

**TOWN OF NIAGARA
TOWN BOARD MEETING
7105 Lockport Road
Niagara Falls, NY 14305**

MINUTES

Tuesday, March 21, 2023

6:30 PM

PUBLIC HEARING

None

OPEN MEETING (Pledge, Prayer, Roll Call)

Supervisor Lee Wallace called the meeting to order with the Pledge of Allegiance.

Deputy Supervisor Teixeira recited a prayer. Attached is a Memorial Page of all the deceased Town residents who passed away recently.

Roll Call:

Present: Supervisor Lee S. Wallace, Charles F. Teixeira, Deputy Supervisor Councilman Richard A. Sirianni, Councilman Marc M. Carpenter

Absent:

Excused: Councilman Samuel Gatto.

Also, present Sylvia Virtuoso, Town Clerk

PRIVILEGE OF THE FLOOR (Announce changes to agenda, if any)

(§50-3 Privilege of the floor. Only members of the public sector are allowed to speak at this time and may address any agenda or non-agenda item.

(3-minute limit)

APPROVAL OF MINUTES

1. Town Board Meeting of February 21, 2023

Motion to approve by Councilman Teixeira, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none

Abstain – none

Motion carried.

PAYMENT OF BILLS

General Fund prepay vouchers [A] \$22,913.88

General Fund vouchers [A] \$37,685.01

Sewer Fund prepay vouchers [G] \$2,523.91

Sewer Fund vouchers [G] \$787.05

Water Fund vouchers [F] \$1,742.82

Water Fund vouchers prepay [F] \$1,332.39

Highway Fund vouchers [DA] \$38,001.60

Highway Fund prepay vouchers [DA] \$88.45

Fire Protection prepay vouchers [SF]

Fire Protection [SF] \$38,726.38

Street Lighting vouchers [SL]

Street Lighting Pre-Pay vouchers [SL] \$9,877.10

Trust & Agency Pre-Pay vouchers [TA] \$8,000.00

Trust & Agency vouchers [TA] \$4,093.02

Capital Projects prepay vouchers [H] \$5,208.49

Capital Projects vouchers [H]

Motion to approve by Councilman Sirianni second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none

Abstain – none

Motion carried.

AGENDA

1. Resolution to approve the following Board Amendments:

Increase DA9901.9 Transfer other fund 228,811.83

Increase DA4089 Federal Aid 228,811.83

Increase DA5031 Interfund Transfer 183,291.35

Increase DA5130.02 Machinery Equipment 183,291.35

Increase SF5031 Interfund Transfer 38,520.48

Increase SF3410.4 Fire Protection 38,520.48

Amendment is necessary to move funds from American Rescue Funds into Highway for Mower and Fire for 12 Radios previous approved for purchase using American Rescue Funds. (Wallace)

Motion to approve by Councilman Teixeira, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none

Abstain – none

Motion carried.

2. Resolution to approve the Doyle Security Systems bid to upgrade security and fire systems throughout the Town Hall, Rec Center and Maintenance Garage at a cost of \$16,365.00. (Guiliani)

Motion to approve by Councilman Teixeira, second by Councilman Carpenter.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none

Abstain – none

Motion carried.

3. Resolution to approve the Collective Bargaining Agreement between the Town of Niagara and the United Public Service Employees Union (Town of Niagara PT Police). The agreement will be effective retroactive to March 14, 2023 through December 31, 2024 (Wallace)

Motion to approve by Councilman Carpenter, second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none

Abstain – none

Motion carried.

4. Resolution to approve the Second Amendment to Solar Lease between the Town of Niagara and Niagara Depot Solar, LLC for the solar project on the Town landfill located at 4798 Lockport Road. The Second Amendment extends the development and construction period due to National Grid delaying interconnection of the project into the grid. The Town Supervisor is authorized to sign, on behalf of the Town, the Second Amendment to the lease and any necessary related documents.

Motion to approve by Councilman Carpenter, second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Carpenter

Noes – none
Abstain – none

Motion carried.

5. Resolution declaring the Town Board of the Town of Niagara's Intent to be the State Environmental Quality Review Act ("SEQRA") Lead Agency for a Solar Energy Facility proposed to be located on Pine Avenue in the Town and directing the Town staff and counsel to take such further steps as SEQRA and the Regulations require for purposes of coordination.

Motion to approve by Councilman Teixeira, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Carpenter
Noes – none
Abstain – none

Motion carried.

TABLED

1. Resolution to call for a public hearing for the rezoning request of Kevin Kirk, RA Director of planning and design of Uniland Development Co. to rezone (16.34 acres +/-) of 25.50 acre (R-3) multiple family zoned parcel to a (L-1) Light industrial zoning designation 3401 Military Road. Tax Map #130.16-1-9. (Haseley)

COMMENTS

Respectfully submitted,

Sylvia Virtuoso

**Sylvia Virtuoso
Town Clerk**

THE MONTHLY AGENDA IS ON THE TOWN WEBSITE
www.townofniagara.com

In Memoriam

Carl F. Horst
William D. Frye
Richard J. Juzwiak

SECOND AMENDMENT TO SOLAR LEASE AGREEMENT

THIS SECOND AMENDMENT TO SOLAR LEASE AGREEMENT (this “Amendment”) is entered into as of January 1st, 2023 (the “Effective Date”) by and between **THE TOWN OF NIAGARA**, a municipal corporation (“Landlord”), and **NIAGARA DEPOT SOLAR, LLC**, a Delaware limited liability company (“Tenant”). Landlord and Tenant may be referred to herein individually as a “Party” and, collectively, as the “Parties”. Capitalized terms used herein but not defined shall have the same meanings given to them in the Lease, as hereinafter defined.

