

Agenda

Jamestown City Council

February 24, 2020

7:30 P.M.

Council Chambers, Second Floor
Municipal Building, Jamestown, New York

STANDING COMMITTEES

Finance, et. al., Committee

1. Resolution authorizing payment of the regular audit.
2. Resolution authorizing Sergeant Sam Piazza and Officer Eric Kraft to attend the New York State Tactical Training Conference and Expo to be held in Verona, New York, April 20 – 24, 2020, with expenses paid pursuant to Section 77-b of the General Municipal Law.
3. Resolution authorizing Lieutenant Greg Wozneak, Lieutenant Scott Forster and Lieutenant Rob Ward to attend the New York State Tactical Team Leadership Forum to be held in Saratoga Springs, New York, March 11 – 13, 2020, with expenses paid pursuant to Section 77-b of the General Municipal Law.
4. Resolution accepting the donation of one (1) 1854 framed map of Chautauqua County from Blackstone-NEY Ultrasonics.
5. Resolution suspending the hiring freeze and authorizing the filling of one (1) full-time Account Clerk in the City Clerk/Treasurer's Office (funded in the 2020 General Fund Budget).
6. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) new 2020 Chevrolet Equinox from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701, in an amount not to exceed Twenty-Five Thousand, Two Hundred Eighteen Dollars and Twenty cents, (\$25,218.20).
7. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) new 2020 Chevrolet Silverado Pickup crew cab from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701, in an amount not to exceed Nine Thousand, Six Hundred Ninety Dollars and Forty Cents, (\$9,690.40).

Note: Price includes trade in value of Twenty-Six Thousand, One Hundred Dollars (\$26,100.00) for 2018 Silverado.

Finance, et. al., Committee (cont)

8. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) new 2020 Chevrolet Silverado Pickup extend cab from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701, in an amount not to exceed Seven Thousand, Three Hundred Ninety Dollars and Eighty Cents, (\$7,390.80).
- Note: Price includes trade in value of Twenty-Six Thousand, One Hundred Dollars (\$26,100.00) for 2018 Silverado.
9. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) new 2020 Chevrolet Silverado Pickup extend cab from Jones Chevrolet, 21505 US Rte. 6, Warren, PA 16365, in an amount not to exceed Seven Thousand, One Hundred Seventy-Three Dollars, (\$7,173.00).
- Note: Price includes trade in value of Twenty-Seven Thousand, Three Hundred One Dollars (\$27,301.00) for 2018 Silverado.
10. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) new 2020 Chevrolet Silverado Pickup extend cab from Jones Chevrolet, 21505 US Rte. 6, Warren, PA 16365, in an amount not to exceed Six Thousand, Nine Hundred Seventy-Three Dollars, (\$6,973.00).
- Note: Price includes trade in value of Twenty-Seven Thousand, Five Hundred One Dollars (\$27,501.00) for 2018 Silverado.
11. Resolution authorizing Jeffrey Lehman, P. E., Director of Public Works, Acting Director of Parks, Recreation and Conservation, to enter into an agreement with NYSDOT, 50 Wolf Road, Albany, NY 12232 for shared services in an amount not to exceed \$25,000.00 for a period of four (4) years.
12. Resolution authorizing the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation and Conservation, to purchase one (1) Lane StormKeeper SK 180 underground detention system from Southern Tier Municipal & Construction Supply Co., 1801 Washington Street, Jamestown, NY 14701, in an amount not to exceed Fourteen Thousand, Seven Hundred Thirty-Eight Dollars and Eighty Cents (\$14,738.80).
13. Resolution authorizing the Mayor to enter into an agreement with The Chautauqua Center, Inc., a New York Corporation, 110 East Fourth Street, Jamestown, NY 14701 for a permanent easement on the sidewalk located on the south side of Briggs Street in an amount not to exceed One Dollar (\$1.00).

Public Works, et. al., Committee

Public Safety, et. al., Committee

14. Resolution designating City Clerk/Treasurer, Jennifer R. Williams as Records Management officer for the City of Jamestown.
15. Resolution designating City Clerk/ Treasurer, Jennifer R. Williams as Records Access Officer for the City of Jamestown.
16. Resolution re-appointing Mary Zerbo to the office of Commissioner of Deeds for a period of two years.

New Business

17. Resolution authorizing an agreement between the City of Jamestown and the Jamestown Local Development Corporation for legal services to be provided as needed by the City's Corporation Counsel Office.
18. Resolution authorizing the Mayor to enter into an agreement with DFT Communications, 38 Temple Street, Fredonia, New York for the purchase of eight (8) PTZ Clear2 Thera Cameras and two Cisco Switches in four city locations in the amount of (Forty-Seven Thousand, Eight Hundred, Ninety-Nine Dollars (\$47,899.00)).
19. Resolution authorizing the City Comptroller to make the following amendment to the 2020 General Fund Budget for the purpose of purchasing eight surveillance cameras and two switches for the Police Department: Increase Appropriations, Police Department Equipment A.3120.0200 in the amount of Twenty-Four Thousand Dollars (\$24,000.00) and Decrease Appropriations, Contingency A.1990.0400 in the amount of Twenty-Four Thousand Dollars (\$24,000.00).

Note: The total cost of the equipment is Forty-Seven Thousand, Eight Hundred, Ninety-Nine Dollars (\$47,899.00) of which Twenty-Three Thousand, Eight Hundred, Ninety-Nine Dollars will be paid using local drug seizure proceeds.

20. Resolution authorizing the Jamestown Police Department to enter into a purchase agreement with Dave Warren, 1001 Washington Street, Jamestown, NY 14701 for one (1) 2020 Dodge Durango in an amount of Twenty-Eight Thousand, One Hundred Ninety-Seven Dollars (\$28,197.00).

The Jamestown Police Department is also authorized to enter into a purchase agreement with General Sales Administration, 47 N. Dell Avenue, Kenvil, NJ for the emergency equipment to outfit the Dodge Durango in the amount of Four Thousand, Ninety-Five Dollars (\$4,095.00).

Note: 2019 contingency funds will be used to purchase this vehicle and equipment.

New Business (cont)

21. Resolution authorizing the City Comptroller to make the following amendment to the 2019 General Fund Budget for the purpose of purchasing one (1) new 2020 Dodge Durango Pursuit AWD SUV for the Police Department: Increase Appropriations, Police Department Equipment A.3120.0200 in the amount of Thirty-Two Thousand, Two Hundred Ninety-Two Dollars (\$24,000.00) and Decrease Appropriations, Contingency A.1990.0400 in the amount of Thirty-Two Thousand, Two Hundred Ninety-Two Dollars (\$32,292.00).
22. Resolution authorizing the Jamestown Police Department to enter into a purchase agreement with Dave Warren, 1001 Washington Street, Jamestown, NY 14701 for one (1) 2020 Dodge Durango in an amount of Twenty-Eight Thousand, One Hundred Ninety-Seven Dollars (\$28,197.00).
- The Jamestown Police Department is also authorized to enter into a purchase agreement with General Sales Administration, 47 N. Dell Avenue, Kenvil, NJ for the emergency equipment to outfit the Dodge Durango in the amount of Four Thousand, Ninety-Five Dollars (\$4,095.00).
- Note: STOP DWI funds will be used to purchase this vehicle and equipment.
23. Resolution authorizing the loan from the Jamestown Local Development Corporation to Warren Property Holdings, LLC of Three Hundred, Fifty Thousand Dollars (\$350,000.00) at a 5.5% rate of interest for a ten (10) year term with collateral being a second security mortgage position behind Cattaraugus County Bank in the real property located at 1001 Washington Street and 2001 Washington Street, subject to an appraisal of the property, and a personal guarantee from David Warren.
24. Resolution adopting the Environmental Assessment Form for the Annexation.
25. Resolution regarding public interest determination related to the Annexation.

COUNCIL MEMBERS: PLEASE CONTACT THE COUNCIL PRESIDENT OR CITY CLERK IF UNABLE TO ATTEND THE WORK SESSION AT 7:00, OR THE REGULAR MEETING AT 7:30 P.M.

BY COUNCILPERSON:

RESOLVED, that Sergeant Sam Piazza and Officer Erik Kraft be, and hereby are, authorized to attend the New York Tactical Training Conference and Expo to be held April 20 through April 24, 2020 in Verona, New York with expenses paid pursuant to Section 77-b of the General Municipal Laws of the State of New York.

BY Councilperson:

RESOLVED, that Lieutenant Greg Wozneak, Lieutenant Scott Forster and Lieutenant Rob Ward be, and hereby are, authorized to attend the New York State Tactical Team Leadership Forum in Saratoga Springs, NY from March 11 - 13, 2020. Food and lodging is provided. Transportation costs will be paid pursuant to Section 77-b of the General Municipal Laws of the State of New York.

BY COUNCIL

WHEREAS, Blackstone-NEY Ultrasonics is desirous of contributing a 1854 framed map of Chautauqua County now therefore it be

RESOLVED, that the City of Jamestown hereby accepts the donation, and be it further

RESOLVED, the Jamestown City Council hereby extends its appreciation and gratitude on behalf of the citizens of the City of Jamestown to Blackstone for their generous donation.

