

**CITY OF LOCKPORT**  
**CORPORATION PROCEEDINGS**

Lockport Municipal Building

Regular Meeting  
Official Record

October 21, 2020  
5:30 P.M.

Mayor Michelle M. Roman called the meeting to order.

**ROLL CALL**

The following Common Council members answered the roll call:

Aldermen Abbott, Devine, Kantor, Oates, Schratz and Van De Mark.

**INVOCATION**

**MAYOR'S UPDATE**

**RECESS**

Recess for public input.

**102120.1**

**APPROVAL OF MINUTES**

On motion of Alderman Devine, seconded by Alderman \_\_\_\_\_, the minutes of the Regular Meeting of October 7, 2020 are hereby approved as printed in the Journal of Proceedings. Ayes \_\_\_\_\_. Carried.

**PUBLIC HEARING**

The Mayor announced a public hearing on Confirming Refuse & Recycling Re-levy.

The Mayor asked the City Clerk if any petitions or communications relative to said Re-levy have been received.

Recess for public input.

The Mayor closed the public hearing.

**PUBLIC HEARING**

The Mayor announced a public hearing on a request for a Special Use Permit to operate a daycare/drop off program at 25 Walnut Street.

The Mayor asked the City Clerk if any petitions or communications relative to said Special Use Permit have been received.

10/7/20 Terry Harmon, Lockport Planning and Zoning Board – the board recommends the request.

Recess for public input.

The Mayor closed the public hearing.

#### **FROM THE MAYOR**

##### **Appointments:**

10/14/20 Christopher B. Sherman, 404 Walnut Street, Lockport, NY – appointed to the Lockport Housing Authority to fill the unexpired term of Jon D. Wiley. Said term expires on April 26, 2025.

Received and filed.

10/19/20 Thomas E. Hull, 313 Willow Street, Lockport, NY – reappointed to the Zoning Board of Appeals. Said term expires on November 15, 2022.

Received and filed.

10/16/20 Mark A. Cocco, 21 Allen Street, Lockport, NY – appointed to Sr. Water/Sewer Maintenance Worker in the Water Distribution Department effective October 12, 2020. Said appointment is Permanent and subject to the City of Lockport Municipal Civil Service rules and regulations.

Received and filed.

10/16/20 Mark P. Davis, Jr., 8548 Ridge Road, Apt. B, Gasport, NY – appointed to Sr. Water/Sewer Maintenance Worker in the Water Distribution Department effective October 12, 2020. Said appointment is Permanent and subject to the City of Lockport Municipal Civil Service rules and regulations.

Received and filed.

#### **FROM THE CITY CLERK**

The Clerk submitted payrolls, bills for services and expenses, and reported that the Department Heads submitted reports of labor performed in their departments. Referred to the Finance Committee.

##### **Communications** (which have been referred to the appropriate City officials)

10/21/20 Paul K. Oates, City Clerk – notification that the Lockport Municipal Offices will be closed the following days in November.

Tuesday, November 3<sup>rd</sup>

Election Day

Wednesday, November 11<sup>th</sup>

Veteran's Day

Thursday & Friday, November 26<sup>th</sup> & 27<sup>th</sup>

Thanksgiving Holiday

The garbage collection schedule will remain the same for November 3<sup>rd</sup> and 11<sup>th</sup>.

For the Thanksgiving Holiday, garbage collection will be as follows:

Normal Pick Up Day

Thursday, November 26<sup>th</sup>  
Friday, November 27<sup>th</sup>

Holiday Pick Up Day

Friday, November 27<sup>th</sup>  
Saturday, November 28<sup>th</sup>

Referred to the Media.

**Notice of Complaint:**

10/7/20 577 Willow Street – trees  
10/9/20 102 Grand Street – tree  
10/16/20 64 Crosby Avenue – tree  
10/19/20 143 Continental Drive - trees  
10/19/20 221 Genesee Street - tree

Referred to the Director of Streets and Parks.

**Notice of Claim:**

10/19/20 Kaylee Irwin, 1707 West Creek Rd., Burt, NY  
Referred to the Corporation Counsel.