WITNESSETH:

WHEREAS, Landlord is the owner of a parcel of land commonly known as 4798 Lockport Road in the Town of Niagara, Niagara County, New York, being Tax Map Parcel Number 131.17- 1-4 (the “Property”), as further described in **Exhibit A** of the Lease; and

WHEREAS, Landlord and Tenant entered into that certain Solar Lease Agreement, dated October 19, 2020 (the “Lease”), a memorandum of which was recorded in the Niagara County Clerk’s Office on January 28, 2021 as Instrument No. 2021-01838, pursuant to which Landlord has leased to Tenant a portion of the Property (the “Lease Area”), as further described in **Exhibit B** of the Lease; and

WHEREAS, Landlord and Tenant now desire to amend the Lease as more particularly set forth below.

AMENDMENT

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Section 4(a)(i). Section 4(a)(i) of the Lease is amended in its entirety as follows:
 - (i) Development and Construction Period. The Development and Construction Period shall be deemed to have begun on the Effective Date and will terminate on the earliest of:
 - (A) Delivery by Tenant of notice of termination in accordance with Section 4(b);
 - (B) 365 days after the commencement of the Development and Construction Period, except that such Development and Construction Period shall automatically extend for up to two (2) additional periods of six (6) months each for permitting and interconnection delays, construction delays, or changes in solar market conditions regarding New York solar programs; provided, however, that Tenant may thereafter extend such period for two (2) additional periods of three (3) months for permitting and interconnection delays, construction delays, or changes in solar market conditions regarding New York solar programs upon delivering notice of such extension to Landlord. Additionally, the Development and Construction period shall be further extended automatically on a monthly basis for delays by the Utility in the completing interconnection upgrades or in interconnecting the Facility. Extensions under this subsection are contingent upon Tenant providing evidence, at Landlord’s reasonable request, that it continues to actively pursue developing the Facility; and
 - (C) The day after the Commercial Operation Date.

If the Commercial Operation Date does not occur prior to the expiration of the Development and Construction Period (as it may be extended), this Lease shall terminate by its own terms with no action

being required of either Party. Termination of this Lease in accordance with this Section 4(a)(i) shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

2. Ratification. The Lease, as amended by this Amendment, is hereby ratified by Landlord and Tenant. Except as expressly amended by this Amendment, all terms and conditions of the Lease shall remain unchanged and in full force and effect. In the event of any inconsistency between the terms and conditions of the Lease and this Amendment, the terms and conditions of this Amendment shall control. This Amendment and the Lease cannot be modified in any manner other than by written modification executed by Landlord and Tenant. The Lease, as hereby amended, contains all of the terms agreed upon between Landlord and Tenant with respect to the subject matter hereof.

3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one agreement. To facilitate execution of this Amendment, the Parties may execute and exchange by email counterparts of the signature pages, which email counterpart shall be binding as if they were originals. No original signatures shall be required for this Amendment to be deemed legally enforceable.

4. Miscellaneous. The Parties have read this Amendment and, on the advice of counsel, each has freely and voluntarily entered into this Amendment. This Amendment shall be binding on and inure to the benefit of the Parties and their heirs, successors and assigns.

TOWN OF NIAGARA TOWN BOARD

Resolution Declaring the Town Board of the Town of Niagara's Intent to be the State Environmental Quality Review Act ("SEQRA") Lead Agency for a Solar Energy Facility Proposed to be Located on Pine Avenue in the Town

WHEREAS, AC Power 15, LLC ("the Applicant") has submitted an application to develop two approximately 5 megawatt ("MW") AC solar energy facilities ("Project") on approximately 38 acres of land ("Property") on Pine Avenue in the Town of Niagara, New York ("Town"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, as amended, the New York State Environmental Quality Review Act (SEQRA) and the implementing regulations at 6NYCRR Part 617 (the "Regulations"), the Town desires to comply with SEQRA and the Regulations with respect to the Project; and

WHEREAS, the Project is classified as a "Type I Action" as defined by the State Environmental Quality Review Act (SEQRA) in 6 NYCRR Part 617.2 and a Full Environmental Assessment Form (FEAF) has been completed in support of the Project; and

WHEREAS, pursuant to SEQRA and the Regulations, the Town Board will undertake a coordinated review process with interested and involved agencies, and wishes to indicate the Town Board's desire to serve as the Lead Agency under the SEQRA process for the Project; and

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Niagara intends to act as Lead Agency for the review of the Project. Town staff and counsel are directed to take such further steps as SEQRA and the Regulations require for purposes of coordination.