BY COUNCIL

WHEREAS, On January 22, 2002 the Jamestown City Council adopted resolution number 200201C03 that effective immediately and until further notice instituted a hiring freeze for the City of Jamestown, and

WHEREAS, On November 20, 2006 the Jamestown City Council adopted resolution number 200611B17 to extend the freeze to any change in employment from Part-Time to Full-Time status, and

WHEREAS, it has become apparent with the desire to effectively manage the city's day-to-day responsibilities in a cost efficient manner, it is in the City of Jamestown's best interest to lift the hiring freeze for a certain position, now therefore be it

RESOLVED, that effective immediately the Jamestown City Council hereby suspends the hiring freeze instituted by resolution number 200201C03 and resolution number 200611B17 authorizing the filling of the following position due to the essential nature of the position.

- One (1) Full-time Account Clerk to be located in the City Clerk-Treasurer's Office (1 full-time position funded through in the 2020 General Fund Budget).

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By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701 via bid #COJDFS12 bid opening January 6, 2020, one (1) new 2020 Chevrolet Equinox, to replace the DPW Car 1, 2013 Chevrolet Equinox, for a total amount not to exceed Twenty Five Thousand Two Hundred Eighteen Dollars and Twenty Cents (\$25,218.20), subject to approval of the Corporation Counsel as to form.

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By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701 via bid #COJDFS09 bid opening January 6, 2020, one (1) new 2020 Chevrolet Silverado pickup crew cab, to replace 2018 Silverado extend cab, Fleet Maintenance Truck #501, for a total amount not to exceed Nine Thousand Six Hundred Ninety Dollars and Forty Cents (\$9,690.40) subject to approval of the Corporation Counsel as to form.

Note: Price includes trade in value (\$26,100.00) for 2018 Silverado extend cab.

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By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Ed Shults Chevrolet, 300 Fluvanna Avenue, Jamestown, NY 14701 via bid #COJDFS10 bid opening January 6, 2020, one (1) new 2020 Chevrolet Silverado pickup extend cab, to replace 2018 Silverado DPW Truck #6, for a total amount not to exceed Seven Thousand Three Hundred Ninety Dollars and Eighty Cents (\$7,390.80) subject to approval of the Corporation Counsel as to form.

Note: Price includes trade in value (\$26,100.00) for 2018 Silverado.

By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Jones Chevrolet, 21505 US Rte 6, Warren, PA 16365 via bid #COJDFS10 bid opening January 6, 2020, one (1) new 2020 Chevrolet Silverado pickup extend cab, to replace 2018 Silverado DPW Truck #10, for a total amount not to exceed Seven Thousand One Hundred Seventy Three Dollars and no Cents (\$7,173.00) subject to approval of the Corporation Counsel as to form.

Note: Price includes trade in value (\$27,301.00) for 2018 Silverado.

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By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Jones Chevrolet, 21505 US Rt 6, Warren, PA 16365 via bid #COJDFS10 bid opening January 6, 2020, one (1) new 2020 Chevrolet Silverado pickup extend cab, to replace 2018 Silverado Parks Truck #202, for a total amount not to exceed Six Thousand Nine Hundred Seventy Three Dollars and no Cents (\$6,973.00) subject to approval of the Corporation Counsel as to form.

Note: Price includes trade in value (\$27,501.00) for 2018 Silverado.

02/24/2020 Resolution #11

By Councilperson

RESOLVED, that the Director of Public Works be and he hereby is authorized to enter into an agreement with NYSDOT, 50 Wolf Road, Albany, NY 12232 to share services, exchange or lend materials or equipment which shall promote and assist the maintenance of State and Municipal roads and highways for an amount not to exceed Twenty Five Thousand Dollars (\$25,000.00). The term of this Agreement shall be for four (4) years from April 1, 2020 to March 31, 2024. Said agreement subject to approval of the Corporation Counsel as to form.

02/24/2020 Resolution #12

By Councilperson

RESOLVED that the Mayor and Jeffrey Lehman, P.E., Director of Public Works and Acting Director of Parks, Recreation & Conservation, be and they hereby are authorized and directed to purchase, from Southern Tier Municipal & Construction Supply Co., 1801 Washington Street, Jamestown, NY 14701, one (1) Lane StormKeeper SK180 underground detention system, for a total amount not to exceed Fourteen Thousand Seven Hundred Thirty Eight Dollars and Eighty Cents (\$14,738.80), subject to approval of the Corporation Counsel as to form.

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By Councilperson

WHEREAS, CITY OF JAMESTOWN, NY, 200 East Third Street, Jamestown, NY (“Grantee”) in the consideration of the sum of One Dollar (\$1.00), has requested from THE CHAUTAUQUA CENTER, INC., a New York Corporation, 110 East Fourth Street, Jamestown, NY (“Grantor”), a non-exclusive permanent easement of pedestrian ingress and egress over and across that certain sidewalk, located on the south side of Briggs Street, heretofore constructed by Grantor on and over certain real property owned by Grantor, now, therefore, be it

RESOLVED, that the Mayor be and he hereby is authorized to enter into certain permanent easement agreement, with the Grantor, said easement subject to approval by the Corporation Counsel as to form.

By Councilperson

WHEREAS, the New York Local Government Records Law was signed into law by Governor Mario M. Cuomo as Chapter 737 of the laws of 1987 in order to pave the way for the efficient and economical management of local government records in New York State; and

WHEREAS, according to the New York Local Government Records Law the Chief Executive Officer of each local government unit must designate a Records Management Officer subject to the approval of the governing body; now therefore be it

RESOLVED, that the City Clerk/Treasurer Jennifer R. Williams be and she hereby is designated as Records Management Officer for the City of Jamestown to coordinate and oversee the Records Management Program for the City of Jamestown.

By Councilperson

RESOLVED, that City Clerk/Treasurer Jennifer R. Williams be and she hereby is designated as Records Access Officer for the City of Jamestown, New York.

01/27/2020 Resolution #16

RESOLVED, That the following person be and he hereby is reappointed to the office of Commissioner of Deeds in and for the City of Jamestown for a term of two years:

Mary Zerbo

February 25, 2020 to March 23, 2022

By Councilperson

**AGREEMENT FOR LEGAL SERVICES
BY AND BETWEEN
THE CITY OF JAMESTOWN
AND
THE JAMESTOWN LOCAL DEVELOPMENT CORPORATION**

WHEREAS, the Jamestown Local Development Corporation (“JLDC”) is organized as a Not-for-Profit Corporation subject in part to the Public Authorities/Public Officers Law, as an independent support organization for the City of Jamestown (“City”) together referred to as (“Parties”); and,

WHEREAS, the JLDC operates separately and apart from the City; and,

WHEREAS, by the terms of the JLDC by-laws, Article V §X, the JLDC is empowered to contract for services with both City and independent consultants; and,

WHEREAS, the JLDC in its ordinary course of operations has periodic need for legal services; and;

WHEREAS, prior to this Agreement the JLDC has contracted with independent consultants for legal services; and,

WHEREAS, the JLDC’s long-term legal consultant has informed the JLDC of his intention to retire from such service; and,

WHEREAS, the City operates a Corporation Counsel Office which provides legal services to the City and related entities; and,

WHEREAS, the Parties after discussion believe it will be in their mutual interest to have the City’s Corporation Counsel Office provide legal services to the JLDC; and,

WHEREAS, the Parties wish to memorialize this Agreement as follows.

IT IS HEREBY AGREED AS FOLLOWS:

1. **Term.** The term of this Agreement shall run from January 1, 2020 – January 12, 2024, at which point this Agreement will stay in effect until renegotiated by the Parties.
2. **Services.** The Parties agree that the City’s Corporation Counsel Office will provide legal services as needed to the JLDC.
3. **Rate.** The City’s Corporation Counsel Office will provide services to the JLDC at the rate of \$50.00 per hour. All bills will be timely invoiced to the JLDC.

4. **Fees and Other Costs.** In the case of loan costs or other legal fees paid by parties other than the JLDC or City, the City's Corporation Counsel Office will bill those services at a reasonable rate in accordance with past fees for such service.

5. **Fee Disputes.** Should a fee dispute occur between the Parties, or with related parties, the fee dispute will be arbitrated in accordance with NYCRR Part 137.

6. **Performance of Services.** If the JLDC deems that any services performed by the City's Corporation Counsel Office do not meet expectations the JLDC will first raise these concerns with the Corporation Counsel Office, and if not properly handled, then with the City Mayor.

7. **Conflict.** Should an actual or perceived ethical conflict arise between the JLDC and the City's Corporation Counsel Office the JLDC will hire its own outside counsel from its funds.

8. This Agreement incorporates the full and complete understandings of the Parties and includes all of the terms and conditions agreed to by them. Any oral promises or representations that might have been made by any of the Parties to the others that are not included in this Memorandum of Agreement shall be considered to have no force or effect.

9. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, County of Chautauqua.

DATED: February __, 2020

FOR THE JLDC:

Crystal Surdyk
Executive Director of the Jamestown Local Development Corporation

FOR THE CITY:

Edward A. Sundquist
Mayor of the City of Jamestown

By Councilperson

RESOLVED that the Mayor, be and he hereby is authorized to enter into an agreement with DFT Communications, 38 Temple Street, Fredonia, New York for the purchase of eight PTZ Clear2 Thera Cameras and two Cisco switches in four city locations in the amount of Forty-Seven Thousand, Eight Hundred Ninety-Nine Dollars and zero cents (\$47,899.00), subject to the approval of the Corporation Counsel as to form.

BY Councilperson

RESOLVED, that the City Comptroller be and hereby is authorized to make the following amendment to the 2020 General Fund Budget for the purchase of eight surveillance cameras and two switches for the Police Department as follows:

INCREASE:	Appropriations	\$24,000.00
	Police Department Equipment	
	A.3120.0200	
DECREASE:	Appropriations	\$24,000.00
	Contingency	
	A.1990.0400	

Note: The total cost of the equipment is \$47,899.00 of which \$23,899.00 will be paid by using local drug seizure proceeds.

BY COUNCILPERSON

RESOLVED, that the Jamestown Police Department be, and hereby is, authorized to enter into a purchase agreement with Dave Warren, 1001 Washington St., Jamestown, New York for one (1) 2020 Dodge Durango. The purchase price is \$28,197.

The Jamestown Police Department is also authorized to enter into a purchase agreement with General Sales Administration, 47 N. Dell Avenue, Kenil, New Jersey for the emergency equipment to outfit the Dodge Durango. The cost of the emergency equipment is \$4,095. 2019 contingency funds will be used to purchase this vehicle and equipment.

By Councilperson

RESOLVED, that the City Comptroller be and hereby is authorized to make the following amendment to the 2019 General Fund Budget for the purchase of one new 2020 Dodge Durango Pursuit AWD SUV for the Police Department as follows:

INCREASE:	Appropriations Police Department Equipment A.3120.0200	\$32,292.00
DECREASE:	Appropriations Contingency A.1990.0400	\$32,292.00

BY COUNCILPERSON

RESOLVED, that the Jamestown Police Department be, and hereby is, authorized to enter into a purchase agreement with Dave Warren, 1001 Washington St., Jamestown, New York for one (1) 2020 Dodge Durango. The purchase price is \$28,197.

The Jamestown Police Department is also authorized to enter into a purchase agreement with General Sales Administration, 47 N. Dell Avenue, Kenil, New Jersey for the emergency equipment to outfit the Dodge Durango. The cost of the emergency equipment is \$4,095. STOP DWI funds will be used to purchase this vehicle.

By Councilperson

WHEREAS, The Jamestown City Council at a regular meeting held on September 21, 1981, authorized the Mayor of the City of Jamestown to enter into an agreement with the Jamestown Local Development Corporation delegating to the Jamestown Local Development Corporation responsibility for the processing and approval of loan applications for “first instance” Urban Development Action Grant re-use money; and

WHEREAS, Article V, Section 3 of said bylaws of the Jamestown Local Development Corporation requires that no loan of Urban Development Action Grant originated moneys in excess of One Hundred Thousand Dollars (\$100,000.00) be placed without prior approval of the City Council of Jamestown, New York; and

WHEREAS, David Warren of Warren Property Holdings, LLC made application to the Jamestown Local Development Corporation for a loan of Three Hundred Fifty Thousand Dollars (\$350,000) through the Jobs and Private Investment Loan Program (Tier II) as part of a \$1,750,000 buyout of out of state partners involving the purchasing of real estate at 1001 Washington Street and 2001 Washington Street, Jamestown, New York; and

WHEREAS, the Board of Directors of the Jamestown Local Development Corporation, at its meeting held on February 18, 2020, gave preliminary approval for the loan to David Warren of Warren Property Holdings, LLC of Three Hundred Fifty Thousand Dollars (\$350,000) at a 5.5% rate of interest for a ten (10) year term subject to an appraisal of the property located at 1001 Washington Street and 2001 Washington Street and the ratification by a majority vote of the City Council of Jamestown, New York; now therefore be it

RESOLVED, that the Jamestown City Council hereby approves the Jamestown Local Development Corporation loan to Warren Property Holdings, LLC of Three Hundred Fifty Thousand Dollars (\$350,000) at a 5.5% rate of interest for a ten (10) year term with collateral being a second security mortgage position behind Cattaraugus County Bank in the real property located at 1001 Washington Street and 2001 Washington Street, subject to an appraisal of the property, and a personal guarantee from David Warren.

WHEREAS, the City of Jamestown (the “City”) is authorized and empowered by Article 17 of the New York State General Municipal Law (“GML”) to alter its boundaries by annexing contiguous land from an adjoining municipality upon the consent of the people, if any, who reside on the land proposed to be annexed and the consent of the governing board of each affected municipality, following a determination that the annexation is in the overall public interest; and

WHEREAS, pursuant to GML Article 17, a Petition for Annexation (the “Petition”) to the City of approximately four acres of uninhabited land (the “Property”) in the Town of Ellicott (the “Town”) and the Village of Falconer (the “Village”) was presented to the City Council of the City of Jamestown (the “City Council”) on or about November 25, 2019 (the “Annexation”); and

WHEREAS, the Property is more particularly described in Schedule A to the Petition and consists of four parcels owned by the City through its Board of Public Utilities (“BPU”), including a portion of land under Tiffany Avenue, and a portion of another parcel owned by National Grid and leased by the BPU and on which the BPU owns all the improvements; and

WHEREAS, the BPU maintains a substation on the Property as part of its electrical operations, which is commonly referred to as the Dow Street Substation (the “Substation”), and whose service area encompasses the entire City, the Village, the Village of Celoron, and the majority of the Town; and

WHEREAS, no one resides on the Property;

WHEREAS, the Petition seeks to annex the Property for the purpose of bringing the City-owned and City-operated Substation within the City’s territorial boundaries, thereby enabling the City to (a) exert greater control over and better protect the Substation by providing it with the full contingent of the City’s municipal services; (b) remove the City-owned property from the Town, Village, Chautauqua County and Falconer Central School District tax rolls and thereby reduce the expenses incurred to pay tax liabilities; (c) maintain the stability of the City’s utility expenses and rates and potentially reducing the need for drastic increases in the utility rates over the next five to ten years to cover increasing tax expenses; and (d) incentivize business and industry to return to and develop in the City and surrounding area by stabilizing and controlling rates for utilities; and

WHEREAS, the City Council considered the Petition at a meeting held on November 25, 2019, accepted the Petition, and authorized its execution by the Mayor by Resolution No. 30; and

WHEREAS, Mayor Samuel Teresi signed the Petition on November 25, 2019 on behalf of the City, as the owner through the BPU, of more than fifty percent of the total assessed valuation of the Property as shown on the last preceding Town Assessment Roll, which was filed in the Town Clerk’s office on July 1, 2019; and

WHEREAS, at the November 25, 2019 meeting, the City Council passed Resolution No. 32, by which it resolved to exercise its powers under GML Article 17 to entertain the Petition and consider the proposed annexation of the Property to the City, and to hold a joint public hearing on the Petition, together with the Town of Ellicott Town Council (the “Town Council”) and the Board of Trustees of the Village of Falconer (the “Village Board”), in accordance with the procedures set forth in GML Article 17; and

WHEREAS, the City Council desires to comply with the requirements of the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations set forth at 6 NYCRR Part 617 (the “Regulations”); and

WHEREAS, at the November 25, 2019 meeting, the City Council also passed Resolution No. 31 preliminarily classifying the Annexation as an Unlisted Action under SEQRA and declaring the City Council's intent to act as lead agency for the purpose of undertaking a coordinated review of the Annexation in accordance with SEQRA; and

WHEREAS, together with Part 1 of the Short Environmental Assessment Form ("EAF"), the City sent notices dated December 13, 2019 to the Town Council and the Village Board, the only other involved agencies for this action, indicating the City Council's desire to act as lead agency for the SEQRA review of the Annexation and requesting their consent to the same; and

WHEREAS, the Town Council and the Village Board did not object to the City Council acting as the SEQRA Lead Agency;

WHEREAS, the City Council has considered the comments provided by the Town Council, the Village Board, the Town-Village Counsel, and others during the public hearing, and has thoroughly reviewed all information provided in the EAF and the Petition; and

WHEREAS, pursuant to the Regulations, the City Council has considered the significance of the potential environmental impacts of the Annexation by (a) using the criteria specified in Section 617.7(c) of the Regulations, and (b) examining the EAF for the Annexation, including the information in Part 1 of the EAF and completing the analyses for Parts 2 and 3 of the EAF, together with examining other available information relevant to the Annexation, to identify the relevant areas of environmental concern, and (c) thoroughly analyzing the identified areas of relevant environmental concern; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council confirms and adopts the following conclusions with respect to SEQRA:

1. The Annexation is subject to SEQRA.
2. The Annexation is an Unlisted Action under SEQRA.
3. The City Council hereby establishes itself as lead agency for purposes of the coordinated SEQRA review of the Project.
4. The City Council has compared the impacts that may reasonably be expected to result from the Annexation to the criteria for determining significance identified in Section 617.7(c)(1) of the Regulations and evaluated the issues of causation and significance in light of the standards under the same Section.
5. The City Council has not identified any significant adverse environmental impacts associated with the Annexation and none are known to the City Council. Based upon its review, and for the reasons set forth more fully in the EAF and its supporting written elaboration, the City Council determines that the Annexation will not have any significant adverse impacts on the environment and makes the following conclusions:

(A) The Annexation will not result in (a) substantial adverse change in existing air quality; ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; or a substantial increase in potential for erosion, flooding, leaching or drainage problems; (b) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of a resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on threatened or endangered species of animal or plant, or the habitat of such species; or (c) other significant adverse impacts to natural resources;

(B) The Annexation will not affect a critical environmental area as designated pursuant to 6 NYCRR § 617.14(g);

- (C) Since no development is proposed for the Property and the Property will continue to be used as it has always been used for over 60 years, as an electrical substation, the Annexation will not conflict with the community's current plans or goals as officially approved or adopted;
- (D) The Annexation will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources;
- (E) The Annexation will not result in the impairment of the character or quality of existing community or neighborhood character because the area is presently characterized by commercial and industrial uses and there are no plans to change either the zoning classification or existing use of the Property;
- (F) The Annexation will not result in a major change in the use of either the quantity or type of energy, but will allow the BPU to reduce costs associated with the provision of electricity to its customers in the City, Town, Village, and other parts of the community;
- (G) The Annexation will not result in the creation of a hazard to human health, but rather would be more protective of the environment and human health by allowing the City to avoid potential jurisdictional or first-responder questions, thereby ensuring that the City will be better able to manage, preserve and protect the City's municipal Substation and electrical system, and any neighboring properties in the event of an emergency;
- (H) The Annexation will not result in a substantial change in the use, or intensity of use, of land including architectural, open space or recreational resources, or in its capacity to support existing uses;
- (I) The Annexation will not result in encouraging or attracting a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- (J) The Annexation will not result in the creation of a material demand for other actions that would result in one or more of the above consequences;
- (K) Any secondary growth or development spawned from the Annexation will not result in the impairment of the existing community or neighborhood character because any such growth would replace numerous businesses and industries that have left the City in recent years and because the City has appropriate zoning laws and municipal services in place to adequately deal with such growth;
- (L) The Annexation will not result in changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; and
- (M) The Annexation will not result in two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in 6 NYCRR § 617.7(c).

6. The information available concerning the Annexation was sufficient for the City Council to make its determination.

7. The City Council hereby approves and adopts the EAF for the Annexation (Parts 1, 2, and 3) with its supporting written elaboration, issues a Negative Declaration, and will not require the preparation of an environmental impact statement for the Annexation.

8. The City Council hereby directs the Council President, Anthony Dolce, to execute the EAF.

9. The City Council hereby authorizes the City Clerk and/or Corporation Counsel to make any filing(s) and publications of notice of the Negative Declaration as required by law and to take such other steps as may be necessary to carry out this Resolution.

10. This Resolution shall take effect immediately.

The adoption of the foregoing was moved by Councilmember _____, seconded by Councilmember _____, and duly put to vote, which resulted as follows:

	Yea	Nay	Abstain	Absent
Council President Anthony Dolce	[]	[]	[]	[]
Councilmember Brent Sheldon	[]	[]	[]	[]
Councilmember Vickye James	[]	[]	[]	[]
Councilmember Marie Carrubba	[]	[]	[]	[]
Councilmember Grant Olson	[]	[]	[]	[]
Councilmember Thomas Nelson	[]	[]	[]	[]
Councilmember Kimberly Ecklund	[]	[]	[]	[]
Councilmember Tamu Graham-Reinhardt []	[]	[]	[]	[]
Councilmember Jeffery Russell	[]	[]	[]	[]

Project:

Date:

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

PRINT FORM

Project: _____
 Date: _____

**Short Environmental Assessment Form
 Part 3 Determination of Significance**

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

See Attached Reasons Supporting Determination of Significance

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input checked="" type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
Jamestown City Council _____ Name of Lead Agency	January __, 2020 _____ Date
Anthony Dolce _____ Print or Type Name of Responsible Officer in Lead Agency	Council President _____ Title of Responsible Officer
_____ Signature of Responsible Officer in Lead Agency	_____ Signature of Preparer (if different from Responsible Officer)

PRINT FORM

Reasons Supporting Determination of Significance
Attachment to Environmental Assessment Form Part 3

Summary of Proposed Action

The City of Jamestown (the "City") is proposing to annex approximately four acres of land (the "Property") which are presently located within the Town of Ellicott (the "Town") and the Village of Falconer (the "Village") (referred to here as the "Project"). The Property consists of four parcels owned by the City through its Board of Public Utilities ("BPU") and a portion of another parcel that the BPU leases from National Grid, on which the City owns the improvements. The deeds for the Property establish that the Property adjoins the City, situated contiguous to the City's boundary line lying at the centerline of Tiffany Avenue.

As part of its electrical utility operations, the BPU operates a substation on the Property, which is commonly referred to as the Dow Street Substation (the "Substation"). The Substation's service area encompasses the entire City, the Village, the Village of Celoron, and the majority of the Town of Ellicott.

No one resides on the Property. In total, the City through the BPU owns over 90% of the assessed value of the Property, well above the 50% threshold required for a petition for annexation, as detailed in the Certification by the Town of Ellicott assessor Kevin Okerlund that was filed with the Petition for Annexation. The purpose of the Petition for Annexation is to bring this City-owned, City-leased, and City-operated Property within the City limits.

SEQRA Coordination

In accordance with SEQRA's provisions, the City Council engaged in a coordinated review of the Project. At its November 25, 2019 meeting, the City Council preliminarily classified the Project as an Unlisted Action under SEQRA and declared its intent to act as lead agency for the coordinated review of the Project. The City Council caused notices to be sent to the Town Council for the Town of Ellicott (the "Town Council") and the Board of Trustees for the Village of Falconer (the "Village Board"), the only other involved agencies for the Project, seeking their concurrence in the City Council serving as lead agency and requesting comments on the Project's potential environmental impacts. Neither the Town Council nor the Village Board objected to the City Council acting as the Lead Agency during the time period provided by the SEQRA Regulations.

In its capacity as lead agency, the City Council has considered the criteria set forth in 6 NYCRR 617.7(c), the potential environmental impacts associated with the Project and the comments made concerning the proposed annexation by the Town, the Village, their legal counsel, and other individuals during the course of the annexation proceeding.

Analysis of Potential Impacts

The City Council concludes that the Project will not result in any significant adverse environmental impacts. The Project does not propose any physical changes to the Property or other impacts to land, natural resources, or related facets of the environment as identified in Section 617.7(c). Instead, the Property is already developed with an existing electrical Substation and the Project simply proposes to redraw the existing municipal boundary line for the City to encompass the Property, causing the municipal boundaries for the Town and Village to thereafter exclude the Property.

The only impacts associated with this change in the legal jurisdiction over the Property relate to a loss of existing tax revenues paid to the Town, the Village, and the Falconer Central School District. The loss of tax revenue is a purely economic impact that is not a cognizable environmental impact under SEQRA. Socioeconomic impacts such as changes in population patterns and community character may be considered, but the Project will not result in any significant adverse socioeconomic impacts. See *Chinese Staff & Workers Ass'n v. N.Y.*, 68 N.Y.2d 359, 366 (1986); *Ridgewood-Bushwick Senior Citizens Council v. Giuliani*, 227 A.D.2d 261, 262 (1st Dept. 1996). Specifically, since the Property is uninhabited, no one would be required to change school districts and population patterns would remain the same. The loss of tax revenue will not adversely affect community services because the revenue loss will be modest and would be covered by a slightly increased tax rate assessed on the remaining property owners in the taxing jurisdictions. For example, per \$1,000 of assessed valuation, the tax burden would increase for residents as follows:

- In the Town: \$0.42
- In the Village: \$0.88
- In the School District: \$0.35 - \$0.44 (depending on the municipality within the School District)

The proposed annexation will not change the existing character of the neighborhood around the Property. This area is presently characterized by commercial and industrial uses and there are no plans to change the zoning classification of the Property. The long-time operation of the Substation on the Property is consistent with surrounding uses and there is no plan to change the use of the Property in the future.

BY COUNCILMEMBER _____ SECONDED COUNCILMEMBER _____:

WHEREAS, the City of Jamestown (the “City”) is authorized and empowered by Article 17 of the New York State General Municipal Law, Section 700 *et seq.* (“Municipal Annexation Law”), to alter its boundaries by annexing contiguous land from an adjoining municipality upon the consent of the people, if any, who reside on the land proposed to be annexed and the consent of the governing board of each affected municipality, following a determination that the annexation is in the overall public interest; and

WHEREAS, pursuant to section 703 of the Municipal Annexation Law, a petition for annexation (the “Petition”) to the City of approximately four acres of uninhabited land (the “Property”) in the Town of Ellicott (the “Town”) and the Village of Falconer (the “Village”) was presented to the City Council of the City of Jamestown (the “City Council”) on or about November 25, 2019; and

WHEREAS, the Property is more particularly described in Schedule A to the Petition and consists of four parcels owned by the City through its Board of Public Utilities (“BPU”), which includes a portion of Tiffany Avenue, and a portion of another parcel that the BPU leases from National Grid, on which the BPU owns all the improvements; and

WHEREAS, the BPU maintains a substation on the Property, which is commonly referred to as the Dow Street Substation (the “Substation”), as part of its electrical operations, which service an area encompassing the entire City, the Village, the Village of Celoron, and the majority of the Town of Ellicott; and

WHEREAS, no one resides in the Property; and

WHEREAS, the Petition seeks to annex the Property for the purpose of bringing the City-owned and City-operated Substation within the City’s territorial boundaries, thereby enabling the City to: (a) exert greater control over and better protect the Substation by providing it with the full contingent of the City’s municipal services, including fire and police protection; (b) remove the City-owned property from the tax rolls of the Town, Village, County of Chautauqua (the “County”), and Falconer Central School District (“Falconer CSD”), and thereby reduce the expenses incurred to pay tax liabilities; (c) maintain the stability of the City’s utility expenses and rates, potentially reducing the need for drastic increases in the utility rates over the next five to ten years to cover increasing tax expenses; and (d) incentivize business and industry to return to, develop in, and expand throughout the City and surrounding area by stabilizing and controlling utility rates; and

WHEREAS, the City Council considered the Petition at a meeting held on November 25, 2019, accepted the Petition, and authorized its execution by the Mayor by Resolution No. 201911B30; and

WHEREAS, then-Mayor Samuel Teresi signed the Petition on November 25, 2019 on behalf of the City, as the owner through the BPU of more than fifty percent of the total assessed valuation of the Property as shown on the last preceding Town Assessment Roll of the Town, which was filed in the Town Clerk’s office on July 1, 2019; and

WHEREAS, at the November 25, 2019 meeting, the City Council passed Resolution No. 201911B32, by which it resolved to exercise its powers under the Municipal Annexation Law to entertain the Petition and consider the proposed annexation of the Property to the City, and to hold a joint public hearing on the Petition, together with the Town of Ellicott Town Council (the “Town

Council”) and the Board of Trustees of the Village of Falconer (the “Village Board”), in accordance with the procedures set forth in sections 704 and 705 of the Municipal Annexation Law; and

WHEREAS, by letters dated November 26, 2019, the City filed the Petition with the Town Council and the Village Board and requested their participation in a joint public hearing on the proposed annexation; and

WHEREAS, the City Council, the Town Council, and the Village Board (collectively, the “Governing Boards” or “Boards”) agreed to hold the joint public hearing on the Petition on December 30, 2019 at 7:30 PM at Jamestown Public High School, 350 East Second Street, Jamestown, New York, and each caused notices setting forth the date, time, and location of the joint public hearing to be published in *The Jamestown Post-Journal* in accordance with section 704 of the Municipal Annexation Law; and

WHEREAS, the City mailed copies of the hearing notice published in *The Jamestown Post-Journal* to the Falconer CSD and the Jamestown Public School District, pursuant to section 704 of the Municipal Annexation Law; and

WHEREAS, upon information and belief, the Town and the Village also mailed copies of their hearing notices to the Falconer CSD, pursuant to section 704 of the Municipal Annexation Law; and

WHEREAS, the Governing Boards held a joint public hearing on December 30, 2019 at 7:30 PM at Jamestown Public High School, 350 East Second Street, Jamestown, New York, as noticed; and

WHEREAS, everyone in attendance at the joint public hearing on December 30, 2019 was given an opportunity to speak and be heard on the proposed annexation, with a stenographer recording all comments and an enlarged map depicting the Property displayed for all to view; and

WHEREAS, during the public hearing and thereafter, the Governing Boards received the written materials listed in Attachment A to this resolution, all of which have been incorporated into and constitute part of the record under consideration by the Boards; and

WHEREAS, the City, through its current Mayor Eddie Sundquist, the City Council, through its Chair Anthony Dolce, and the BPU, through its General Manager, David Leathers, had discussions with the Town, the Village and the Falconer CSD to determine whether the concerns raised by the Town, the Village and the Falconer CSD could be addressed such that annexation could proceed with the consent of all municipalities; however, the Town, the Village and the Falconer CSD refused to continue these discussions; and

WHEREAS, the City Council has duly considered and deliberated upon the Petition, taking into account each of the comments made at the public hearing, the written objections submitted at the public hearing and thereafter, as well as its independent investigation into the Petition’s compliance with the Municipal Annexation Law and consideration of whether the proposed annexation is in the overall public interest; and

WHEREAS, during its **January 27**, 2020 meeting, the City Council completed the environmental review it had undertaken with respect to the proposed annexation pursuant to and in compliance with the requirements of the State Environmental Quality Review Act (“SEQRA”), by adopting by resolution a negative declaration determining that the proposed annexation will not have any significant adverse environmental impacts; and

WHEREAS, the City Council hereby incorporates all of the documents relating to the SEQRA review, as identified in Attachment B, as part of the record for the annexation process; and

WHEREAS, the City Council now makes the following findings of fact with respect to the Petition and the proposed Annexation:

I. THE PROPERTY TO BE ANNEXED IS ELIGIBLE FOR ANNEXATION PURSUANT TO THE MUNICIPAL ANNEXATION LAW.

The Property totals approximately four acres in size and consists of four contiguous parcels owned by the City through the BPU (Tax Map Nos. 371.14-1-20, 371.14-1-21, 371.14-1-48, and 371.14-1-49)¹ and a small portion of another parcel owned by National Grid (Tax Map No. 371.14-1-22), which adjoins the City's parcels. The City, through its BPU, leases the small portion of National Grid's parcel included in the Property proposed for Annexation, in connection with its operation of the Substation. All improvements on the leased portion are owned by the City, through its BPU. The City, through the BPU, operates the Substation on the Property. The Substation is an integral part of the electric services the BPU provides to customers in the City, the Town, the Village, and surrounding municipalities.

Not only are these parcels contiguous to one another, but also, the Property as a whole is contiguous to the existing City boundary line. The Property is therefore eligible for annexation pursuant to the Municipal Annexation Law. During the public hearing and in written comments, legal counsel for the Town and Village and members of the public claimed that the Property is not contiguous to the City, asserting that the western edge of the Property is separated from the City's municipal boundary by the eastern section of Tiffany Avenue, which is a County road.

The City Council has considered this comment and determines that no issue exists with respect to the contiguity of the Property to the City. The City Council consulted with its legal counsel and concludes, as a threshold matter, that under the Municipal Annexation Law, the "only specific requirement of the statute is that the territory to be annexed must adjoin the annexing local government." *Matter of Common Council of the City of Gloversville v. Town Bd. of the Town of Johnstown*, 32 N.Y.2d 1, 4 (1973); see Gen. Mun. § 703(1). The highest court of this State, the Court of Appeals, has directed that the "validity of an annexation ought not to turn upon who owns the land which is the subject of the annexation, but upon the statutory requirements that the annexing local government and the territory to be annexed adjoin and that the annexation be in the over-all public interest." *City of Gloversville*, 32 N.Y.2d at 5. Here, the Property which the City proposes to annex in the Petition extends to the centerline of Tiffany Avenue. See Petition, Schedule A. Thus, the Property proposed to be annexed adjoins the City's municipal boundary at the centerline of Tiffany Avenue, and therefore indisputably satisfies the contiguity requirement.

In addition, although ownership of the territory to be annexed is not relevant to the issue of contiguity, the deeds for the Property that were delivered to the Governing Boards show that the section of Tiffany Avenue within the Property that adjoins the City's existing boundary line was previously conveyed into the Chautauqua County Industrial Development Agency (the "IDA") and then was conveyed from the IDA to the City. Thus, that section of Tiffany Avenue is part of the parcel identified by Tax Map No. 371.14-1-20, which is one of the City-owned parcels within the Property proposed for annexation. The Survey for the Property, revised June 8, 2017,

¹ Although the Tax Map Parcels do not extend to the center line of Tiffany Avenue where the municipal boundary is located, the parcels as deeded to the BPU and the legal description of the Property proposed for annexation does extend to the center line of Tiffany Avenue. Reference to the Tax Maps is for the purpose of determining assessed value and is not controlling in terms of limiting the area proposed for annexation.

also shows that this section of Tiffany Avenue is owned by the City. The Petition is seeking to annex this section of Tiffany Avenue, together with remainder of the Property of which it is a part.

Finally, through consultation with its legal counsel, the City Council also determines that recitations of the law in New York by counsel for the Town and Village were incorrect. Specifically, the Court of Appeals has determined that the presence of a highway *bisecting* a territory sought to be annexed does not necessarily destroy contiguity when the highway is not separate and apart from the territory being annexed and is rather located within the boundaries of one of the municipalities involved in the annexation. *See City of Gloversville*, 32 N.Y.2d at 4-6. The City Council concludes that, to the extent the ownership of the Property has been discussed during the annexation proceedings, this principle of law is relevant here, where the eastern side of Tiffany Avenue is currently situated in the Town and Village, but clearly is part of the Property proposed for Annexation. Moreover, the City Council finds that the fact that Tiffany Avenue is a County roadway which is maintained by the County does not impact a finding of contiguity. The County of Chautauqua, which holds an easement over the surface of the road, will continue to hold an easement over the surface of the road and will continue to have responsibility for the maintenance of its road, regardless of the municipality in which the road, or any portion thereof, is located. *See Matter of City of Middletown v. Town Bd. of Town of Wallkill*, 54 A.D.3d 333, 336 (2d Dept. 2008). Therefore, the road's presence within the Property does not affect the contiguity of the Property and the City's existing boundary line. Nor does the length of the border adjoining the City create an issue, particularly given the location of the Property in relation to the rest of the City and the commercial and industrial uses dominating the surrounding area. The statute only requires that the territory being annexed adjoin the annexing municipality, and that requirement is satisfied here.

Accordingly, the City Council concludes that both the facts and the law support its determination that the Property adjoins the City and may properly be annexed to the City under the Municipal Annexation Law.

II. THE FORM AND CONTENTS OF THE PETITION COMPLY WITH THE REQUIREMENTS OF THE MUNICIPAL ANNEXATION LAW.

The Petition contains a metes and bounds description of the Property to be annexed, which is attached to the Petition as Schedule A, and accurately states that there are no inhabitants residing in the Property. The Petition was signed by then-Mayor Samuel Teresi, pursuant to authority granted to him by resolution of the City Council, on behalf of the City, as the owner of more than 90% of the assessed value of the Property, as shown on last preceding Assessment Roll of the Town filed in the Town Clerk's office on July 1, 2019. The City Council determines that the Petition therefore complies with section 703(1) of the Municipal Annexation Law. No objections to the Petition's compliance with these requirements were raised at the joint public hearing, nor in the written objections submitted to the Boards and incorporated into the record of the annexation proceedings.

The signature of then-Mayor Teresi was authenticated by the affidavit of a witness, James N. Olson, whose signature was notarized by a Notary Public on November 25, 2019. The City Council determines that this affidavit of James N. Olson, as witness to the signature of then-Mayor Teresi, complies with the requirements of section 703(2) of the Municipal Annexation Law. No objections to the Petition's compliance with these requirements were raised at the joint public hearing, nor in the written objections submitted to the Boards and incorporated into the record of the annexation proceedings.

Annexed to the Petition as Schedule B is a certificate of the Town assessor, Kevin Okerlund, who was responsible for preparing the Town's 2019 Assessment Roll, which was the last preceding Assessment Roll of or utilized by the Town and Village (the latter of which is not a separate assessing unit) when the Petition was signed. Mr. Okerlund certified that the Petition is signed by the owner of a majority in assessed valuation of the real property proposed for annexation. The City Council determines that the Petition therefore complies with section 703(3) of the Municipal Annexation Law.

Counsel for the Town and the Village made comments at the public hearing asserting the Assessor's Certificate was deficient, and these comments are reiterated in each of the 226 signed "Objections to Petition" that the City Council received at the public hearing, which are identical except for the signature blocks.

First, it was asserted that the Assessor's Certificate is defective because it "does not completely describe the proposed real property that is the subject of the annexation, in that it ignores the portion of Tiffany Avenue between the centerline of the road and extending east to the western boundary of Tax Parcel No. 371.14.1-20." The City Council finds that there is no basis to support these comments because "the portion of Tiffany Avenue" referred to does not "extend east" from the centerline of the road "to the western boundary of Tax Parcel No. 371.14.1-20"; rather, the deeds and Survey for the Property that were delivered to the Governing Boards irrefutably establish that this "portion of Tiffany Avenue" is part of Tax Parcel No. 371.14.1-20. The Assessor's Certificate does not "ignore" this "portion of Tiffany Avenue," nor does it fail to "completely describe the proposed real property that is the subject of the annexation." To the contrary, paragraph 3 of the Assessor's Certificate expressly states that "[t]he real property in Petitioner's name that is within the area sought to be annexed and is assessed on the last preceding Assessment Roll for the Town of Ellicott" includes "Tax Map Parcel No[.]. 371.14.1-20."

Objections were also made at the hearing and in writing that the Assessor's Certificate was deficient because "there is no mention made of the assessed valuation, if any, of the portion of the Property to be annexed situated between the western boundary of Tax Parcel No. 371.14-1-20 and the center line of Tiffany Avenue." Again, the City Council finds that there is no basis for these objections because there is no "portion of the Property" that is "situated between the western boundary of Tax Parcel No. 371.14-1-20 and the center line of Tiffany Avenue." Rather, Tax Parcel No. 371.14-1-20 extends all the way to the center line of Tiffany Avenue, and paragraph 4 of the Assessor's Certificate states that the total assessed value of Tax Parcel No. 371.14-1-20 on the Assessment Roll is \$285,603. Moreover, after reviewing section 703 of the Municipal Annexation Law, the City Council finds that section 703(1) simply requires that a petition for annexation describe the territory to be annexed, state the approximate number of inhabitants thereof, and be signed. One of the methods for accomplishing the signature requirement is by the signature of the "owners of a majority in assessed valuation of the real property in such territory assessed upon the last preceding assessment roll of, or utilized by, the local government or governments in which it is situated." Gen. Mun. § 703(1). When this method of signature is used, the petition must also have attached "a certificate of an assessor responsible for the preparation of such assessment roll certifying to such facts." Gen. Mun. § 703(3). There is no requirement to list the assessed values of any individual tax parcels included within a territory proposed for annexation.

Finally, objections were made at the hearing and in writing that the Assessor's Certificate was deficient because "as set forth in paragraph 4 of the Assessor Certificate, it is unclear if the total assessed values set forth on the schedule provided therein are for the last assessment roll."

The City Council finds these objections to be without merit. Paragraphs one, two, three, and five of the Assessor's Certificate all specifically state that the assessment roll referenced therein is the 2019 Assessment Roll for the Town of Ellicott, which was filed with the Town of Ellicott Clerk on July 1, 2019. That paragraph four of the Assessor's Certificate refers to the "Assessment Roll" rather than the "2019 Assessment Roll" or the "last preceding Assessment Roll for the Town of Ellicott" does not give rise to any ambiguity. Again, there is no requirement in the law that an assessor's certificate set forth the assessed values of any individual tax parcels included within a territory proposed for annexation at all – much less that the assessor's certificate clearly identify the assessment roll from which those assessed values were sourced in the same paragraph in which the assessed values are stated.

The City Council determines that the Assessor's Certificate attached to the Petition as Schedule B clearly sets forth the information required to be included therein, pursuant to section 703(3) of the Municipal Annexation Law. Because each of the applicable requirements has been satisfied, the Common Council determines that the Petition is in compliance with section 703 of the Municipal Annexation Law.

III. THE PROPOSED ANNEXATION IS IN THE OVERALL PUBLIC INTEREST.

The City Council has weighed the benefits and detriments that the proposed Annexation would have on the City, as the annexing municipality; the Property proposed to be annexed; and the Town and Village, as the municipalities from which the Property would be annexed. In weighing the benefits and detriments, the City Council has considered the provision of municipal services to the Property, the likely economic impacts of the proposed Annexation, and whether the Property and the adjoining area of the City have the requisite unity of purpose and facilities to constitute a community. With respect to these considerations, the City Council makes the following findings of fact:

A. Provision of Municipal Services

The BPU's Samuel A. Carlson Electric Generating Station is one of the oldest and most successful municipal power plants in the country, and the City's BPU is the largest of 47 municipally-owned and operated utilities in New York State. The BPU was created by the City Charter of 1923, to guide the development of the community's electric and water services. Today, the electric division of the BPU serves the City, the Village, the Village of Celoron and portions of the Town. This service territory encompasses a total area of 23.7 square miles, having an estimated population of about 48,000, and 19,235 metered customers, over 3,700 of which are in the Town or the Village, including the Falconer CSD, the Town's municipal building, and the Village's municipal building. To serve its territory, the BPU has ten neighborhood substations located strategically throughout its franchise territory. Because the Property proposed for annexation houses one of the nine electrical substations owned and operated by the BPU's electric division, it is a vital part of the City's municipal utility infrastructure.

In fact, of the BPU's nine substations, the Substation located on the Property is the most vital to the electric division's operations because it is the BPU's sole interconnect the New York State electric grid. The BPU's electrical generating station does not typically generate enough electricity to power its entire system, so the New York State electric grid is the primary source of the electricity that the BPU distributes to its customers. The electric division's substations

transform the electricity from the New York State grid and the BPU's own generating station into distribution voltages, which are then distributed to businesses and residents throughout the BPU's service territory. The Dow Street Substation interconnects to the New York State electric grid through overhead utility lines, and there are also multiple transformers and various other structures and apparatus located on the Property that protect and control the BPU's electric utility system, including circuit breakers, lightning towers, and disconnect switches – all of which are also owned by the BPU.

The Substation on the Property, like all of the BPU's electrical infrastructure, is susceptible to unique dangers and threats. As such, any emergency response to an emergency situation at a BPU property on which electrical infrastructure is located involves additional considerations that are not involved in responses to other emergency situations. For example, the BPU's electrical infrastructure is highly dangerous and volatile, creating the potential for explosions or the release of hazardous energy or chemicals. The Substation on the Property in particular has extremely high voltage, which increases the likelihood of an accident and creates a significant shock hazard risk. In addition, BPU properties that house electrical infrastructure like the Substation are considered to be viable and high-value targets for potential international and domestic terrorism. Because the BPU's electrical infrastructure is critical in nature, highly dangerous, and volatile. Even a relatively minor incident, such as a trespass or criminal mischief complaint, at a BPU property housing electrical infrastructure creates the potential for substantial harm to result, either as a result of ignorance or malign intent on the part of the suspect.

The potential for emergency situations to arise at the Property because of the considerable risks associated with the Substation is very real, as evidenced by several incidents that have occurred at the BPU electric division's properties located within the City in recent years. On one occasion, the exhaust of a gas turbine generator at the BPU's generating station leaked hydraulic fluid in a diverter valve, which caught fire and ultimately had to be extinguished by the City's fire department (the "City FD"), using approximately 300 pounds of chemical extinguisher. Subsequently, an arc flash – which is a large discharge of energy, akin to an explosion – occurred at one of the BPU's substations within the City, which severely burned and injured three BPU workers and required emergency responses from both the City FD and the City's police department (the "City PD").

Because of the Substation's importance to the BPU's electrical infrastructure, any damage to the Substation or the other electric infrastructure located on the Property could cause the BPU's electric system to lose connectivity to the New York State electric grid, which would leave all of the electric division's customers without power. In addition to the loss of electricity to its customers, a disruption to the BPU's electric infrastructure would create the potential for cascading and catastrophic impacts well beyond the electric division's service territory, as was demonstrated by the 2003 northeast blackout, which originated from a loss of energy due to routine maintenance at a facility in Akron, Ohio at the same time that another plant happened to be off-line and resulted in a cascading "domino effect" of energy plants not being able to supply the grid, leaving eight states and 45 million people without power for up to three days. The City, as the owner and operator of the Substation, through its BPU, has a compelling interest in protecting and preserving the Substation, and ensuring its continued operation.

The Property is already within the jurisdiction of the City for purposes of providing water and sewer services; however, because it is presently located in the Town and the Village, the responsibilities for providing fire and police protection to the Property and responding to any emergency situations that may arise there are divided between the Village's volunteer fire

department (the “Village VFD”) and the Town’s police department (the “Town PD”). Those departments would also control the response to any incident that occurred at the Property – even if the City PD and/or the City FD were also to respond – notwithstanding the City’s ownership of the Substation. Conversely, if the Property is annexed to the City, the City FD and the City PD will have jurisdiction over and be responsible for providing fire and police protection and responding to any incidents or emergencies at the Property, and will ultimately take the incident command position and be in control of the response to any incident or emergency occurring at the Property.

The City PD and City FD are both encompassed under the umbrella of the City’s unified Department of Public Safety (the “City DPS”), which is under the command of the City’s Chief of Police/Director of Public Safety. The integrated structure of the City DPS allows for open communication and effective operations among the City PD and City FD, which operate as a team and provide consistent support to one another. As such, the proposed annexation will ensure that the Property and the BPU’s electrical infrastructure are protected by a coordinated, cohesive, and unified team of first responders that is under the direction and control of the municipality that has the greatest interest in protecting and preserving the Property, rather than being divided among two different departments from separate municipalities. Following the annexation, all municipal services would be provided by the City. This consolidation of municipal services cannot be accomplished absent annexation of the Property to the City, because the Town does not have a fire department and the Village does not have a police department; only the City has both.

Accordingly, the proposed annexation will benefit the Property and the City, because the City indisputably has the greatest interest in protecting and servicing the Property and is better equipped than either the Town or the Village to provide all municipal services to the Property. In addition, the proposed annexation would provide some benefit to the Town’s Police Department (“Town PD”) and the Village’s Volunteer Fire Department (“Village FD”), which would no longer be responsible for providing police and fire protection to the Property and would therefore be able to devote resources that would otherwise have had to be devoted to protecting the Property to serve other properties within their respective jurisdictions.

The City PD and the City FD have the manpower, resources, and capabilities necessary to protect and respond to any incident or emergency that might arise at the Property if it were annexed to the City, as evidenced by their protection of the BPU’s generating station and the eight BPU substations already located within their jurisdictions. In fact, the City PD and the City FD have greater resources, manpower, equipment, and training, and faster response times as compared to the Town PD and the Village VFD, respectively.

As compared to the Town PD, the City PD has more officers in total, more officers on-duty at any given time, and greater resources available to provide police protection and respond to an incident or emergency at the Substation Property. Although the City PD has far greater manpower than the Town PD, the jurisdiction that it is responsible for patrolling and protecting only covers approximately four square miles, which is less than half the size of the jurisdiction of the Town PD (approximately ten square miles). If the Property is annexed to the City and brought within the jurisdiction of the City PD, the maximum amount of time it will take for the City PD to respond to any call for service at the Property is approximately five minutes. There are foreseeable circumstances where the City PD’s specialized units – such as its K-9 unit and SWAT team – and its drone program would provide a tactical advantage in responding to an incident at the Property if it were located within its jurisdiction. The Town PD does not have a K-9 unit, nor does it have

its own SWAT team, and no other police department in the immediate area – including the Town PD – has a drone program and an FAA-certified drone pilot, as does the City PD.

Likewise, as compared to the Village VFD, the City FD has more firefighters in total; has firefighters on-duty, present at a City fire station, and ready to respond to an alarm at any given time; is able to respond to a fire emergency at the Substation property faster; has more resources and equipment; and has additional training in responding to electrical emergencies of the sort that could potentially arise at the Substation. The City FD is a paid, full-time, professional, all-hazards fire department, and its firefighters are therefore subject to more stringent training requirements than are the Village VFD's firefighters. The City FD has firefighters on-duty and staffs its main centralized fire station at City Hall, along with at least two of its three satellite engine companies, at all times; as soon as the City FD receives an alarm, all on-duty firefighters respond, along with a command car, a quint ladder truck, and two fire engines. If the Property is annexed to the City, the City FD will be able to respond to an emergency at the Property in approximately two minutes from Fire Station 4, which is the closest of its four fire stations to the Property, and in just over four minutes from the main centralized fire station, Ladder Company 1. The Village VFD only has one fire station, which is not regularly staffed – meaning that when an alarm comes in, the Village's volunteer firefighters have to receive the alarm, stop what they are doing, travel to their station, and form a crew before they can start their response to the scene – so the number of firefighters who will respond to any given incident is uncertain because it is limited by the number of volunteer firefighters who receive the call and are available to respond at that time. Also, the Village VFD's response time to an incident depends on how quickly its volunteer firefighters can get to the fire station and form a crew, and it typically takes much longer for the Village VFD to respond to the scene of an emergency than it takes the City FD.

Any police or fire response to the Property would require coordination with the City's BPU. The City Council determines that, because they are all under the direction and control of the City, the City PD and City FD are also better suited to effectively coordinate and work with the BPU to respond to any electrical emergency at the Property. The City PD already conducts extra patrols and maintains a high police presence near the BPU properties within its jurisdiction, works hand-in-hand with the BPU to harden these targets and ensure the safety of the BPU's properties and electrical infrastructure, and would coordinate any response to a call for service at one of these properties with the BPU, and whatever emergency services and other resources were dispatched to the incident, to ensure scene security and personnel safety. The City FD is similarly well-suited to coordinate with the City's BPU, inasmuch as it already has jurisdiction over and responsibility for protecting the BPU's electrical generating station and the eight substations located in the City, and has previously responded to serious emergencies at those properties.

The City Council has considered comments asserting that the consolidation of municipal services under the City is not particularly meaningful, because the Town PD, the Village VFD, the City PD, and the City VFD all participate in mutual aid. However, the City Council has determined that the existence of mutual aid assistance policies or agreements between the City, the Town, and the Village does not guarantee a response from the City PD or the City FD for any particular incident or emergency occurring at the Property while it remains within the jurisdictions of the Village VFD and the Town PD; only the department with jurisdiction over the area where an incident or emergency is occurring is required to respond. In addition, even if the Village VFD and/or the Town PD requested mutual aid assistance to deal with an emergency situation or incident occurring at the Property and the City FD and/or City PD responded, the Village VFD or

the Town PD would still be in control of the incident response, and the department that has jurisdiction over an incident is necessarily determinative of the response that will be provided.

The City Council recognizes and appreciates that the emergency responders in the Town, Village, and City provide critical services throughout the area and believes that each department is competent, capable, important to the community as a whole. However, in connection with the proposed annexation of the Property, consideration of the municipal services that would be provided to the Property if the annexation were to occur, versus those that would be provided in the absence of annexation, is an issue of primary importance to the public interest determination that the City, the Town, and the Village must make under the Municipal Annexation Law. The City Council finds that the response to any incident or emergency that may arise at the Property in the future can be coordinated and carried out most efficiently and effectively if that property is within the municipal boundaries of the City and under the jurisdiction of the City PD and City FD, which are both parts of the City's unified Department of Public Safety and are well-positioned to coordinate and work with the City's BPU, rather than under the divided jurisdiction of the Town PD and the Village VFD.

Based on its consideration of all of the evidence in the record, the City Council determines that the City PD and City FD are better suited than the Town PD and the Village VFD to provide police and fire protection to the Property, and consolidation of all municipal services under the City is therefore in the best interest of the Property and the City. In addition, the annexation will provide some benefit to the Town and the Village because, if the Property is annexed to the City, it will then fall under the jurisdiction of the City FD and the City PD, and would be one less property that the Village VFD and the Town PD have the primary responsibility to protect, thus reducing the burdens on those departments, and any resources that those departments would otherwise have had to devote to the Property could be reallocated to protecting other properties within their respective jurisdictions.

B. Economic Impacts

The City is the number one taxpayer in the Town and Village, based on total taxable assessed value. In fact, over the past twenty years, the City or its BPU has paid over \$13,487,340 to the Town, Village, and Falconer CSD. The Substation is a vital – and highly-assessed – component of the City's electrical infrastructure, and annexation would significantly reduce the City's real property tax liability and, correspondingly, the BPU's operating expenses, because the Property would become tax exempt, as a matter of law, if it were located within the City's municipal boundaries. Notably, although the annexation of the Property would reduce the City's tax payments to its neighbors, the City would still be the second-largest taxpayer in the Town and the third-largest taxpayer in the Village following annexation, based on total taxable assessed value.

Currently, the City BPU pays approximately \$34,681 in taxes to the Town, \$72,641 in taxes to the Village, \$153,261 in taxes to the Falconer CSD, and \$73,305 in taxes to Chautauqua County – a total of about \$333,889 – annually on the Substation. Annexing the Property would reduce BPU expenses by eliminating its real property tax expenses associated with the Property, thereby also eliminating double-payments for multiple entities to provide municipal services, such as police and fire protection. Although the BPU has engaged in a concerted effort over the past several years to manage its budget prudently, financial difficulties remain. Eliminating or reducing real property tax expenses is a common step that non-municipal public utilities and

businesses take to reduce their overall expenses. Thus, the elimination of real property taxes is a valid, business-like reason in favor of annexation.

