

SHAWN M. MORSE CHAIRMAN ALBANY COUNTY LEGISLATURE
HAROLD L. JOYCE OFFICE BUILDING
112 STATE STREET, ROOM 710
ALBANY, NEW YORK 12207
(518) 447-7168 - FAX (518) 447-5695
WWW.ALBANYCOUNTY.COM

PAUL T. DEVANE CLERK

# **AGENDA**

# LAW COMMITTEE

**FEBRUARY 24, 2014** 

## PREVIOUS BUSINESS:

## APPROVING PREVIOUS MEETING MINUTES

- 1. <u>RESOLUTION NO. 247 (2013)</u>: DIRECTING THE DIVISION OF INFORMATION SERVICES TO DEVELOP A PROGRAM FOR PAID SPONSORSHIP OPPORTUNITIES ON THE COUNTY WEBSITE
- 2. RESOLUTION NO. 465 (2013): ADOPTING A POLICY REQUIRING WATER BOARDS AND WATER DISTRICTS TO DETAIL METERED AND UNMETERED WATER RATES AND ESTABLISHING THAT ALBANY COUNTY WILL NOT LEVY WATER CHARGES FOR UNMETERED PROPERTIES WITHOUT SAID DETAIL

## **CURRENT BUSINESS:**

- 3. <u>RESOLUTION NO. 73</u>: REQUESTING THE COMMISSIONERS OF THE BOARD OF ELECTIONS TO EVALUATE ONLINE VOTING REGISTRATION
- 4. AUTHORIZING AN AGREEMENT WITH THE CITY OF ALBANY REGARDING POLICE ATTENDANCE AT THE CRIME VICTIM AND SEXUAL VIOLENCE CENTER'S TAKE BACK THE NIGHT RALLY
- 5. AUTHORIZING AN AMENDMENT TO AN AGREEMENT REGARDING SPECIAL COUNSEL FOR THE SEWER DISTRICT'S WASTE HEAT COGENERATION PROJECT

Honorable Shawn M. Morse and Members of the Albany County Legislature:

## LADIES AND GENTLEMEN:

The Law Committee of the Albany County Legislature met on January 27, 2014. Chairperson Corcoran, Messrs. Clenahan, Higgins, Feeney, Jacobson, Carman, Mss. Kinsch and Lockart were present. Mr. Beston was excused. The following items were discussed and/or acted upon:

Approving Previous Meeting Minutes: The Committee unanimously approved the minutes as amended.

- 1. Resolution No. 247 (2013): Directing the Division of Information Services to develop a program for paid sponsorship opportunities on the County website: Tabled at the request of the sponsor.
- 2. Resolution No. 465 (2013): Adopting a Policy Requiring Water Boards and Water Districts to Detail Metered and Unmetered Water Rates and Establishing that Albany County will not levy Water Charges for Unmetered Properties Without said Detail: Tabled at the request of the sponsor.
- 3. Authorizing the Submission of a Grant Application and an Agreement regarding the Motor Vehicle Theft and Insurance Fraud Prevention Program: It was indicated that the NYS Division of Criminal Justice Services notified the Albany County District Attorney that grant funding in the amount of \$68,100 is available to Albany County regarding the Motor Vehicle Theft and Insurance Fraud Prevention Program. The District Attorney requested authorization to submit a grant application and enter into an agreement with the NYS Division of Criminal Justice Services regarding the Motor Vehicle Theft and Insurance Fraud Prevention Program. It was indicated that the grant funding would be used to finance salaries and benefits of staff to supervise the prosecution of those who engage in motor vehicle related fraud and auto theft schemes and to reduce the incidence of these crimes through the integrated efforts of City, County and State law enforcement agencies for the period January 1, 2014 to December 31, 2014. After further discussion. the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.
- 4. Authorizing the Submission of a Grant Application and an Agreement regarding a Statement Videotaping Project and Amending the 2014 District Attorney's Budget: It was indicated that the NYS Division of Criminal Justice Services notified the Albany County District Attorney that grant funding in the amount of \$48,613 is available to Albany County regarding a Statement Video Taping Project. The District Attorney requested authorization to submit a grant application and enter into an agreement with

the NYS Division of Criminal Justice Services regarding a Statement Video Taping Project. The District Attorney further requested authorization to amend the 2014 Department budget to incorporate the available grant funding. It was indicated that the grant funding would be used to purchase videotaping equipment for local law enforcement agencies throughout Albany County for the period commencing January 1, 2014 and ending December 31, 2014. After further discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

5. Authorizing the Submission of a Grant Application to the NYS Department of Education regarding a Local Government Records Management Improvement Grant for Upgrades to the Electronic Management System at the Hall of Records: The County Clerk requested authorization to submit a grant application to the NYS Department of Education pertaining to the Local Government Records Management Improvement Fund. It was indicated that the Clerk's Office will produce the application for a PILOT Demonstration Grant from the Local Government Records Management Improvement Fund. It was indicated that if the Department is granted said funding, it will be used to help finance the capital costs associated with upgrading the current electronic management system at the Albany County Hall of Records. After further discussion, the Committee voted unanimously to move the proposal forward for legislative action with a favorable recommendation.

Respectfully Submitted, THE LAW COMMITTEE

JUSTIN O. CORCORAN, Chairperson ROBERT J. BESTON BRYAN M. CLENAHAN CHRISTOPHER T. HIGGINS DENNIS A. FEENEY

RICHARD P. JACOBSON NOELLE KINSCH LEE R. CARMAN PATRICE LOCKART

## **RESOLUTION NO. 247**

# DIRECTING THE DIVISION OF INFORMATION SERVICES TO DEVELOP A PROGRAM FOR PAID SPONSORSHIP OPPORTUNITIES ON THE COUNTY WEBSITE

Introduced: 7/8/13

By Messrs. Clenahan, Beston, Bullock, Clay, Commisso, Corcoran, Cotrofeld, Ethier, Feeney, Ms. Kinsch, Mr. Mackey, Ms. Maffia-Tobler, Mr. Mayo, Ms. McKnight, Messrs. Morse, Nichols, O'Brien, Reilly, Simpson and Ward:

WHEREAS, Albany County is facing budget concerns for the foreseeable future and needs to consider new ideas for revenue generation to address these concerns and reduce the burden on County taxpayers, and

WHEREAS, Albany County residents and businesses use the County website to access news, information, documents and to obtain services, and

WHEREAS, Albany County should establish a program to sell sponsorship opportunities on the County website as a recurring revenue stream, now, therefore be it

RESOLVED, That the Albany County Division of Information Services is hereby authorized, empowered and directed to develop a program for paid sponsorship opportunities on the County website, and, be it further

RESOLVED, That the Division of Information Services is further directed to develop all rules and regulations for this program to govern the process for becoming a sponsor, the type of sponsorships which will be accepted, and who may sponsor the Albany County website, and, be it further

RESOLVED, That the Division of Information Services shall submit the proposed sponsorship program, rules and regulations to the County Legislature for approval prior to implementing same, and, be it further

RESOLVED, Any sponsorship of the County website pursuant to this program must be accompanied by an express statement that the sponsorship does not constitute an express or implied endorsement of the sponsoring entity by the County, and, be it further

RESOLVED, Any revenue generated from this program will be used to offset the County tax burden on County taxpayers.

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

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## SHAWN M. MORSE CHAIRMAN

# ALBANY COUNTY LEGISLATURE HAROLD L. JOYCE OFFICE BUILDING 112 STATE STREET, ROOM 710 ALBANY, NEW YORK 12207 (518) 447-7168 - FAX (518) 447-5695 WWW.ALBANYCOUNTY.COM

PAUL T. DEVANE CLERK

DATE:

November 25, 2013

TO:

Thomas Marcelle, County Attorney

FROM:

Hon. Justin Corcoran, Chairman, Law Committee

RE:

Follow up: Opinion on Resolution No. 465

As per the discussion at the Law Committee meeting last week, attached is Resolution No. 465 for 2013 for your review to provide an official opinion.

Please note, the next Law Committee meeting is not until January 2014.

Thank you for your attention regarding this matter. If there is any additional information you need from our office, please do not hesitate to reach out.

## **RESOLUTION NO. 465**

ADOPTING A POLICY REQUIRING WATER BOARDS AND WATER DISTRICTS TO DETAIL METERED AND UNMETERED WATER RATES AND ESTABLISHING THAT ALBANY COUNTY WILL NOT LEVY WATER CHARGES FOR UNMETERED PROPERTIES WITHOUT SAID DETAIL

Introduced: 10/15/13

By Messrs. Higgins, Bullock, Nichols and O'Brien:

WHEREAS, Vacant and abandoned properties present a danger to the health and safety of local residents, result in costs and loss of revenues to local governments, and discourage further investment in the community, and

WHEREAS, The Albany County Legislature recognizes the negative effects vacant, abandoned and tax-delinquent properties have on the social and economic vitality of communities, surrounding properties, and municipalities in general. In addition to the social cost to communities and neighboring owners and residents, vacant and abandoned properties increase local costs in code and regulatory compliance, fire and police protection, emergency responses, and cause the tax base to decrease, and

WHEREAS, The Legislature further recognizes that Albany County is currently expending much-needed taxpayer funds solely for the purposes of making municipalities whole for delinquent taxes; boarding up, maintaining, paying outstanding water bills for vacant properties; and demolishing vacant buildings, and

WHEREAS, It is the intent of the Legislature and Albany County government that those funds be redirected to positive purposes that have the effect of decreasing the numbers of tax-delinquent properties, revitalizing communities and increasing the tax rolls to the benefit of all its citizens. It is further the intent of this legislation to provide pro-active tools to mitigate costs, spur investment and improve property values within the land bank area, and

WHEREAS, The County Legislature annually appropriates hundreds of thousands of dollars to cover maintenance and demolition costs associated with foreclosed parcels, and

WHEREAS, The costs of such demolitions regularly exceeds the total amount budgeted, and

WHEREAS, The County recognizes that water bills often accumulate on many of the buildings taken through its tax foreclosure process, and

WHEREAS, Oftentimes these buildings have been vacant for several years with no significant water usage or in some instances vacant lots taken via this process use no water at all and yet are charged an unmetered rate, and

WHEREAS, To date, no process or procedure to review water usage or turn off meters at many buildings, irrespective of whether said properties are on the City of Albany's vacant building registry or another municipality's has occurred, and

WHEREAS, It would be in the best interests of all Albany County taxpayers to have such a policy established to reduce the amount of water allegedly being used on such properties and also to prevent additional costs for such service, and

WHEREAS, In 2010 by Resolution No. 365 sponsored by Legislator Morse, a policy was established requiring prior approval by the County for demolition of any property that will be transferred to the County as a result of delinquent taxes, and

WHEREAS, The aforementioned resolution specifically stated that Albany County will not reimburse a municipality for the costs of said demolition after the fact, now, therefore be it

RESOLVED, By the Albany County Legislature that a policy is hereby established whereas the County will no longer continue remunerating payments to the Albany Water Board or any other water board or water district for unmetered water charges on properties that Albany County would otherwise levy onto the tax rolls, and, be it further

RESOLVED, That municipal water boards and districts shall, via a process and procedure, provide Albany County on the statements of unpaid water and sewage provided indicate whether such water charges were metered or unmetered rates as well as whether any of said properties are registered on the City of Albany Vacant Building Register. Moreover water boards and districts shall verify to the county those buildings within its respective jurisdiction where water bills have gone unpaid for three consecutive billing cycles in order for the county to verify whether such property is vacant or abandoned, and, be it further

RESOLVED, That municipal water boards and districts shall provide this information within 90 days of enactment of this resolution to both the County Executive and Clerk of the Albany County Legislature and if not, the County of Albany shall not levy and assess such water and sewer charges, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials and to every water board which provided the County with a statement of unpaid water and sewer charges from 2012.

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## **RESOLUTION NO. 73**

# REQUESTING THE COMMISSIONERS OF THE BOARD OF ELECTIONS TO EVALUATE ONLINE VOTING REGISTRATION

Introduced: 2/10/14

By Ms. McLean Lane and Mr. Clenahan:

WHEREAS, The Help America Vote Act of 2002 provides assistance with the administration of certain Federal election laws and programs to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and

WHEREAS, Several states currently offer online voter registration, and initial results indicate that online voter registration is feasible and may be cost-effective, and

WHEREAS, By adopting an automated online voter registration system it may be possible to minimize the need for employee form-processing as almost all physical forms related to registration can be eliminated, and

WHEREAS, The registration system would need to include a secure and accessible online portal for individuals to register to vote, update their voter registration information and check necessary voting information such as polling location, now, therefore be it

RESOLVED, By the Albany County Legislature that the Commissioners of the Board of Elections are requested to evaluate the potential benefits of online voter registration in Albany County, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Referred to Law Committee. 2/10/14

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DANIEL P. MCCOY
COUNTY EXECUTIVE

# COUNTY of ALBANY CRIME VICTIM and SEXUAL VIOLENCE CENTER 112 State Street, Room 1118 Albany, New York 12207-2077

Office: (518) 447-7100 Fax: (518) 447-7102 24-Hour Sexual Assault Hotline: (518) 447-7716

www.albanycounty.com/cvsvc e-mail: cvsvc@albanycounty.com

12 February 2014

KAREN ZIEGLER

DIRECTOR

Hon. Shawn Morse, Chairman Albany County Legislature 112 State St., Rm. 710 Albany, NY 12207

Dear Chairman Morse:

Due to a technical error, please disregard the previously submitted RLA for our annual Take Back the Night event. Please allow the attached to replace the prior request. Should you have any questions, don't hesitate to contact myself or Emma Forbes from the County Executive's office. I greatly appreciate your cooperation with this matter.

