Work Sessions. RLs generated from within City Hall departments must be submitted to the Mayor, Comptroller and Corporation Counsel for review before submission. RLs generated by citizens may be submitted directly to the City Clerk's Office.*

### Applicant Information

**Request submitted by:** \_\_\_\_\_

**Title/Department:** \_\_\_\_\_

**Contact Information:** \_\_\_\_\_

### RL Information

**Proposed Title:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Suggested Content:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **Additional Information**

Does this RL concern grant funding? Yes  No

If 'Yes', is the required RL Grant Worksheet attached? Yes  No

Is additional information related to the RL attached? Yes  No

Is RL related to previously adopted legislation? Yes  No

If 'Yes', please provide Permanent Ordinance/Resolution/Local Law number(s): \_\_\_\_\_

### **OFFICE USE ONLY**

**Mayor:** \_\_\_\_\_

**Comptroller:** \_\_\_\_\_

**Corporation Counsel:** \_\_\_\_\_

Finance  Planning  MPA  PW/Parks  Employees  Rules/Special Studies



## POLICE MODERNIZATION LAW (Draft as of 7-31-15)

### Section 1: STATEMENT OF POLICY

Recent racially charged national tragedies involving law enforcement highlight the need to take proactive steps to improve policing practices, ensure public accountability, and solidify trust between our law enforcement officers and the residents they serve and protect through transparency and respect. Recognizing that the United States and New York State Constitutions guarantee the equal protection of all citizens under the laws, and the right of all persons to be secure in their person, the City of Binghamton is committed to the equal treatment of all citizens by law enforcement officers.

Racial profiling and bias-based policing have been uniformly condemned at the highest levels of government, our legal system, and by our own Police Administration. These policies have been found to be illegal and unconstitutional. In addition, scientific research has determined that racial profiling and bias-based policing are inefficient and increase community distrust, making policing more difficult and dangerous for officers. Therefore, racial profiling and bias-based policing are considered illegal policing practices in the City of Binghamton.

Determined to ensure unconstitutional policing does not occur in our city, the Binghamton Police Department is open to any resources that can assist in improving the protection of our residents and officers.

This Law establishes three priorities that will be instrumental in protecting against racial profiling and bias-based policing, improve police-community relations and making a better and safer city for all residents. These priorities are: (1) the consistent tracking, analysis and reporting of all vehicle and pedestrian stops; (2) cultural competency and anti-racism training as part of annual in-service training of all officers; and (3) diversification of the police force.

### Section 2: DEFINITIONS

The terms racial profiling and bias-based policing mean the practice of a law enforcement agent, or agency relying, to any degree, on race, ethnicity, national origin, religion, gender, gender expression, and/or sexual orientation, in selecting which individuals to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is probable cause, relevant to the locality and time frame, that links a person of a particular race, ethnicity, national origin, religion, gender, gender expression, and sexual orientation, to an identified criminal incident or scheme.

### Section 3: POLICIES TO REINFORCE EQUAL PROTECTION

It shall be the policy of the Binghamton Police Department to:

- i) maintain adequate policies and procedures designed to eliminate racial profiling and bias-based policing;
- ii) collect data in accordance with guidelines issued by the Binghamton Human Rights Commission and approved by the Binghamton City Council and the Mayor of the City of Binghamton;
- iii) provide its law enforcement agents with mandatory cultural competency, implicit bias, and procedural justice training, as part of the annual in-service training, that incorporate learning objectives that highlight the ineffectiveness and deleterious impact of racial profiling and bias-based policing as a law enforcement practice, and emphasizes cultural sensitivity and respect;

# HUMAN RIGHTS COMMISSION ▪ CITY OF BINGHAMTON



38 Hawley Street ▪ Binghamton, NY 13901 ▪ Phone: (607) 398-0559  
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iv) endeavor to increase diversity of law enforcement employees, with the goal of achieving a demographic makeup comparable to the community it serves.

## Section 4: DATA COLLECTION

Data collection, analysis and reporting are essential tools in preventing racial profiling and bias-based policing before it happens, as well as in identifying and eliminating racial profiling and bias-based policing when it does occur. By implementing a comprehensive data collection, analysis and reporting plan, the City of Binghamton intends to demonstrate its commitment to the prevention of racial profiling and bias-based policing.

A. REGULATIONS. Not later than six months after the date of enactment of this Act, the Binghamton Human Rights Commission, in consultation with stakeholders, including City of Binghamton law enforcement agencies and community, professional, research, and civil rights organizations, shall recommend guidelines for the collection and compilation of data (including demographic information and justifications for stops, searches, arrests, detentions, use of force, and injuries related to law enforcement actions) to the Binghamton City Council and the Mayor of the City of Binghamton for consideration and approval.

