

## March 20, 2023 Meeting Minutes

The second regular meeting of the Kingsbury Town Board was conducted on March 20, 2023, at 6 Michigan Street, Hudson Falls, NY.

### MEMBERS PRESENT:

Dana Hogan, Supervisor  
William Haessly, Councilman  
James Lindsay, Councilman  
Dan Washburn, Councilman

### ABSENT:

Richard Doyle, Councilman

### OTHERS PRESENT:

Michael Graham, Highway Superintendent  
Shane Reynolds, Water Superintendent  
Todd Humiston, Code Enforcement & Dog Control Officer  
Jeffrey Meyer, Town Attorney

The meeting was called to order by Supervisor Hogan at 6:37 pm and opened for the order of business with the Flag Salute led by Councilman Haessly.

A **motion** by Councilman Lindsay seconded by Councilman Washburn and carried by a vote of 4 ayes to accept the minutes of March 6, 2023, Town Board Meeting as submitted by the Town Clerk.

The Highway Superintendent and the Town Attorney met with CHPE in February to discuss the Road Use Agreement with CHPE. There are two road crossings CHPE must do; they will pay \$25,000.00 to \$30,000.00 for the road work. A **motion** by Councilman Haessly seconded by Councilman Lindsay and carried by a vote of 4 ayes for Supervisor Hogan to sign the agreement with CHPE. (Resolution attached.)

The Board discussed the lead agency status for Krueger Energy Inc. At the Town of Kingsbury Planning Board on March 15, 2023, they adopted a resolution designating itself as lead agency. The Town Board will not dispute the lead agency status of the Planning Board for this project. Councilman Haessly suggested the Board take no action. After discussion no action was taken, and this will not slow down the project. Attorney Meyer stated Krueger Energy, Inc. will be pursuing a PILOT; but they did not disclose where.

Attorney Meyer and the Town Engineer have reviewed the contract from Bellamy Construction and are comfortable with the contract language. A **motion** by Councilman Washburn seconded by Councilman Lindsay and carried by a vote of 3 ayes; Councilman Haessly voted present, to accept the Contract Agreement with Bellamy Construction for the Burgoyne Avenue Waterline Extension and give permission to Supervisor Hogan to sign. (see attached)

**TOWN CLERK REPORT:** Town Clerk has been sorting through the excess supply of notebooks in the basement. Fifty notebooks in poor condition were disposed of. The Village of Hudson Falls Police Department took approximately 20 notebooks. There are approximately 125 to 150 notebooks in good condition. The Town Clerk is working on organizing records in the basement to create a much-needed space for Planning and Zoning records.

**COMPTROLLER:** Weekly update: The AUD Report is halfway complete, the Comptroller anticipates it will be complete early this week. She has briefly spoken with the website developer who was referred to her

by our NYCLASS rep. They will be sending her a questionnaire and some samples of website development; once received she will forward it to the Board for their input and will use it to request additional proposals from other developers.

TOWN JUSTICE: Supervisor Hogan checked in with Judge White; everything is going well.

HIGHWAY SUPERINTENDENT REPORT: Superintendent Graham thanked his staff for their great work during the last snowstorm. The last two snowstorms a resident requested the sidewalk on Dix Avenue be cleared of snow. The Village of Fort Edward has a sidewalk machine and assisted by clearing the snow on the sidewalk. The Town is grateful for their assistance, the Supervisor will send a thank you letter to the Village of Fort Edward. The Board discussed the poor condition of the sidewalk. Supervisor Hogan has submitted requests for a grant to replace the sidewalk.

COUNCILMAN REPORT: Councilman Haessly expressed his concern that the Town may not make use of the ARPA Funds before the deadline. Supervisor Hogan stated the Town has until the end of 2024 to use the ARPA Funds. Supervisor Hogan is confident the Town will have no problem spending the ARPA Funds.

SUPERVISOR REPORT: Supervisor stated the Town has verbally committed \$125,000.00 of the ARPA funds to the firehouse towards a new truck. Gerald Kearns, a member of the firehouse stated they should have the truck by December 2023.

Supervisor Hogan set up an appointment to speak with Mike Wheeler and Bob Beard of the American Legion. Supervisor Hogan discussed re-imbursing them with ARPA funds due to the loss of revenue due to the pandemic; they were unable to conduct Bingo. Mr. Wheeler reported the net revenue loss was approximately \$66,000.00. The Town can assist in the funding of a Capital Project. The American Legion would like to replace the pavement which has a lot of cracks and uneven spaces. The estimate to replace the parking lot is approximately \$125,000.00.