Sincerely,

Director

cc: Frank Commisso, Majority Leader
Lee Carman, Minority Leader
Jamie Kallner, Majority Counsel
Arnis Zilgme, Minority Counsel

# 2014 FEB 12 AM 11 35

FOR COU	
Date Received: Received By: Method: Hand: Courier: Mail:	

# REQUEST FOR LEGISLATIVE ACTION:

DATE: 2/5/2014	
DEPARTMENT: Crime Victim and Sexual Viole Contact Person: Ziegler, Karen, Director	<u>nce</u> -
Telephone: 518-447-7103	
Dept. Representative Attending	
Committee Meeting: Ziegler, Karen	
PURPOSE OF REQUEST: Take Back the Night	
Adoption of Local Law	
Amendment of Prior Legislation	<del></del>
Approval/Adoption of Plan/Procedure	
Bond Approval	
Budget Amendment (See below) Contract Authorization (See below)	$\overline{\mathbf{x}}$
Environmental Impact	<u> </u>
Home Rule Request	
Property Conveyance	·
Other: (State briefly if not listed above)	_
CONCERNING BUDGET AMENDMENTS STATE THE FOLLOWING:	
Increase Account/Line No.	
Source of Funds:	
Title Change:	
CONCERNING CONTRACT AUTHORIZATION	ON
STATE THE FOLLOWING:	<u>011</u>
TYPE OF CONTRACT	
Change Order/Contract Amendment	
Purchase (Equipment/Supplies)	
Lease (Equipment/Supplies)	
Requirements Professional Services	X
Education/Training	
Grant: New	
Renewal	<del></del>
Submission Deadline Date	
Settlement of a Claim	
Release of Liability	
Other: (State briefly)	

## CONCERNING CONTRACT AUTHORIZATION (Cont'd) STATE THE FOLLOWING:

### Contract Terms/Conditions:

Party(Name/Address): City Of Albany, City HallAlbany, NY 12207

Amount/Raise Schedule/Fee: \$0.00

Scope of Services: to provide a police escort during the Take Back the Night March on

4/10/14

## Contract Funding:

Bond Res. No.: Date of Adoption:

## CONCERNING ALL REQUESTS:

Mandated Program/Service: No

If Mandated Cite: Authority

Anticipated in Current Adopted Budget: No

County Budget Accounts:

Revenue: Appropriation:

## Fiscal Impact - Funding: (Dollars or Percentages)

Federal: - 0%

State:

- 0%

County:

- 0%

Local:

- 0%

Term/Length of Funding:

## Previous Requests for Indentical or Similar Action

Resolution/Law Number:

Date of Adoption:

Justification: (State briefly why legislative action is requested)

This is the 33rd Annual Take Back the Night March for CVSVC and we are holding it in partnership with Albany Law School. The purpose of this event is to raise awareness around the issues of violence against women and to encourage community mobilization. There is a rally on campus followed by a march. We are requesting that the Albany Police Department provides a mounted police escort for the one mile march through the City of Albany.

Back-up Material Submitted: (i.e., application/approval notices from funding source, bid tabulation sheet, civil service approval notice, program announcement, contracts and/or any materials which explain or support the request for legislative action.)

http://acvsp2010/sites/CALM/Lists/RLA/Attachments/769/RLA Cover Letter.doc http://acvsp2010/sites/CALM/Lists/RLA/Attachments/769/DOC020614TBTN.pdf http://acvsp2010/sites/CALM/Lists/RLA/Attachments/769/TBTN\_Flyer2014.pdf http://acvsp2010/sites/CALM/Lists/RLA/Attachments/769/RLA Cover Letter.doc

Submitted By: Ziegler, Karen

Title:



Office of the City Clerk Room 202 – City Hall Albany, New York 12207 (518) 434-5090 (518) 434-5081 (fax)

Participants 25-49	\$27.50
	\$55.00
2500 or more	\$275.00
Riverfront Park	\$500.00
Lake House Rental	\$250.00
Bus Parking (per bus)	\$50.00
Open Container Permit	\$11.00

# Special Event & Facility Use Permit Application

Please complete this application and submit it to the City Clerk's Office NO LESS THAN 20 DAYS PRIOR TO THE EVENT. An incomplete application or one submitted without the permit fee will not be accepted. All events require a \$1 million general liability insurance policy naming the City of Albany as an additional insured party and must be submitted prior to the issuance of a permit. The insurance requirement may be waived if the event is co-sponsored by the City of Albany. If Police, Fire and/or General Services are required, costs will be the responsibility of the applicant/permit holder and organization. The applicant/permit holder is obligated to adhere to all rules and regulations detailed in the Code of the City of Albany.

Public Gathering (up to 25 attendees) Washington Park Lake House
Large Group Event (26 to 50 attendees) Riverfront Park
Large Group Event (50+ attendees) (includes Amphitheater)
Exact Location or City Park (please specify):  A 1 DON LOW SCHOOL
March Rally-DFrom Albany Law, down New Scotland, cross Matison a
Date of Application: United B1, 2014 Fee (see schedule) s enter washington
Applicant's Name:  (Applicant will serve as contact & permit holder – must be on site and in passession of permit during entire event)
organization: Albany County Crime Victim and Sexual Violence Center
Federal Tax I.D. # [4] - 6002.663 Not-for-Profit? X Yes No
Address: 12 State St. Rm 118 Albany NY 12207 (street) (street) (street)
Phone: 447-7100 447-7102
Title of Event: Take Back The Night Date of Event 4 10 14
Time of Event: 438m to 900m 4pm, 90m (set-up) (breakdown)
*5000+ attendees require you to obtain NYS Department of Health Part 18 Permit (518) 473-8600.
Purpose & Explanation of Event (if applicable, attach map of proposed event route) : AVAICORS VOLV
and march against sexual violence.
Will this event be catered? Yes No If yes, Name:Phones:
Will alcoholic beverages he SERVED? Yes No Will alcoholic beverages be SOLD? Yes No
<ul> <li>If alcohol will be serve, an Open Container Permit Application must accompany this application.</li> </ul>

- . If alcohol is to be sold, the caterer MUST provide a NYS Liquor Authority Permit to the City of Albany.
- SLA phone number (518) 474-3115

Slidin' Dirty Food Truck - Tim Taney - 944-3614

SERVICES:

Applications require the review and approval of the Departments of Police, Fire and General Services to issue a permit. If the review determines costs will be incurred to effectuate the event, the applicant will be notified of estimated costs and all costs would be the responsibility of the applicant/permit holder.