**MOTIONS & RESOLUTIONS**

**102120.2**

By Alderman Oates:

Resolved, that the Mayor and City Clerk be authorized to issue orders in favor of the claimants for payrolls, bills, and services to be paid on October 22, 2020 as follows:

General Fund	Fund A	\$ 65,137.39
Water Fund	Fund FX	\$ 9,822.24
Sewer Fund	Fund G	\$ 19,684.97
Refuse Fund	Fund CL	\$100,399.83
Self Insurance	Fund MS	\$ 95,546.50
Community Dev.	Fund CD	\$ 10,075.00
Payroll	Pay Date 10/8	\$451,589.00

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.3**

By Alderman Schratz:

WHEREAS, the City Treasurer submitted to the City Council all delinquent assessments, penalties, charges or fees and any other amounts to be added to taxes, and

WHEREAS, the Common Council conducted a virtual public hearing on October 21, 2020 at 5:30 P.M. in the Common Council Chambers, Lockport Municipal Building, One Locks Plaza, Lockport, New York in accordance with section 155-7 A (Solid Waste) of Chapter 158 of the City Code to confirm the delinquent accounts to re-levy.

NOW THEREFORE BE IT

RESOLVED, that the following delinquent accounts totaling \$194,270.94 are hereby confirmed and shall be inserted in the annual tax rolls and be a part of the annual tax upon said parcels against which such amounts are charged and shall be subject to all the provisions of the City Charter:

<u>Account</u>	<u>Amount</u>
Refuse	\$178,685.94
Re-levy Fee	\$ 15,585.00

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

#### **102120.4**

By Alderman Abbott:

WHEREAS, the City of Lockport Common Council directed the Planning Board to conduct a of review the Comprehensive Plan and the uses of property in the RA Reserve Area District to determine whether any changes to the Plan or the zoning code and/or zoning map are appropriate; and

WHEREAS, the Planning Board has completed its review and submitted its report to the Council; and

WHEREAS, a public hearing was duly called and held on the proposed Partial Update of the Comprehensive Plan; and

WHEREAS, the proposed update was duly submitted to the County Planning Board for review and recommendation and that, board recommended approval of the proposed Partial Update of the Comprehensive Plan; and

WHEREAS, the Common Council has reviewed the proposed Partial Update of the Comprehensive Plan under State Environmental Quality Review Act and issued a Negative Declaration; and

WHEREAS, the Common Council wishes to adopt the recommendations of the Planning Board.

NOW THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LOCKPORT as follows

1 The Proposed Partial Update of the Comprehensive Plan Relating to the RA-Reserve Area District, a copy of which is attached and incorporated herein, is hereby adopted.

2. This Resolution is effective immediately.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

#### **102120.5**

By Alderman Abbott:

### **City of Lockport**

### **Local Law No. 5 of the year 2020**

A LOCAL LAW Amending Special Uses Section 190-77 of the Lockport City Code

Be it hereby enacted by the City Council of the City of Lockport as follows:

Section 1: Section 190-77 of the City Code of the City of Lockport shall be amended to read in its entirety as follows:

Section 190-77 Special uses.

Notwithstanding any other provision of the City Code and Charter, the special uses allowed in the RA Reserve Area District shall be as follows:

- A. Parks, golf courses, athletic fields, arenas, and other similar uses, including concessions related to those uses.
- B. Essential services.
- C. Land reclamation operations other than refuse and garbage landfill.
- D. Cemeteries.
- E. Public or privately owned community centers.

Section 2. This Local Law shall be effective upon filing with the Secretary of State pursuant to the Municipal Home Rule Law

Seconded by Alderman \_\_\_\_\_. A roll call vote was taken which resulted as follows:

Alderman Abbott	VOTING	_____
Alderman Devine	VOTING	_____
Alderman Kantor	VOTING	_____
Alderman Oates	VOTING	_____
Alderman Schratz	VOTING	_____
Alderman Vandemark	VOTING	_____

The Local Law was thereupon declared duly adopted.