Supervisor Hogan reviewed the use of the ARPA Funds; \$125,000.00 to the firehouse for a new truck, \$125,000.00 to the American Legion to repave the parking lot, \$100,000.00 set aside to cover any additional costs for the Burgoyne Avenue Waterline Extension and there are other local organizations who have been seeking financial assistance. He does not believe the Town will have any problem distributing the ARPA Funds to organizations that can utilize it. The Board discussed other ways to use any excess ARPA funds.

The Town of Kingsbury is in line to receive funds when the Champlain Hudson Power Express gets underway. The first payment of the Community Host Benefit Package would be anticipated in the first quarter of 2026. There are limitations on what the funds can be used for. As we get closer to the date it is received, the Town will have a better handle on how to be able to define what you can make the contributions to.

Supervisor Hogan asked the Board if there were any strong objections to pursuing assistance to the American Legion using ARPA Funds. There is no objection from the Board.

Supervisor Hogan and the Town Clerk attended CPR training at the Kingsbury Volunteer Hose Company.

WRITTEN REPORTS: A **motion** by Councilman Washburn seconded by Councilman Lindsay and carried by a vote of 4 ayes to accept the following written reports:

Code Enforcement Officer: No. Permits 8; Fire Inspections 5; Total Fees \$905.80

Dog Control Officer: Complaints/Calls 4; Seizures 1; Mileage 56,562

Town Clerk: Paid to EnCon \$4.72; Paid to Supervisor \$2,604.79; Paid to Village of Hudson Falls \$80.00; Paid to Ag & Markets for Population Control \$69.00; Department of Health \$22.50

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Town Comptroller: Receipts \$70,277.77; Disbursements \$144,812.23

Town Justice:

For October 2022 \$7,690.00

For November 2022 \$8,176.00

For December 2022 \$6,732.50

For January 2023 \$13,061.00

Assessor Reports

There being no further business before the Board a **motion** by Councilman Haessly seconded by Councilman Washburn and carried by a vote of 4 ayes to adjourn the meeting at 7:25 pm.

Respectfully submitted,

A handwritten signature in black ink that reads "Cynthia Bardin". The signature is written in a cursive, flowing style.

Cynthia Bardin, Town Clerk

**TOWN BOARD OF THE TOWN OF KINGSBURY  
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Adopted March 28, 2023

Introduced by Councilman Haestby who moved its adoption  
Seconded by Councilman Lindsay

**RESOLUTION AUTHORIZING THE ROAD USE AND CROSSING AGREEMENT  
FOR THE CHAMPLAIN HUDSON POWER EXPRESS ELECTRIC TRANSMISSION  
CABLE SYSTEM CROSSING**

**WHEREAS**, CHPE intends to construct and operate a buried 1,250 megawatt High Voltage Direct Current electric transmission facility consisting of two solid-state cables and related equipment and appurtenances (“Project”) pursuant to the Certificate of Environmental Capability and Public Need granted to CHPE by the New York State Public Service Commission (“PSC”) on April 20, 2013 (as amended from time to time, the “Certificate”), the Project’s Environmental Management and Construction Plan (as amended from time to time) to be approved by the PSC in due course, and other permits and authorizations to conduct certain related activities, including Project construction and Project restoration activities as provided for herein (collectively, “Project Activities”); and

**WHEREAS**, on June 1, 2020, the Town Board of the Town of Kingsbury (the “Board”) by resolution, granted its consent, pursuant to Section 11 of the New York State Transportation Corporations Law, to CHPE’s proposed routing of the Project over certain municipal property (the “Resolution”); and

**WHEREAS**, a Road Use and Crossing Agreement has been prepared to accomplish the Project Activities within the Town authorizing CHPE to install and operate buried cables in, across, and under certain Town highways, while assuring the Town it will be indemnified for any and all damage and claims related to the Project Activities.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board of the Town of Kingsbury hereby approves the Road Use and Crossing Agreement a copy of which is attached hereto and a part hereof; and be it further

**RESOLVED**, the Supervisor is hereby authorized to sign said Agreement, with a file copy of the Agreement to be maintained in the Town Clerk’s Office; and be it further

**RESOLVED**, that this resolution shall take effect immediately.

**AGREEMENT**  
**CONTRACT NO. 1G – GENERAL**

THIS AGREEMENT is by and between The Town of Kingsbury (“Owner”) and Bellamy Construction (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:
- A. Project consists of the installation of new water main and related appurtenances heading south on Burgoyne Avenue from Michigan Street to Franklin Street (Phase I and Phase II).