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POLICE SERV	CES:				٦
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(Before a permit is issued	you must contact the All	bany Police Departmen	nt Traffic Safety Division, 5:	2 18.458.5675 to arrange bus parking)	-
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# ALBANY COUNTY CRIME VICTIM AND SEXUAL VIOLENCE CENTER

# **BRINGS YOU THE 33RD ANNUAL**

# TAKE BACK THE NIGHT

Rally and March Against Sexual Violence

Thursday, April 10, 2014

HOSTED BY THE ALBANY LAW SCHOOL PRO BONO PROGRAM
80 New Scotland Avenue - Albany
Campus Gymnasium

# Pre-Rally Entertainment Begins at 4:30 PM

Community Agency Tabling, Music Performances, Poetry Readings, Food Vendors, Giveaways, \$10 Teal hair Extensions

Pre-rally - 4:30-5:30
Welcoming Remarks 5:30-6:00
Speak Out - 6:00-7:00
March - 7:00-8:00
Vigil - 8:00-8:30

Please contact Christin Guilder at christin.guilder@albanycounty.com or (518) 447-7100

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DANIEL P. MC COY
COUNTY EXECUTIVE

# COUNTY OF ALBANY SEWER DISTRICT P.O. Box 4187

ALBANY, NEW YORK 12204
PHONE: (518) 447-1611 FAX: (518) 433-0369
www.albanycounty.com

February 12, 2014

COMMISSION

JOHN R. ADAIR, JR.

CHAIRMAN

MICHAEL J. AIDALA

JOHN W. BISHOP, JR.

NICHOLAS W. FOGLIA

DENNIS RIGOSU

RICHARD J. LYONS
EXECUTIVE DIRECTOR

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Hon. Shawn M. Morse Chairman Albany County Legislature 112 State Street – Suite 710 Albany, NY 12207

Dear Mr. Morse:

The Sewer District is requesting legislative approval to amend the contract with Breakell Law Firm, P.C., 10 Airline Drive, Albany 12205. This amendment will allow continuity with attorney representation and assure the County's legal interests remain fully protected in the almost three (3) year dispute with C.O. Falter Construction Corporation, the general contractor for the waste heat cogeneration project. The amendment is to increase the retainer from \$90,000 to \$390,000 and the term by two (2) years to June 2, 2016.

Breakell Law was originally retained via a request for proposal process, memorialized as RFP 2011-054 with the governing authority being the Contract Administration Board (CAB). Breakell Law has spent substantial time in becoming familiar with the contract issues. CAB approved the original contract and subsequent amendments that increased the retainer from \$50,000 to \$90,000 and the term to the maximum of three (3) years.

Unfortunately, over the past three (3) years we have been unable to negotiate a settlement with C.O. Falter Construction Corporation which included mediation of claims this past September. Due to the complete disregard of C.O. Falter to mitigate the ongoing issues, the County filed a summons and complaint in Supreme Court, dated December 2, 2013, which includes a total of over \$1.3M of liquidated damages.

The additional \$300,000 is a worst case scenario of costs to complete discovery and go through litigation. The funds are available in the HGF-3 capital account for this project with the \$300,000 allocated from the fund balance to the capital account during the 2014 budget process. The County Attorney has been kept apprised of the issues and assigned Assistant County Attorney, Tracy Murphy to support the District and Special Counsel to reduce costs.

I have enclosed the CAB letters dated April 14, 2011, July 5, 2012, June 3, 2013 and the filed summons and complaint dated December 2, 2013.

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# 2014 FEB 11 AM 9 19

FOR COU	NSEL USE LY
Date Received: Received By: Method: Hand: Courier: Mail:	

	j	Mail:	
REQUEST FOR LEGISLATIVE ACT	ION:		<del></del>
DATE: 1/29/2014  DEPARTMENT: Sewer District  Contact Person: Lyons, Richard, Executive Telephone:  Dept. Representative Attending  Committee Meeting: Lyons, Richard, Executive Attending	e Director		
Adoption of Local Law Amendment of Prior Legislation Approval/Adoption of Plan/Procedure Bond Approval Budget Amendment (See below) Contract Authorization (See below) Environmental Impact Home Rule Request Property Conveyance Other: (State briefly if not listed above)	X Amendment of contract	of that originate.	, ;
CONCERNING BUDGET AMENDMENTS TATE THE FOLLOWING:	Administration Board,	-	nom Compact
Increase Account/Line No. Source of Funds: Title Change:			
CONCERNING CONTRACT AUTHORIZATION	<u>ON</u>		

# E THE FOLLOWING: TYPE OF CONTRACT

Change Order/Contract Amendment Purchase (Equipment/Supplies) Lease (Equipment/Supplies)	_
Requirements Professional Services Education/Training	$\overline{\mathbf{X}}$
Grant:	
New	7
Renewal	_
Submission Deadline Date	
Settlement of a Claim	
Release of Liability	_
Other: (State briefly)	

## CONCERNING CONTRACT AUTHORIZATION (Cont'd) STATE THE FOLLOWING:

# Contract Terms/Conditions:

Party(Name/Address): Breakell law Firm, LLC, 10 Airline Drive, Albany, NY 12205

Amount/Raise Schedule/Fee: \$300,000.00

Scope of Services: Special legal counsel for waste heat cogenration project

## Contract Funding:

Bond Res. No.: Date of Adoption:

# **CONCERNING ALL REQUESTS:**

Mandated Program/Service: No If Mandated Cite: Authority

Anticipated in Current Adopted Budget: Yes

County Budget Accounts:

Revenue: Appropriation:

Account Code: N/A, Amount: \$300000

# Fiscal Impact - Funding: (Dollars or Percentages)

Federal:

Capital account HGF-3 - 0%

State:

Capital account HGF-3 - 0%

County:

Capital account HGF-3 - 100%

Local:

Capital account HGF-3 - 0%

Term/Length of Funding: 24 Months (6/2/2014 - 6/2/2016)

# Previous Requests for Indentical or Similar Action

Resolution/Law Number:

Date of Adoption:

Justification: (State briefly why legislative action is requested)

Legal counsel for waste heat cogneration project, discovery and litigation for General construction contract

Back-up Material Submitted: (i.e., application/approval notices from funding source, bid tabulation sheet, civil service approval notice, program announcement, contracts and/or any materials which explain or support the request for legislative action.)

http://acvsp2010/sites/CALM/Lists/RLA/Attachments/752/RLA Breakell Law amendment 2-12-2014.pdf

Submitted By: Lyons, Richard Title:



MICHAEL G. BRESLIN
COUNTY EXECUTIVE

# COUNTY OF ALBANY

www.albanycounty.com

SEWER DISTRICT
P.O. BOX 4187
ALBANY, NEW YORK 12204
PHONE: (518) 447-1611 FAX: (518) 433-0369

April 14, 2011

COMMISSION

JOHN R. ADAIR, JR.

CHAIRMAN

MICHAEL J. AIDALA

JOHN W. BISHOP, JR.

RICHARD H. RAPP

DENNIS RIGOSII

RICHARD J. LYONS
EXECUTIVE DIRECTOR

Hon. Michael G. Breslin County Executive 112 State Street Albany, NY 12207

Hon. Daniel P. McCoy Chairman Albany County Legislature 112 State Street – Suite 710 Albany, NY 12207

Hon. Thomas Clingan County Clerk 112 Sate Street Albany, NY 12207

Dear Messrs. Breslin, McCoy, Clingan:

In response to RFP 2011-054, Special Counsel Waste Heat Cogeneration Project, the Sewer District is requesting approval to enter into contract with Breakell Law Firm, P.C., 10 Airline Drive, Albany, NY 12205.

The counsel is needed to address immediate and any future legal issues. The immediate issues include notice of mediation of claims in regards to two (2) engineer/owner rejected price change orders (PCO's) with a value of \$72,000 and contractor rejection of a contract amendment. All issues are with the general contractor, C.O. Falter Construction Corporation from Syracuse. Future claims with potential litigation are not out of the question and it is in the best interest of the District to be prepared. The District has kept the Department of Law advised of the issues.

The District received five (5) proposals from the following firms:

- Breakell Law Firm, PC
- Carter, Conboy, Case, Blackmore, Maloney & Laird, PC
- Lemery Greisler, L.L.C.
- Bond, Schoeneck & King, PLLC
- McNamee, Lochner, Titus & Williams, PC

A committee was formed to review the proposals which included me, Commissioner Bishop and Commissioner Rigosu. Based on review of the proposals in regards to construction law experience, interviews were held with three (3) firms.

Page 2 April 14, 2011

The firms were the following:

- Breakell Law Firm, PC (interview held on April 8th)

- Carter, Conboy, Case, Blackmore, Maloney & Laird, PC (interview held on April 11th)

McNamee, Lochner, Titus & Williams, PC (interview held on April 11th)

Based on the submitted proposal and interview the committee unanimously agreed that Breakell Law should be retained. The committee offers the following detailed justification:

- The firm focuses it's legal services to the New York construction industry

 Broad based industry specific knowledge and experience handling a multitude of both routine and multifaceted complex construction disputes

- Specific experience that relates to the project issues include: analysis of contract documents, extra work claims, delay claims and payment disputes

- Intimate knowledge and experience with the Standard General Conditions of the Construction Contract (EJDC C – 700) which are incorporated in the project specifications

 Lead attorney, Walter Breakell, who has been practicing law for thirty-three (33) years has specific construction dispute experience with water and wastewater facilities: i.e. Middletown, Castleton, Oswego

 Mr. Breakell is an Arbitrator on the Construction Industry Arbitration Panel of the American Arbitration Association (1980 – present)

 Mr. Breakell has issued numerous publications in the Capital District Business Review all related to construction disputes and issues

 Mr. Breakell has made many presentations to industry groups relating to construction contracts, documents and claims

Mr. Breakell has committed to being the day to day contact on all issues

 Mr. Breakell has knowledge of the general contractor C.O. Falter Construction Corporation and also knows their attorney

During the interview, Mr. Breakell presented an approach of the issues using a business oriented path, to avoid litigation with the best possible outcome for the County. He elaborated that in most construction dispute litigation the only winners are the attorneys.

The contract will be for a one (1) year term, with two (2) additional year extensions if necessary with a retainer of \$50,000. The creation of the retainer is via a budget neutral amendment that has been submitted to the legislature.

I have enclosed the committees score sheets and the firm's hourly rates and I am available for any questions at 447-1617.

Very truly yours,

Richard J. Lyons Executive Director

RJL:sh

Cc:

Elizabeth Staubach, Policy Analyst

Tom Leitz, Budget Analyst Karry Culihan, Assistant County Attorney

Board of Commissioners

	Request for Contract Approval
Request ID #	61
Contract #	0
Contract Type	B) CAB Contracts
Contract Action	A) New
Contract Action Type	N) None
Department	G8130 - Sewage Treatment
Date submitted	4/13/11
Contact person	Lyons, Richard
Contact Phone	447-1617
Vendor	Breakell law Firm, PC
Estimated Amount	\$50,000.00
Estimated Term	1 year with 2 year extensions
Scope of Services	Special counsel for waste heat cogeneration project
Budget Line Item	GG8130
Fiscal Impact	County 0.00% / ひょ %
	State 0.00%
	Federal <del>100.00%</del>
BID,RFP,RFQ Completed?	Yes - RFP
dget Analyst	Date
r Contract Board Use:	Date Approved

Thomas G. Clingan Albany County Clerk Daniel P. McCoy, Chairman Albany County Legislature

Michael G. Breslin Albany County Executive



DANIEL P. MC COY
COUNTY EXECUTIVE

## COUNTY OF ALBANY SEWER DISTRICT P.O. Box 4187

ALBANY, NEW YORK 12204
PHONE: (518) 447-1611 FAX: (518) 433-0369
www.albany.county.com

July 5, 2012

COMMISSION

JOHN R. ADAIR, JR.

CHAIRMAN

MICHAEL J. AIDALA

JOHN W. BISHOP, JR.

NICHOLAS W. FOGLIA

DENNIS RIGOSU

RICHARD J. LYONS
EXECUTIVE DIRECTOR

Hon. Daniel P. McCoy County Executive 112 State Street Albany, NY 12207

Hon. Shawn M. Morse Chairman Albany County Legislature 112 State Street – Suite 710 Albany, NY 12207

Hon. Thomas Clingan County Clerk 112 State Street Albany, NY 12207

Dear Messrs. McCoy, Morse, Clingan:

The Sewer District is requesting approval to amend the contract with Breakell Law Firm, P.C., 10 Airline Drive, Albany, NY 12205. Breakell Law was retained through RFP 2011-054, Special Counsel Waste Heat Cogeneration Project. The amendment is to extend the contract for an additional year and to increase the retainer from \$50,000 to \$90,000. The additional funds were budgeted and available in the consultant fee line item (G98130.4.4047). The original contract was for a one (1) year term, with two (2) additional year extensions available, if necessary. To date the District has expended \$29,479.82 of the original \$50,000 retainer.

To date, Breakell Law has reviewed all appropriate documents including project specifications, contract standard general conditions, submittals, construction schedules, construction meetings and provided ongoing legal advisement. Issues remain with the general contractor, C. O. Falter Construction Corporation in regards to owner rejected price change orders and a notice of project delay claim by C. O. Falter. The project has been extremely challenging and is schedule to be commissioned by mid to late July. Unfortunately, it is inevitable that additional legal support will be needed to close this project out.

Page 2 July 6, 2012

The County Attorney has been kept up to speed on the issues and he has provided support via Assistant County Attorney Tracy Murphy. I am available for any questions at 447-1617.

Very truly yours,

Richard J. Lyons Executive pirector

RJL:sh Enc.

Cc: Michael McLaughlin, Policy Analyst Cillian Flavin, Budget Analyst

Tracy Murphy, Assistant County Attorney

Request ID #	767
Contract #	0
Contract Type	B) CAB Contracts
Contract Action	B) Amendment
Contract Action Type	N) None
Department	G8130 - Sewage Treatment
Date submitted	7/3/12
Contact person	Lyons, Richard
Contact Phone	447-1617
Vendor	Breakell Law
Estimated Amount	
Estimated Term	1 year
Scope of Services	Special legal counsel for waste heat cogeneration project
Budget Line Item	GG8130
Fiscal Impact	County 100.00%
	State 0.00%
	Federal 0.00%
BID,RFP,RFQ Completed?	Yes - RFP

Budget Analyst		Date
For Contract Board Use:		Date Approved
Daniel P. McCoy Albany County Executive	Thomas G. Clingan Albany County Clerk	Shawn M. Morse, Chairman Albany County Legislature

.



\* Skici P. Mc Coy

COUNTY OF ALBANY
SEWER DISTRICT
P.O. BOX 4187
ALBANY, NEW YORK 12204
(518) 117 1611 Fox (518) 12204

ALBANY, NEW YORK 12204 PHONI: (518) 447-1611 FAX: (518) 433-0369 www.albanycounty.com

June 3, 2013

Commission is

JOHN R. ADMR, IE.

CHAPTEL AIDMEN

MICHAEL J. AIDMEN

JOHN W. BISHOP, JR.

NICHOLAS W. FOGLEY

DENNIS RIGOSE

RICHARD L. LYONS
I MOTHER DEGREE

Hon. Daniel P. McCoy County Executive 112 State Street Albany, NY 12207

Hon. Shawn M. Morse Chairman Albany County Legislature 112 State Street – Suite 710 Albany, NY 12207

Hon. Thomas Clingan County Clerk 112 State Street Albany, NY 12207

Dear Messrs. McCoy, Morse, Clingan:

The Sewer District is requesting approval to amend the contract with Breakell Law Firm, P.C., 10 Airline Drive, Albany, NY 12205. Breakell Law was retained through RFP 2011-054, Special Counsel Waste Heat Cogeneration Project. The amendment is to invoke the final one (1) year extension clause for a total term of three (3) years. The retainer will remain at \$90,000 of which \$35,787.32 has been expended.

To date, Breakell Law has reviewed all appropriate documents, including project specifications, contract standard general conditions, submittals, construction schedules, construction meetings, and has provided on-going legal advisement. Legal issues involving the general contractor, C. O. Falter Construction Corporation, continue with regard to owner-rejected price change orders, and C.O. Falter has also filed a project delay claim.

The project was commissioned in March 2013, but remains extremely challenging due to the numerous legal issues. Mediation of claims is currently scheduled for July 2013. The District, the Department of Law and Special Counsel are still hopeful that a final settlement can be negotiated. Unfortunately, it is inevitable that additional legal support will be needed to close this project out.

Page 2 June 3, 2013

The County Attorney has been kept up to speed on the issues and he has provided support via Assistant County Attorney Tracy Murphy. I am available for any questions at 447-1617.

Very truly yours,

Richard & Lyons
Executive Director

RJL:sh Enc.

Cc: Scott Siegel, Policy Analyst

Chandra Williams, Budget Analyst

Tracy Murphy, Assistant County Attorney

Request for Contract Approval		
Request ID #	1194	
Contract #	1294	
Contract Type	B) CAB Contracts	
Contract Action	B) Amendment	
Contract Action Type	N) None	
Department	G8130 - Sewage Treatment	
Date submitted	5/31/13	
Contact person	Lyons, Richard	
Contact Phone	447-1617	
Vendor	Breakell Law Firm, P.C.	
Estimated Amount	\$90,000	
Estimated Term	1 year	
Scope of Services	Invoke extension clause, legal support waste heat cogeneration project	
3udget Line Item	GG8130	
iscal impact	County 100,00%	
	State 0.00%	
	Federal 0.00%	
BID,RFP,RFQ Completed?	Yes - RFP	

Budget Analyst	Date	
For Contract Board Use:		Date Approved
Daniel P. McCoy Albany County Executive	Thomas G. Clingan Albany County Clerk	Shawn M. Morse, Chairman Albany County Legislature

STATE OF NEW YORK SUPREME COURT COUNTY OF ALB	ANY			
COUNTY OF ALBANY,	7		•	! f'
Plaintiff, -against- C. O. FALTER CONSTRUCTION CORP.,		SUMMONS		
		Index No.:	6527-	13
Defendant.				

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Trial is desired in the County of Albany.

The basis of venue designated above is that the location of the plaintiff's principal place of business is within the County of Albany.