B. REQUIREMENTS. The regulations issued under subsection (A) shall:

- i) provide for the collection of data on all routine or spontaneous investigatory activities;
- ii) provide that the data collected shall:
  - (1) be collected by race, ethnicity, national origin, gender, gender expression, and sexual orientation;
  - (2) include the date, time, and location of such investigatory activities;
  - (3) include detail sufficient to permit an analysis of whether a law enforcement agency is engaging in racial profiling or bias-based policing; and
  - (4) not include personally identifiable information;
- iii) provide that a standardized form (i.e., the Motor Vehicle Stop Data Collection Form, Code 710Z or later enhanced forms similar to this) shall be made available to all Binghamton police officers engaging with the public;
- iii) provide that the Binghamton Police Department shall compile data in a standardized format including data under paragraph (ii), and submit the form biannually to the Mayor of the City of Binghamton, the Binghamton City Council, and the Binghamton Human Right Commission;
- iv) provide that law enforcement agencies shall maintain all data collected under this Act for not less than 7 years;
- v) include guidelines for setting comparative benchmarks, consistent with best practices, against which collected data shall be measured;
  - (1) analyze the data for any statistically significant disparities, including:
    - (a) disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population;
    - (b) disparities in the hit rate; and
    - (c) disparities in the frequency of discretionary searches performed on drivers of one protected class in comparison to the frequency of searches performed on drivers outside of such class ; and
  - (2) not later than two (2) years from the date of enactment of this Act, and annually thereafter:
    - (a) prepare a report describing and summarizing the findings of the analysis conducted under subparagraph (a);
    - (b) provide such report annually to the Mayor of the City of Binghamton, the Binghamton City Council and the Binghamton Human Rights Commission; and
    - (c) make such report and the aggregated data available to the public, including on a website of the City of Binghamton, and through requests made pursuant through the Freedom of Information Law.

## C. INTENDED USE OF DATA



- i) The Mayor of the City of Binghamton shall take all requisite measures to respond to any data that is indicative of racial profiling or bias-based policing by the Binghamton Police Department.
- ii) The Binghamton Human Rights Commission and the Binghamton Police Chief shall develop appropriate responses to data that shows a high rate of racial profiling or bias-based policing conducted by any individual law enforcement agent.
- iii) Data will be made available to the public.
- iv) Individuals who believe they have been racially profiled may have access to the data and use it as evidence as to whether racial profiling or bias-based policing exists in the City of Binghamton Police Department.

## Section 5: TRAINING

Personal experience, education and personal values shape the judgments of law enforcement personnel and these judgments can affect the outcomes of potentially life-threatening situations. Understanding cultural differences, and the way they affect human behavior, can help prevent or de-escalate situations that law enforcement personnel face on a daily basis – situations that not only put them at risk, but may increase distrust or create potential legal problems; it can help make policing more effective; and it helps police avoid misunderstandings, grievances and potential lawsuits.

A. REGULATIONS. Not later than six months after the date of enactment of this Act, the Binghamton Human Rights Commission, in consultation with stakeholders, including City of Binghamton Police Department and community, professional, research, and civil rights organizations, shall recommend to Binghamton City Council and the Mayor of the City of Binghamton for consideration and approval a list of cultural competency, anti-racism, anti-discrimination training resources.

City Council will budget necessary funds for this training during the budget process. The Binghamton Police Department will engage in the appropriate bidding/vetting process and select from among these resources.

B. REQUIREMENTS. The Binghamton Police Department will include as part of the annual in-service trainings of officers learning objectives that highlight the ineffectiveness and deleterious impact of racial profiling and bias-based policing as a law enforcement practice and that help officers develop further their understanding of equity in policing—particularly racial and gender equity—both within law enforcement agencies and between agencies and the communities they serve.

## Section 6: RECRUITMENT AND DIVERSIFICATION

The importance of having a police force whose composition closely matches the racial breakdown of the community it serves is accepted by most national law enforcement leaders and criminal justice experts. The U.S. Department of Justice has stated that more diverse police departments are able to develop better relationships with the communities they serve, are more trusted by those communities, and are better able to obtain the support and cooperation of all citizens.

A. REGULATIONS. Upon the enactment of this Act, the Binghamton Police Department will report and make available to the public, data regarding the composition and organizational structure of their department including race, gender, age, and other relevant demographic data.

Not later than six months after the date of enactment of this Act, the City of Binghamton Police Department, in consultation with stakeholders, including the Binghamton Human Rights Commission, the Police Department, and community, professional, research, and civil rights organizations, shall recommend to Binghamton City

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Council and the Mayor of the City of Binghamton for consideration and approval guidelines for personnel recruitment and hiring policies and programs that aim to increase diversity within the Police Department.

Upon the enactment of this Act, and on an ongoing basis, the Binghamton Police Department will help organize and/or participate in, on an ongoing basis, community-based programs designed to increase trust between the police and the communities with whom relationships with the police have traditionally been tense and to educate these communities on the value of a career in law enforcement.

Not later than one year from the enactment of this Act, the Binghamton Police Department will institute incentive programs, such as a Resident Officer Program, to encourage Binghamton police officers to take up residence within the City of Binghamton. By living in the distressed neighborhoods they are charged with serving and protecting, the Binghamton Police Department can provide police service, increase trust, and be the stimulus that empowers the residents to problem solve, improve their quality of life, and independently take ownership of the neighborhood.

B. REQUIREMENTS. The guidelines mentioned above will include a focus on building positive relationships and trust between the police and traditionally underrepresented communities of residents with the goal of encouraging the desire to enter into a law enforcement career; supports criminal justice programs in middle and high schools, as well as community colleges and universities around the area; and will better market and make available to traditionally underrepresented communities both civil service exam preparatory classes and civil service exam schedules.

## Section 7: MISCELLANEOUS PROVISIONS

SEVERABILITY. If any provision of this Act, or the application of such a provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the application of the remaining provisions of this Act to any person or circumstance shall not be affected thereby.