**ARTICLE 2 – THE PROJECT**

- 2.01 *The Project, of which the Work under the Contract Documents is a part, is generally described as follows:*
- The Town of Kingsbury**  
**Burgoyne Avenue Water Main Extension Phase I & II**  
**Engineer’s Project No. 21-030**

**ARTICLE 3 – ENGINEER**

- 3.01 The part of the Project that pertains to the Work has been designed by **Kathleen A. Suozzo, PE, PLLC. (KSPE)**.
- 3.02 The Owner has retained **Kathleen A. Suozzo, PE, PLLC. (KSPE)** (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

- 4.01 Time of the Essence
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 Contract Times: Days
- A. The Work will be substantially completed within **180** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **240** days after the date when the Contract Times commence to run.

#### 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner **\$500** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
  2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$500** for each day that expires after such time until the Work is completed and ready for final payment.
  3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### 4.04 Special Damages

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. Any failure of the Contractor to provide proper services, modification, documentation, or allow access to records as required by NYSDOT, NYSDOH, or any other State funding or regulatory agency having jurisdiction over the work which impacts Grant reimbursement to the Owner shall be considered damages. Failure of Owner to obtain grant funds due to Contractor's action will result in special damages being assessed to the Contractor in the amount equal to grant funds anticipated, but not obtained by the Owner. Delay in obtaining funds shall also be considered damages.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of: **\$294,350**. All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## **ARTICLE 6 – PAYMENT PROCEDURES**

### **6.01 Submittal and Processing of Payments**

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### **6.02 Progress Payments; Retainage**

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the **15th day of each month** during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
    - a. **95** percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### **6.03 Final Payment**

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

## **ARTICLE 7 – INTEREST**

- 7.01 All amounts not paid when due shall bear interest at the rate of **0** percent per annum.

## ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
- K. Contractor expressly represents and warrants that has the expertise and experience to complete its obligations under this Contract, and that it possesses sufficient personnel, and if needed will retain additional personnel at its sole cost and expense, to complete its obligations under this Contract, including but not limited to timely performance to meet all Milestones and Contract Times.



## **ARTICLE 9 – CONTRACT DOCUMENTS**

### **9.01 Contents**

- A. The Contract Documents consist of the following:
  - 1. Invitation To Bid.
  - 2. Instructions To Bidders.
  - 3. This Agreement.
  - 4. Performance bond, EJCDC Document C-610, 2013 edition, Payment Bond, EJCDC Document C-615, 2013 edition, and other required Bonds.
  - 5. General Conditions, EJCDC Document No. C-700, 2007 edition.
  - 6. Supplementary Conditions – Amendments to the General Conditions.
  - 7. Supplementary Conditions – Additional Articles.
  - 8. Specifications as listed in the table of contents of the Project Manual.
  - 9. Drawings (not attached but incorporated by reference) sheet T-101 to sheet C-604
  - 10. Addendum 1.
  - 11. Contractor’s Bid, (Bid Form)
  - 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.
- E. The NYS DOT Grant Financing Conditions, as detailed in NYSDOT “Capital Project Agreement, Project ID #1761.94.301 and OSC Contract No. 040172.
- F. Utility easements for King’s Plaza HF, LLC (parcel # 146.00-3-19.1) and Vaughn property (parcel #146.00-3-18). NYSDOT Use and Occupancy permit (parcel # 146.00-3-17).

## **ARTICLE 10 – MISCELLANEOUS**

### **10.01 Terms**

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

#### 10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

The Town of Kingsbury

Bellamy Construction

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Dana Hogan, Supervisor

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

Town of Kingsbury

\_\_\_\_\_

6 Michigan Street

\_\_\_\_\_

Hudson Falls, NY 12839

\_\_\_\_\_

License No.: \_\_\_\_\_

*(where applicable)*

STATE OF NEW YORK

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, do swear or affirm, under penalty of perjury that:

I am the \_\_\_\_\_ of Bellamy Construction.

And I am authorized to legally bind the Company and to execute the documents on behalf of the Company.

Signature:

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023

Notary Public: