

Intro No. \_\_\_\_\_  
Date 6/21/18  
Reviewed by JLS  
Co. Attorney \_\_\_\_\_  
Date 6/14/18

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

**Sponsored by:** Finance Committee

**RESOLUTION AUTHORIZING A COST SHARING AGREEMENT BETWEEN PACEMAKER STEEL AND PIPING COMPANY, INC AND THE DEPARTMENT OF PUBLIC WORKS FOR A PARKING LOT RECONSTRUCTION PROJECT**

WHEREAS, Broome County is reconstructing a parking lot jointly and separately owned by the County and Pacemaker Steel and Piping Company, Inc., located adjacent to 2 N. Floral Avenue in the City of Binghamton, and

WHEREAS, the Commissioner of Public Works requests authorization for a cost sharing agreement between Pacemaker Steel and Piping Company, Inc. and the Department of Public Works, for said Parking Lot Reconstruction Project, attached as Exhibit "A", now, therefore, be it

RESOLVED, that this County Legislature hereby authorizes a cost sharing agreement between Pacemaker Steel and Piping Company, Inc., 2 North Floral Avenue, P.O. Box 908, Binghamton, New York 13902 and the Department of Public Works for a Parking Lot Reconstruction Project, attached as Exhibit "A" and be it

FURTHER RESOLVED, that the County Executive or his 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.

## **Exhibit A**

### **Parking Lot Construction Agreement**

This Agreement is made on February 12<sup>th</sup>, 2018, between Broome County (hereinafter referred to as the "County"), a political subdivision of the State of New York with offices located at Broome County Office Building, 60 Hawley St., Binghamton, New York 13902 and the Pacemaker Steel & Piping Co. (hereinafter referred to as "Pacemaker"), located at 2 N Floral Ave., Binghamton, New York 13905 for the removal and construction (hereinafter referred to as "Project") of its jointly and separately owned parking lot located within Broome County, as more fully described herein.

#### **Witnesseth:**

WHEREAS, Broome County is reconstructing a parking lot jointly and separately owned by the County and Pacemaker located adjacent to 2 N Floral Ave in Binghamton, New York. The survey of the parking lot is attached as "Exhibit A," and

WHEREAS, the parties have agreed to share the cost of the reconstruction on the terms set forth herein, now, therefore,

IN consideration of the mutual promises and covenants contained herein the parties agree as follows:

#### **1. Project**

The Project will consist of the following: removal and replacement of the existing parking lot and any affected underground utilities. Affected underground utilities will be replaced to existing conditions. The County will design, bid and construct the parking lot. The County will award all contracts for construction in accordance with its purchasing requirements. All construction contractors shall name Broome County and Pacemaker as additional insureds on their insurance policies.

#### **2. Ownership**

The County owns approximately 53% of the parking lot and Pacemaker owns approximately 47% of the parking lot as shown on Exhibit "A" attached. Use of physical barriers to divide the parking lot based on property lines of ownership is strictly prohibited. Use of the County's owned portion of the parking lot by Pacemaker is subject to the County's approval. Pacemaker shall have access to the County portion of the parking lot for purposes of allowing trucks access to its loading docks. Any other use shall be permitted with express written consent of the County. Consent will not be unreasonably withheld.

#### **3. Bidding**

Prior to bidding, Pacemaker will be permitted to review and comment on bid documents for the Project.

The County will solicit bids and intendeds to award contracts for construction of the Project to the lowest bidder in accordance with State and County laws. Broome County Engineering is responsible for designing and stamping the proposed construction plan. All efforts will be made to satisfy Pacemaker operational requests and the County will endeavor to incorporate comments of Pacemaker into bid documents. However, the County engineer of record shall make the final decision on the design.

**4. Cost of Project:**

The total cost of the project is two-hundred, sixty-seven thousand, six-hundred, five (\$267,605.00) dollars. Pacemaker agrees to contribute in an amount not to exceed ninety-two thousand, seven-hundred (\$92,700.00) dollars. The County agrees to contribute one-hundred, seventy-four thousand, nine-hundred, five (\$174,905.00) dollars. In the event the Project bids exceed the estimated costs set forth in this paragraph, Pacemaker's contribution is not to exceed \$92,700.00.

Pacemaker agrees to pay the County sixty-nine thousand, five-hundred, twenty-five (\$69,525.00) prior to the construction of the Project. Pacemaker will pay the County the remaining balance of twenty-three thousand, one-hundred, seventy-five (\$23,175.00) dollars in full within 30 days after the completion of the Project.

In the event change orders result in the cost of the Project exceeding the total cost of \$267,605.00, the party or parties owning the affected portion of the parking lot is responsible for said cost(s). The change order must be signed by the effected party or parties.

In the event the bids for the Project are less than the County's total contribution or \$174,905.00, each party's respective contribution of the cost will be reduced in amounts equal with each party's respective percentage of ownership of the parking lot referenced in Paragraph "2."

**5. Maintenance of Project**

In the event of the necessity of material repairs of the Project, Pacemaker must notify the County within 30 days upon inspection. The County will make said repairs on a time and materials basis for each process, subject to County approval. The County will require its selected contractor to post a two (2) year warranty for work performed. Other than the warranty provided by the contractor, the County does not warrant the work performed pursuant to the Project and will not be responsible for any cost(s) associated with premature parking lot failure, defects due to design, construction errors or unforeseen circumstances. For work other than that subject to warranty, the County and Pacemaker will be responsible for maintaining and repairing its respective owned portion of the parking lot.

**6. Term:**

The term of this Agreement shall be effective as of the date of this agreement of February \_\_\_\_, 2018. This agreement shall terminate upon completion of the construction of the parking lot and payment by Pacemaker of the balance owed for the reconstruction.

**7. Termination:**

The County and Pacemaker shall have the right to terminate that portion of this agreement that relates to the maintenance and repairs of the Project by the County upon written notice. The notice of termination must be given at least six (6) months in advance for termination to take effect.

**8. Assignment:**

Should Pacemaker determine to sell or transfer its facility located at 2 N Floral Ave., Binghamton, New York 13905, Pacemaker agrees to provide for the assignment of this Agreement to the purchaser or operator so that this Agreement shall remain in full force and effect. In the event Pacemaker should be dissolved and cease to be a corporation, this Agreement shall be binding on whatever entity succeeds Pacemaker and Pacemaker agrees as part of the dissolution process to take all steps necessary to effectuate the provisions of this subsection.

**9. Notices:**

All notices provided for in this Agreement shall be in writing addressed to and either delivered personally to, or sent by regular mail to, or sent by courier service to the respective offices of the Broome County Engineer and the Vice President of Pacemaker, or to such representatives as they or any of them may from time to time designate in writing.

**10. Indemnification:**

Each Party agrees to indemnify, defend and hold harmless the other Party and its Affiliates, and their directors, officers, employees, agents, successors and assigns from and against all liabilities, losses, damages and costs (including reasonable attorneys' fees) they may suffer as the result of claims, demands, actions, suits or judgments against them resulting from or arising out of: (a) the negligence, recklessness or willful misconduct on the part of the indemnifying Party; (b) the failure by the indemnifying Party to comply with applicable Laws in connection with the exercise of any of its rights or the performance of any of its obligations hereunder; and/or (c) any breach of this Agreement by the indemnifying Party. Insurance requirements attached as Exhibit "B" are incorporated herein.

**11. Waiver of Terms or Conditions**

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**12. Severability**

In the event that any provision of this Agreement shall be held unconscionable, unenforceable, or void for any reason by any court of competent jurisdiction, it is agreed that the provision in question shall be modified to eliminate the elements of concern to the court and as modified shall be binding on the parties hereto. The remaining provisions shall not be affected by the action of any tribunal or modification of such provision, and shall remain in full force and effect.

**13. Entire Agreement**

This Agreement represents the entire Agreement between the Company and County and supersedes all prior Agreements or representations, whether written or oral, with respect to this subject matter hereof. No provision of this Agreement may be changed or amended except by written Agreement signed by both parties.

**14. Captions and Headings.**

Captions and headings throughout this agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this agreement nor in any way affect this Agreement.

**15. Governing Law.**

This Agreement shall be governed and construed in accordance with the laws of the State of New York.

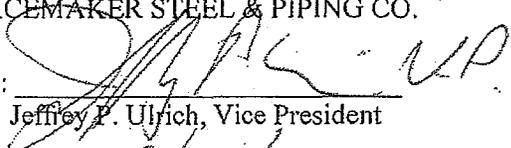
IN WITNESS WHEREOF, County and Pacemaker have caused their respective, duly authorized officers to execute this Agreement under seal as of the day and year first above written.

COUNTY OF BROOME

By: \_\_\_\_\_  
Jason T. Garnar, County Executive

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

PACEMAKER STEEL & PIPING CO.

By:  VP  
Jeffrey P. Ulrich, Vice President

Date: 2/12/18

PACEMAKER STEEL & PIPING CO. INC.  
2 NORTH FLORAL AVE.  
PO BOX 908  
BINGHAMTON, NEW YORK 13902  
PHONE # 1-800-833-3525  
PHONE # 1-607-798-0671  
FAX # 1-607-798-0676