DATED: Albany, New York December 2, 2013

Walter G. Breakell

BREAKELL LAW FIRM P.C.

Attorneys for Plaintiff

Office and Post Office Address:

10 Airline Drive

Albany, New York 12205

Telephone: (518) 869-5552

The original Summons and Complaint was filed in the Albany County Clerk's Office on December 2, 2013.

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Albany County Clerk Document Number 11521818 Rovd 12/02/2013 3:39:06 PM



STATE OF NEW YOR	K
SUPREME COURT	COUNTY OF ALBANY

COUNTY OF ALBANY,

Plaintiff,

-against-

**COMPLAINT** 

Index No.: 6527-13

C. O. FALTER CONSTRUCTION CORP.,

Defendant.

Plaintiff, Albany County Sewer District, by and through its attorneys, the Breakell Law Firm P.C., as and for its complaint against the Defendant, C. O. Falter Construction Corp., states and alleges as follows:

- At all times herein mentioned, Plaintiff, County of Albany (hereinafter
  "Plaintiff") was and still is a municipal corporation, organized and existing under the laws of the
  State of New York, with its principal office and place of business located at 112 State Street,
  Albany, New York 12207.
- 2. Upon information and belief, at all times herein mentioned, C. O. Falter Construction Corp. (hereinafter "Defendant") was and still is a domestic corporation, authorized and existing under the laws of the State of New York, with offices for the principal conduct of business located at 403 West Bear Street, Syracuse, New York 13204.
- 3. That at all times mentioned the Albany County Sewer District was and still is a department of the County of Albany and more particularly an enterprise fund of County Government.

Albany County Clerk
Document Number 11521818
Rovd 12/02/2013 3:39:06 PM

1

# AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF STATES AND ALLEGES AS FOLLOWS:

- 4. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" through "3" of this complaint with the same force and effect as if fully set forth at length herein.
- 5. On or about December 31, 2009, Plaintiff, County of Albany by and through the Albany County Sewer District entered into a written Contract ("Contract") with Defendant, whereby Defendant agreed to provide General Construction Services, inclusive of design and engineering services and mechanical equipment for an Incineration Waste Heat/Co-Generation Project ("Project") at Plaintiff's North Plant, Albany, New York, in return for payment in the sum of Six Million, Two Hundred Thirty Three Thousand, One Hundred One and 00/100 (\$6,233,101.00) Dollars.
- 6. Amongst other things, the Project called for the installation of an integrated Organic Rankine Cycle Turbine Generator System ("ORC"), allowing for the utilization of waste heat to power a turbine generator.
- 7. Under the Contract, Defendant was required to timely perform and complete its work under the Contract in a good, substantial, workmanlike, and contractually compliant manner.
- 8. The Contract also provided that time was of the essence with respect to ...

  Defendant's performance of its Contract work, and contained a liquidated damage clause should

  Defendant fail to timely complete its work under the contract.

- 9. Pursuant to an issued change order, the substantial completion date for Defendant's work on the Project was January 6, 2012.
- 10. The contractual liquidated damages clause provided that Defendant would pay One-Thousand Three-Hundred (\$1,300.00) Dollars to Plaintiff for each day that expired after the specified substantial completion date of Defendant's work.
- 11. Defendant commenced performance of its Contract work on or after December 31, 2009.
- 12. Defendant has failed and refused to complete its work pursuant to the contract although duly demanded by Plaintiff.
- 13. Defendant failed to substantially complete its Project work by January 6, 2012 due to no fault of Plaintiff.
- 14. A certificate of substantial completion for Defendant's contract work was issued on July 15, 2013, a delay of more than 555 days for which Plaintiff is entitled to liquidated damages.
- 15. The work, equipment, labor and services provided by Defendant under the contract documents were non-compliant, defective, and deficient.
- 16. The Defendant failed to construct the system so that it met the contractually required performance specifications, including, but not limited to, the performance specifications set forth in Section 11396 of the project specifications.
- 17. Prior to final acceptance of the Contract Work, Plaintiff notified Defendant that certain aspects of its work was unacceptable, defective, deficient, and non-compliant with the Contract documents.

- 18. Prior to final acceptance of the Contract Work, Plaintiff demanded that Defendant investigate and remediate its defective, deficient and non-complaint work, pursuant to the Contract.
- 19. Defendant has wrongfully failed and refused to investigate and remedy its unacceptable and noncompliant work, although duly demanded, in breach of its obligations to the Plaintiff under the Contract.
- 20. Defendant has substantially and materially breached the Contract by furnishing, installing and constructing the Project and associated components that are defective, deficient and non-compliant with the contract documents, and further failed to complete its contract obligations within the time frame contractually specified, through no fault of Plaintiff.
  - 21. Plaintiff has duly performed all the conditions required of it under the Contract.
- 22. Thereafter Plaintiff declared Defendant in Contractual Default and terminated its contract in accordance with the contract documents.
- 23. Pursuant to the Contract, Plaintiff is entitled to recover liquidated damages, additional engineering fees, and attorneys' fees relating to Defendant's breach and the subject litigation.
- 24. As a result of the Defendant's breach of Contract, Plaintiff has been damaged in a sum presently unliquidated but expected to exceed One Million, Three Hundred Eighty-One Thousand, One Hundred Sixty-Seven and 00/100 (\$1,381,167.00) Dollars plus interest and attorney's fees.

# AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF STATES AND ALLEGES AS FOLLOWS:

- 25. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" through "24" of this complaint with the same force and effect as if fully set forth at length herein.
- 26. At the time of the Contract between the parties, Defendant, as an inducement to Plaintiff to enter into the Contract, expressly warranted to Plaintiff, *inter alia*, that the materials furnished would be of good and merchantable quality, that the work and materials would conform with the requirements of the Contract documents, and that the work performed pursuant to the Contract would be in a good, substantial, workmanlike, and approved manner.
  - 27. That Plaintiff relied upon said warranty in entering into the Contract.
- 28. Upon information and belief, Defendant breached said warranty in that the labor and materials furnished and installed by Defendant were defective, deficient, not of a good and merchantable quality, and/or not suitable for its intended purposes.
- 29. Plaintiff duly gave notice to Defendant of the breach of said warranty as soon as Plaintiff had knowledge thereof, and Defendant has failed to repair or replace the defective labor and/or materials furnished.
- 30. As a direct and proximate result of the Defendant's breach of express warranty, Plaintiff has been damaged in a sum presently unliquidated but expected to exceed Six Hundred Thousand (\$600,000.00) Dollars plus interest and attorney's fees.

# AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF STATES AND ALLEGES AS FOLLOWS:

- 31. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" through "30" of this complaint with the same force and effect as if fully set forth at length herein.
- 32. At the time of the Contract between the parties, Defendant impliedly warranted to Plaintiff, *inter alia*, that the materials furnished would be of good and merchantable quality, that the work and materials would conform with the requirements of the Contract documents, and that the work performed pursuant to the Contract would be in a good, substantial, workmanlike, and approved manner.
  - 33. That Plaintiff relied upon said warranty in entering into the Contract,
- 34. Upon information and belief, Defendant breached said warranty in that the labor and materials furnished and installed by Defendant were defective, deficient, not of a good and merchantable quality, and/or not suitable for its intended purposes.
- 35. Plaintiff duly gave notice to Defendant of the breach of said warranty as soon as Plaintiff had knowledge thereof, and Defendant has failed to repair or replace the defective labor and/or materials furnished.
- 36. As a direct and proximate result of the Defendant's breach of implied warranty, Plaintiff has been damaged in a sum presently unliquidated but expected to exceed Six Hundred Thousand (600,000.00) Dollars plus interest and attorney's fees.

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# AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF STATES AND ALLEGES AS FOLLOWS:

- 37. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" through "36" of this complaint with the same force and effect as if fully set forth at length herein.
- 38. At the time of the Contract between the parties, Plaintiff disclosed to Defendant the particular purpose for which the equipment and materials under the Contract were required, and Defendant impliedly warranted to Plaintiff that the equipment and materials furnished under the Contract were suitable for their intended use for the Project.
- 39. Defendant had knowledge of the purpose for which said materials were purchased and warranted the same to be fit and proper for such purpose.
  - 40. That Plaintiff relied upon said warranty in entering into the Contract.
- 41. Upon information and belief, Defendant breached said warranty in that the materials furnished and installed by Defendant were defective, deficient, not of a good and merchantable quality, and/or not suitable for its intended purposes.
- 42. Plaintiff duly gave notice to Defendant of the breach of said warranty as soon as Plaintiff had knowledge thereof, and Defendant has failed to repair or replace the defective labor and/or materials furnished.
- 43. As a direct and proximate result of Defendant's breach of implied warranty,
  Plaintiff has been damaged in a sum presently unliquidated but expected to exceed Six Hundred
  Thousand (\$600,000.00) Dollars plus interest and attorney's fees.

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# AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF STATES AND ALLEGES AS FOLLOWS:

- 44. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" through "43" of this complaint with the same force and effect as if fully set forth at length herein.
- 45. Upon information and belief, Turboden S.R.L. ("Turboden") entered into a subcontract with Defendant to provide specialized equipment and materials to be integrated into the Project.
- 46. Upon information and belief, Turboden provided equipment, materials and services for the project pursuant to its subcontract with Defendant.
- 47. Upon information and belief, Turboden has performed services, and provided equipment and materials for the Project in accordance with its subcontract with Defendant, and became entitled to payment.
- 48. On March 20, 2013, Defendant submitted Payment Application #25 in the sum of Five Hundred Forty-Five Thousand, Three Hundred and 00/100 (\$545,300.00) Dollars to Plaintiff certifying that Turboden had performed services, and provided equipment and materials for the Project in accordance with its subcontract with Defendant, and had become entitled to payment from Defendant.
- 49. On May 8, 2013 Plaintiff made payment in the sum of Five Hundred Forty Five Thousand, Three Hundred (\$545,300.00) Dollars to Defendant for said Payment Application #25.

- 50. On or about October 4, 2013 Richard Lyons, Executive Director of Plaintiff, was informed by Turboden it had not received payment from the Defendant for the work that Turboden had performed on the Project which was certified by Defendant as having been completed on March 20, 2013.
- 51. The above certifications made by Defendant to secure monies under Payment Application #25 were false.
- 52. Upon information and belief, Defendant did not intend to use the aforementioned monies to pay Turboden, despite its express statement and representation to Plaintiff that the monies tendered would be used for that purpose, and for no other purpose, and wrongfully converted such money for its own use.
- 53. The funds paid by Plaintiff to Defendant under Payment Application #25 constitute trust funds under the New York State Lien Law.
- 54. Upon information and belief, Defendant knew that the representations made by it were false when made.
- 55. Upon information and belief, Defendant made the referenced representations for the purpose and with the intent to deceive and defraud Plaintiff, and to induce Plaintiff to tender monies to Defendant that were otherwise not due and owing to Defendant.
- 56. At the time the representations were made, Plaintiff did not know the truth, believed the Defendant's representations to be true, relied on them, and as a result was induced to tender monies to Defendant that Defendant was otherwise not due.
- 57. As a direct and proximate result of the fraudulent representations made by Defendant, and Plaintiff's reliance upon those representations, Plaintiff was damaged in the

amount of Five Hundred Forty Five Thousand, Three Hundred (\$545,300.00) Dollars plus interest and attorney's fees.

WHEREFORE, Plaintiff demands judgment as follows:

- A. On the first cause of action judgment against Defendant, in a sum presently unliquidated but expected to exceed One Million, Three Hundred Eighty-One Thousand, One Hundred Sixty-Seven and 00/100 (\$1,381,167.00) Dollars plus interest and attorney's fees incurred by Plaintiff;
- B. On the second cause of action judgment against Defendant, in a sum presently unliquidated but expected to exceed Six Hundred Thousand (\$600,000.00) Dollars plus interest and attorney's fees incurred by Plaintiff;
- C. On the third cause of action judgment against Defendant, in a sum presently unliquidated but expected to exceed Six Hundred Thousand (\$600,000.00) Dollars plus interest and attorney's fees incurred by Plaintiff:
- D. On the fourth cause of action judgment against Defendant, in a sum presently unliquidated but expected to exceed Six Hundred Thousand (\$600,000.00) Dollars plus interest and attorney's fees incurred by Plaintiff;
- E. On the fifth cause of action judgment against Defendant in the sum of Five Hundred Forty Five Thousand, Three Hundred (\$545,300.000) Dollars plus interest and attorney's fees incurred by Plaintiff;

F. Together with the costs and disbursements of this action and such other and further relief as the Court deems just and proper.

Dated: Albany, New York December 2, 2013

Walter G. Breakell

BREAKELL LAW FIRM P.C.

Attorneys for Plaintiff

County of Albany

Office and Post Office Address:

10 Airline Drive

Albany, New York 12205

Telephone: (518) 869-5552