#### **102120.6**

By Alderman Kantor:

RESOLVED, By the Common Council of City of Lockport that Retention and Disposition Schedule for New York Local Government Records (LGS-1), issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for local government records, is hereby adopted for use by all officers in legally disposing of valueless records listed therein, and be it further

RESOLVED, that in accordance with Article 57-A:

(a) only those records will be disposed of that are described in Retention and Disposition Schedule for New York Local Government Records (LGS-1), after they have met the minimum retention periods described therein;

(b) only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

#### **102120.7**

Alderman Abbott:

**WHEREAS**, the City of Lockport received an application from Ruhlmann Farm Acres LLC and **OYA Ruhlmann A LLC** for a Special Use Permit for a solar energy system to be located at **251 Summit Street**, Lockport, New York; and

**WHEREAS**, the City of Lockport Planning Board reviewed the proposed project and recommended approval to the Mayor and Common Council of the City of Lockport; and

**WHEREAS**, the City of Lockport Common Council, on Wednesday, October 7, 2020, did hold a duly advertised Public Hearing at Municipal Building, One Locks Plaza, Lockport, New York 14094 regarding the application for a Special Use Permit for a solar energy system located at **251 Summit Street**, Lockport, New York 14094 and at such public hearing every party wishing to be heard was heard; and

**WHEREAS**, the Common Council has considered all relevant testimony, documents, and all other information presented and placed before it;

**NOW THEREFORE BE IT RESOLVED** that based on the testimony, documents, and other information presented, the Common Council makes the following findings:

a. That the use, solar energy system, is designed, located and proposed to be operated so the public health, safety, welfare and convenience will be protected; *to wit*: the project has been designed and located such that the solar panels will be behind structures and vegetation substantially reducing its visibility and impact to neighboring properties and public highways, the project is also located in a sparsely populated area of the City, and

b. That the use, solar energy system, will not cause substantial injury to the value of other property in the neighborhood where it is located, *to wit*: the project has been designed and located, such that the solar panels will be behind structures and vegetation thus substantially reducing its visibility and impact to neighboring properties, berms and landscaping have also been made part of the project to reduce visibility to neighbors, and the applicant has exceeded the setbacks required under the City Code for distances from neighboring properties, structures and lot lines; and

c. That the use, solar energy system, will be compatible with adjoining development and the character of the neighborhood where it is located, *to wit*: the neighborhood the project is located in is zoned residential. However, it generally consists of large lots with a few single-family homes and/or large farming operations and woods. The parcels are also within close proximity to the Transit Road commercial corridor. The character of the neighborhood where the project is located will not be affected since the project has been designed to substantially minimize and obscure the solar panels from view of neighboring properties and public highways; and

d. That the use, solar energy system, provide adequate screening to preserve the character of the neighborhood, *to wit*: the project does require a berm and additional landscape plantings; and

e. That the use, solar energy system, provide adequate off-street and loading and the special use will not substantially interfere with traffic on abutting streets, *to wit*: while the project will cause an increase in traffic on Summit Street and Ruhlmann Road during construction that impact is not expected to be substantial and will be limited in time to only the period of construction. The nature of the project does not require the presence of employees or other staff beyond periods of required maintenance, and

**BE IT FURTHER RESOLVED** that the Special Use Permit for operation of solar energy systems at **251 Summit Street** is approved with the following conditions:

A. Landscape buffering consistent with the landscape plan submitted by or on behalf of **OYA Ruhlmann A LLC** with the continuous live vegetation, evergreen trees planted in a staggered format, forever green, dense, and sufficiently high to block view of the fence and solar energy systems at ground level from the street and neighboring properties; and

B. Solar farms are to be constructed and operated in accordance with the Guidelines for Agricultural Mitigation for Solar Energy Projects (rev. dated 4/19/2018).

C. Decommissioning Plan.

1. At the completion of construction of the Project (the "Start Date"), **OYA Ruhlmann A LLC**, its successors and assigns (hereinafter the "Owner") shall post a Decommissioning Bond (the "Bond") for the benefit of the City in the amount set forth in Table 4 of the Decommissioning Plan submitted to the Planning Board and City of Lockport. At the end of each one-year period following the Start Date (the "Anniversary Date"), Owner shall renew the Bond according to the Decommissioning Bond Value Schedule in Table 4 of the Decommissioning Plan. Upon posting of the Bond, the Owner will provide a copy of the related Bond policy with contact information for the financial provider. Owner or its successor in title to this Project shall be responsible for renewing such Bond as long as the system remains in commercial operation, which is expected to be for a period of thirty-five (35) years.

The Parties agree that the Bond shall be used solely to pay for any Decommissioning costs of the Project. Owner shall have no further payment obligations in connection with Decommissioning during the operation of the Project provided that Owner complies with posting the Bond in accordance with this Agreement. Nonetheless, in the event the actual Decommissioning costs exceed the amount covered by the Bond, Owner or its successor in title to this Project shall be responsible for any such excess costs, provided such excess costs are not as a result of the City using any amount covered by the Bond for any reason other than to pay for Decommissioning costs of the Project. In the event the City uses any amount from the Bond for any reason other than to pay for Decommissioning costs related to the Project, the City shall be responsible to pay for such amount used and shall indemnify and hold harmless the Owner and Landowner of the Project from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from the City's use of the funds.

2. Decommissioning as used in this Agreement shall mean the removal and disposal of all structures, equipment and accessories, including subsurface foundations and all other material, concrete, or debris, that were installed in connection with the Project and the reasonable restoration of the parcel of land on which the Project is built to either of the following, at the Landowner's option ("Decommissioning"): (i) the condition such lands were in prior to the development, construction and operation of the Project, including restoration, regrading, and reseeding, or (ii) the condition designed by a subsequent Owner or developer as agreed upon with the Landowner and the City. Costs of Decommissioning under this agreement include labor, professional services and any other costs reasonably associated with such restoration.

3. The Parties agree that the Decommissioning process of the Project may commence (and the funds to pay for the cost of any such Decommissioning from the Bond may be called on) for the following reasons, each (a "Triggering Event"):

- (a) Owner provides written notice to the City of its intent to retire or decommission the Project (the 'Owner Decommissioning Notice')
- (b) Commercial operation of the Project has not started within eighteen (18) months of the completion of construction, or
- (c) The Project "ceases to be operational" (as defined below) in its entirety for more than twelve (12) consecutive months.

In event the Owner fails to initiate Decommissioning of the Project within one-hundred eighty (180) days after providing Owner Decommissioning Notice, as defined in Triggering Event (a), or Owner fails to provide a reasonable explanation for the delay in the construction or cessation of operation of the Project, then the City may commence Decommissioning of the Project through use of the Bond, provided that the City issues a notice to Owner and Landowner (the "City Decommissioning Notice") and allows the Owner thirty (30) days to respond to the City Decommissioning Notice prior to the commencement of Decommissioning. For the purposes of this Agreement, "ceases to be operational" shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of Owner. Any one of the events outlined in this Section 3 shall be deemed a Triggering Event based upon which the City shall have the right to demand Decommissioning.

4. Upon the occurrence of any of the Triggering Events in Section 3 above, the City shall have the right, but not the obligation, to perform the Decommissioning itself if the Owner or its successors or assigns, or any other person under whose control the Project fails, refuses, or neglects to initiate the Decommissioning within one-hundred eighty (180) days of such occurrence. In such event, Owner (or its successors or assigns) and Landowner (or any of Landowner's heirs or assigns) agrees to give the City right of reasonable access on Landowner's property to decommission the Project and shall defend, hold harmless and indemnify the City for any and all claims, liability, loss or damage arising out of its exercise of its right to decommission this Project as provided for herein, except in cases of negligence by the City or any of its contractors or agents. For clarity, nothing in this Section 4 or this



Agreement shall infer any obligation or responsibility, financial or otherwise, to Landowner (or any of Landowner's assigns) for any costs of Decommissioning the Project.

5. Upon removal of the infrastructure and disposal of the components of the Project from the site on which the Project is built, and restoration of the properties to their pre-project state, or to the condition designed by a subsequent Owner or developer as agreed upon with the Landowner and the City, then the Owner shall have no further obligation to the City.

6. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective administrators, successors and assigns. In accordance with the provisions of section 109 of the New York General Municipal Law, Owner and Landowner are prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of any right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Owner shall provide the City with proof that it either carries sufficient Workers' Compensation insurance coverage for its employees in New York or that it is exempt from such requirement.

8. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.

9. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York.

10. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

#### **102120.8**

By Alderman Kantor:

WHEREAS, Red Jacket Lodge #646, in conjunction with the Ismailia Shriners, would like to conduct a food drive to benefit ValorWNY, which is a food bank for needy veterans and their families, and

WHEREAS, the volunteers collecting the donations will be wearing gloves and masks throughout the event, and adhering to COVID-19 protocols in accordance with New York State guidelines, and

WHEREAS, there will be no change to traffic or city street flow, NOW, THEREFORE, BE IT

RESOLVED, that pursuant to their request, permission is hereby granted to the Red Jacket Lodge #646 to conduct a Drive-Thru Food Drive in the City parking lot next to the Masonic Hall, 1 Cottage Street, on November 14, 2020, from 9am until 1pm.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.8A**

By Alderman Vandemark:

Resolved, that the request for a special use permit made by The Chapel to operate a daycare / drop off program until June 30, 2021, located at 25 Walnut Street, situated in a B-2 Zone, be and the same is hereby approved, subject to the following provisions:

No change in character of neighborhood.

No excessive noise or disturbance of neighborhood.

No appreciable change in traffic.

No outside storage of materials.

Special permits can be indefinite or limited to a specific time.

The special permit shall go to the applicant only and shall terminate on the sale or transfer of the property, and further it terminates if the use permitted is abandoned for more than one year, if any of the conditions enumerated herein have changed, and in the discretion of the Common Council make such use unsuitable.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.8B**

By Alderman Abbott:

**WHEREAS**, the City of Lockport received an application from Ruhlmann Farm Acres LLC and **OYA Ruhlmann B LLC** for a Special Use Permit for a solar energy system to be located at **219 Summit Street**, Lockport, New York; and

**WHEREAS**, the City of Lockport Planning Board reviewed the proposed project and recommended approval to the Mayor and Common Council of the City of Lockport; and

**WHEREAS**, the City of Lockport Common Council, on Wednesday, October 7, 2020, did hold a duly advertised Public Hearing at Municipal Building, One Locks Plaza, Lockport, New York 14094 regarding the application for a Special Use Permit for a solar energy system located at **219 Summit Street**, Lockport, New York 14094 and at such public hearing every party wishing to be heard was heard; and

**WHEREAS**, the Common Council has considered all relevant testimony, documents, and all other information presented and placed before it;

**NOW THEREFORE BE IT RESOLVED** that based on the testimony, documents, and other information presented, the Common Council makes the following findings:

a. That the use, solar energy system, is designed, located and proposed to be operated so the public health, safety, welfare and convenience will be protected; *to wit*: the project has been designed and located such that the solar panels will be behind structures and vegetation substantially reducing its visibility and impact to neighboring properties and public highways, the project is also located in a sparsely populated area of the City, and

b. That the use, solar energy system, will not cause substantial injury to the value of other property in the neighborhood where it is located, *to wit*: the project has been designed and located, such that the solar panels will be behind structures and vegetation thus substantially reducing its visibility and impact to neighboring properties, berms and

landscaping have also been made part of the project to reduce visibility to neighbors, and the applicant has exceeded the setbacks required under the City Code for distances from neighboring properties, structures and lot lines; and

c. That the use, solar energy system, will be compatible with adjoining development and the character of the neighborhood where it is located, *to wit*: the neighborhood the project is located in is zoned residential. However, it generally consists of large lots with a few single-family homes and/or large farming operations and woods. The parcels are also within close proximity to the Transit Road commercial corridor. The character of the neighborhood where the project is located will not be affected since the project has been designed to substantially minimize and obscure the solar panels from view of neighboring properties and public highways; and

d. That the use, solar energy system, provide adequate screening to preserve the character of the neighborhood, *to wit*: the project does require a berm and additional landscape plantings; and

e. That the use, solar energy system, provide adequate off-street and loading and the special use will not substantially interfere with traffic on abutting streets, *to wit*: while the project will cause an increase in traffic on Summit Street and Ruhlmann Road during construction that impact is not expected to be substantial and will be limited in time to only the period of construction. The nature of the project does not require the presence of employees or other staff beyond periods of required maintenance, and

**BE IT FURTHER RESOLVED** that the Special Use Permit for operation of solar energy system at 219 Summit Street is approved with the following conditions:

A. Landscape buffering consistent with the landscape plan submitted by or on behalf of **OYA Ruhlmann B LLC** with the continuous live vegetation, evergreen trees planted in a staggered format, forever green, dense, and sufficiently high to block view of the fence and solar energy system at ground level from the street and neighboring properties; and

B. Solar farms are to be constructed and operated in accordance with the Guidelines for Agricultural Mitigation for Solar Energy Projects (rev. dated 4/19/2018).

C. Decommissioning Plan.

1. At the completion of construction of the Project (the "Start Date"), **OYA Ruhlmann B LLC**, its successors and assigns (hereinafter the "Owner") shall post a Decommissioning Bond (the "Bond") for the benefit of the City in the amount set forth in Table 4 of the Decommissioning Plan submitted to the Planning Board and City of Lockport. At the end of each one-year period following the Start Date (the "Anniversary Date"), Owner shall renew the Bond according to the Decommissioning Bond Value Schedule in Table 4 of the Decommissioning Plan. Upon posting of the Bond, the Owner will provide a copy of the related Bond policy with contact information for the financial provider. Owner or its successor in title to this Project shall be responsible for renewing such Bond as long as the system remains in commercial operation, which is expected to be for a period of thirty-five (35) years.

The Parties agree that the Bond shall be used solely to pay for any Decommissioning costs of the Project. Owner shall have no further payment obligations in connection with Decommissioning during the operation of the Project provided that Owner complies with posting the Bond in accordance with this Agreement. Nonetheless, in the event the actual

Decommissioning costs exceed the amount covered by the Bond, Owner or its successor in title to this Project shall be responsible for any such excess costs, provided such excess costs are not as a result of the City using any amount covered by the Bond for any reason other than to pay for Decommissioning costs of the Project. In the event the City uses any amount from the Bond for any reason other than to pay for Decommissioning costs related to the Project, the City shall be responsible to pay for such amount used and shall indemnify and hold harmless the Owner and Landowner of the Project from any claim, loss, damage, liability or costs (including any reasonable attorney costs) arising from the City's use of the funds.

2. Decommissioning as used in this Agreement shall mean the removal and disposal of all structures, equipment and accessories, including subsurface foundations and all other material, concrete, or debris, that were installed in connection with the Project and the reasonable restoration of the parcel of land on which the Project is built to either of the following, at the Landowner's option ("Decommissioning"): (i) the condition such lands were in prior to the development, construction and operation of the Project, including restoration, regrading, and reseeding, or (ii) the condition designed by a subsequent Owner or developer as agreed upon with the Landowner and the City. Costs of Decommissioning under this agreement include labor, professional services and any other costs reasonably associated with such restoration.

3. The Parties agree that the Decommissioning process of the Project may commence (and the funds to pay for the cost of any such Decommissioning from the Bond may be called on) for the following reasons, each (a "Triggering Event"):

- a. Owner provides written notice to the City of its intent to retire or decommission the Project (the 'Owner Decommissioning Notice')
- b. Commercial operation of the Project has not started within eighteen (18) months of the completion of construction, or
- c. The Project "ceases to be operational" (as defined below) in its entirety for more than twelve (12) consecutive months.

In event the Owner fails to initiate Decommissioning of the Project within one-hundred eighty (180) days after providing Owner Decommissioning Notice, as defined in Triggering Event (a), or Owner fails to provide a reasonable explanation for the delay in the construction or cessation of operation of the Project, then the City may commence Decommissioning of the Project through use of the Bond, provided that the City issues a notice to Owner and Landowner (the "City Decommissioning Notice") and allows the Owner thirty (30) days to respond to the City Decommissioning Notice prior to the commencement of Decommissioning. For the purposes of this Agreement, "ceases to be operational" shall mean no generation of electricity, other than due to repairs to the Project or causes beyond the reasonable control of Owner. Any one of the events outlined in this Section 3 shall be deemed a Triggering Event based upon which the City shall have the right to demand Decommissioning.

4. Upon the occurrence of any of the Triggering Events in Section 3 above, the City shall have the right, but not the obligation, to perform the Decommissioning itself if the Owner or its successors or assigns, or any other person under whose control the Project fails, refuses, or neglects to initiate the Decommissioning within one-hundred eighty (180) days of such occurrence. In such event, Owner (or its successors or assigns) and Landowner (or any of Landowner's heirs or assigns) agrees to give the City right of reasonable access on Landowner's property to decommission the Project and shall defend, hold harmless and indemnify the City for any and all claims, liability, loss or damage arising out of its exercise of its right to decommission this Project as provided for herein, except in cases of negligence by the City or any of its contractors or agents. For clarity, nothing in this Section 4 or this Agreement shall infer any obligation or responsibility, financial or otherwise, to Landowner (or any of Landowner's assigns) for any costs of Decommissioning the Project.

5. Upon removal of the infrastructure and disposal of the components of the Project from the site on which the Project is built, and restoration of the properties to their pre-project state, or to the condition designed by a subsequent Owner or developer as agreed upon with the Landowner and the City, then the Owner shall have no further obligation to the City.

6. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective administrators, successors and assigns. In accordance with the provisions of section 109 of the New York General Municipal Law, Owner and Landowner are prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of any right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Owner shall provide the City with proof that it either carries sufficient Workers' Compensation insurance coverage for its employees in New York or that it is exempt from such requirement.

8. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.

9. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York.

10. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all parties.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.8C**

By Alderman XXXX:

WHEREAS, the City of Lockport Common Council directed the Planning Board to conduct a review of the Comprehensive Plan and the uses of property in the RA Reserve Area

10/21/19

District to determine whether any changes to the Plan or the zoning code and/or zoning map are appropriate; and

WHEREAS, the Common Council declared the proposed amendment of the RA Reserve Area District Comprehensive Plan a Type I action under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, Because the change in the Comprehensive Plan could have resulted in the loss of open space, loss of recreational resource, increase in traffic, increase in density , drainage and infrastructure changes, significant increase in demand for public services, and potentially significant cumulative impacts (along with changes proposed in the neighboring Town of Lockport), the Board found the Plan Amendment may result in a significant negative impact on the environment and issued a Positive Declaration under SEQRA; and

WHEREAS, under the SEQRA regulations (6 N.Y.C.R.R. 617.9) when on the basis of the environmental investigation and comments made thereon, the lead agency has determined that the action will not have a significant adverse impact on the environment, a negative declaration must then be prepared, filed and published in accordance with 6 N.Y.C.R.R. 617.12; and

WHEREAS, the Planning Board has recommended that no change be made to the allowable uses under the District except to recognize uses already occurring, and therefore no new environmental impacts will occur nor be permitted under the amended Comprehensive Plan,

NOW THEREFORE BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LOCKPORT AS FOLLOWS

1. The Partial Comprehensive Plan Amendment to the RA Reserve Area District and the Local Law implementing the amendment to the RA Reserve Area District will not have any significant adverse impacts upon the environment, and therefore the Common Council issues the attached Negative Declaration of Environmental Significance, which is incorporated herein.
2. Notice of this Negative Declaration shall be published in the ENB and distributed in accordance with the SEQRA regulation, and notice of the Common Council's action shall be provided to the County Planning Board.
3. This resolution shall be effective immediately.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.8D**

By Alderman XXXX:

Resolved, that the Mayor, subject to Corporation Counsel approval, be and the same is hereby authorized and directed to execute a contract with Sirius Computer Solutions, Inc., the lowest responsible bidder, for assistance in the process of transferring City data in electronic format from the current VMware environment to an SQL server as the City's primary facility for

virtual technology, with Niagara County's servers acting as back-ups, at a cost of \$17,166.00, to be charged to account #A.1680.54115.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

**102120.9**

**ADJOURNMENT**

At \_\_\_\_\_ P.M. Alderman Devine moved the Common Council be adjourned until 5:30 P.M., Wednesday, November 4, 2020.

Seconded by Alderman \_\_\_\_\_ and adopted. Ayes \_\_\_\_\_.

PAUL K. OATES  
City Clerk