The City Council acknowledges that, while the proposed annexation would eliminate the real property taxes owed for the Property to the Town, the Village, the County, and the Falconer CSD, the BPU would be required to make a different type of payment under the General Municipal Law and the Public Service Law (“PSL”) administered by the Public Service Commission (“PSC”) known as a tax equivalency payment. However, the total amount of these tax equivalency payments will be significantly less than what the BPU currently pays in taxes, leaving the BPU, with the net benefit of saving approximately \$177,000 annually. The tax savings would also offset increased costs that may otherwise be incurred for operation or maintenance of the Substation in the future.

Eliminating uncontrollable expenses such as real property taxes would help the BPU to maintain the stability of its utility rates and reduce the need for the BPU to seek increases in utility rates over the next five to ten years. For example, the 2010 and 2016 rate cases for the BPU added \$883K and \$816K to annual revenues, respectively. Saving approximately \$177,000 per year represents more than 20% of the amount awarded in each of these two rate cases. Spread across the 6 years between rate cases, the savings to the BPU would be over \$1,000,000, which would have likely helped to delay the need for these rate increases. Accordingly, saving approximately \$177,000 per year is both meaningful and material to the BPU.

Moreover, stable electric rates benefit all users of the Substation’s electricity services, which includes not only City residents, but also residents from the Village, Town, and other surrounding municipalities. Even the Falconer CSD receives electricity from the BPU. These BPU customers enjoy discounted utility rates – at about half the cost charged by National Grid. Reducing BPU expenses will help the BPU maintain those low rates. Stabilizing rates and keeping rate increases to a minimum also helps attract commercial and industrial developers to the area and the BPU has been instrumental in offering special incentive electric rates to some of the largest employers and taxpayers in the Town and Village including SKF, Titan X, Monofrax and Trucklite. This results in jobs and a commercial tax base for the entire area. Thus, by facilitating the efficient operation of the Substation, the annexation would directly benefit the the BPU customers located in the City, Town, and Village, as well as directly benefiting the Property and the City.

As noted above, following annexation, the BPU would be required to make tax equivalency contributions to the City and to the Jamestown Public School District in accordance with requirements of the State General Municipal Law and the State Public Service Commission. Specifically, under the General Municipal Law, a municipality with its own electric utility may earn a tax equivalency payment from the utility in an amount that totals the amount of taxes that would be owed on the utility if it were privately owned (rather than owned by the same municipality). The PSC recognizes these tax equivalency payments and allows an annual payment to be made to the local school district as well. The PSC’s formula provides that the utility will pay 1% of the book value of its asset holdings located within the City.

The BPU already pays to the City an amount equal to 1% of its assets within the City limits, and because annexation would bring additional assets within the City limits, the total dollar amount owed by the BPU would correspondingly increase. Upon annexation of the Property, the BPU would be required to pay additional contributions totaling approximately \$78,616 each to the City and to the Jamestown Public School District. Since the City is up against its constitutional tax limit, which restricts the amount a City may raise by taxing real

estate in any given year, the annual tax equivalency payment received from the BPU following the annexation would provide the City with additional revenues without violating its constitutional tax limit. Thus, there will be a clear economic benefit to the City and the Jamestown Public School District as a result of the annexation.

The majority of objections raised at the public hearing were related to the potential loss of tax revenue to the Town, Village, and Falconer CSD, and/or the increased tax liability to the remaining taxpayers in those jurisdictions. The City Council acknowledges that some loss of assessed value to the Town, Village, County, and Falconer CSD is inevitable in the event of annexation, which will necessarily result in either a loss of tax revenue or an increase in the tax rates applied to the remaining taxpayers. However, as stated above, the City would still be the number two taxpayer in the Town and number three taxpayer in the Village, based on total taxable assessed value, even after the annexation of the Property.

Moreover, the City Council determines that the economic impacts to the Town, Village and Falconer CSD would be modest and could be avoided entirely by a marginal tax increase to residents of those jurisdictions. The marginal increase in tax rates, spread out amongst all the properties in the Town and Village, is not a significant detriment and would be substantially outweighed by the benefits to the Property, the City, and the community in general if the annexation occurs. On the Town's most recent (2019) Assessment Roll, the Property was listed with an assessed value of \$7,861,599. Based on the most recent tax bills, annexation of the Property to the City would result in a loss of approximately \$34,681 of tax revenue to the Town, \$72,641 to the Village, and \$153,261 to the Falconer CSD, if they kept their tax levies the same and did not increase their tax rates. These figures represent approximately 0.8% of the Town's total budget, 0.6% of the Falconer CSD's budget, and 8.67% of the Village's total tax levy (which is likely less than the budget amount).

Annexation of the Property to the City, and the resulting tax losses to the taxing jurisdictions where the Property is currently located would also have little effect on the tax rates that would be applied to the remaining taxpayers in the Town, the Village, and the Falconer CSD. Per \$1,000 of assessed valuation, the tax burden would increase for residents as follows:

- In the Town: \$0.42;
- In the Village: \$0.88; and
- In the Falconer CSD: \$0.35 - \$0.44 (depending on which municipality within the Falconer CSD the taxpayer resides).

In fact, the Falconer CSD may be able to further minimize the tax rate increase by reducing its unassigned fund balance margins. For example, according to multi-year comparison reports available on the State Comptroller website, the Falconer CSD increased its unassigned fund balance by \$532,447 to bring the total balance to \$4,038,327 for its fiscal year ending June 30, 2019. Thus, the loss of \$153,000 in property tax revenue could be absorbed without any tax rate increases or programming or position cuts by simply reducing the annual increase to the unassigned fund balance. Accordingly, the City Council determines that the loss of tax revenue to the Town, the Village, and the Falconer CSD, and the resulting increases in tax liability to other taxpayers within those jurisdictions, if any, would be marginal.

The City Council finds the circumstances involved in the Annexation of the Property are similar to those that occurred in *City of Fulton v. Town of Granby*, 117 A.D.3d 1529 (4th Dept. 2014), where annexation was found to be in the overall public interest. There, the City of Fulton sought to annex a territory on which it operated its wastewater treatment plant from the Town of Granby. The Court concluded that annexation of the property would give the City of Fulton

more control over the plant and “would significantly reduce the City’s tax liability, and, therefore, the Facility’s operating expenses.” In total, annexation would save the City of Fulton \$116,183.46 in taxes, while the loss of tax revenue to the Town of Granby would increase the tax burden on residents by only about 7.5 cents per \$1,000 of assessed valuation. The resulting tax reduction allowed the City of Fulton to stabilize its sewer fund and the rates it charged, which the parties agreed would promote industrial growth and development in the area, given that wastewater disposal rates are a key cost consideration for businesses when deciding where to operate. In addition, the City of Fulton’s municipal services were better equipped to service the site. In light of these considerations, the Court agreed that annexation would be in the overall public interest despite the loss in tax revenues to the town. The same factors and considerations are true here.

In addition, although no improvements are currently proposed for the Property, the annexation would enable the BPU to make any future improvements to the Substation without putting itself at risk of the Town substantially increasing its assessment and tax liability. As it stands now, any upgrades would result in an increased assessment and increased tax liability to the Town, Village, County, and Falconer CSD. While such improvements would also increase the tax equivalency payments due to the City and the Jamestown Public School District, those tax equivalency payments would always be less than any increase in tax liability to the Town, Village, and Falconer CSD.

One objection raised during the public hearing implied that the benefits of annexation are illusory because the annexation will not result in reduced utility rates for BPU customers. The City Council finds that this objection misses the mark – the Petition does not promise or seek rate reductions, but rather seeks to reduce expenses and stabilize utility rates. Annexation would have the benefit of reducing the expenses that the BPU must incur because the current tax liabilities owed to the Town, Village, County, and Falconer CSD would be eliminated. Annexation would also eliminate the uncertainty and lack of control over the expenses that would otherwise be incurred annually to cover property taxes for the Property. As noted, expenses for real property taxes could change at the discretion of the taxing authorities within whose jurisdictions the Property currently sits: the Town, Village, County, and Falconer CSD. Historical tax rates and common sense demonstrate that property taxes owed to other municipalities are bound to increase over the long-term, and if the Property remains within those taxing jurisdictions, the BPU will continue to bear the additional expenses associated with increased taxes.

However, if the City annexes the Property – the entirety of which the City owns or leases and on which it operates a municipal utility for the benefit of public users across all of the affected municipalities – the City will gain control over this aspect of the BPU’s expenses, and thereby minimize the need to seek approval for increased rates over the long-term due to increased property tax expenses. It is indisputably in the overall public interest for the City and the BPU to avoid paying unnecessary costs to subsidize the budgets of other municipalities when it could avoid doing so altogether. Thus, by reducing the BPU’s existing operating costs for the Substation, and by providing more certainty over costs for future operations, the annexation would help stabilize long-term utility rates and ensure reliable, cost-effective service for the BPU’s customers.

Further, the City Council has determined that incorporating the City-owned Property presently located in the Village and Town into the territorial boundaries of the City will help spawn industrial growth and development in the City and surrounding areas. In recent years, the

City has been plagued by the departure of a significant portion of the business and industry that once served as the lifeblood of the City. As these vital businesses left the City, so did many residents. Although the City has endeavored to attract new business and fill its vacant factories, its high tax and utility rates have continuously frustrated its efforts. Accordingly, reducing the City's tax liability to the Village, Town, County, and Falconer CSD, and thereby stabilizing the City's electric rates, would be a significant boon to its attempts to attract businesses to the area. In fact, the BPU has been instrumental in offering special incentive electric rates to some of the largest employers and taxpayers in the Town and Village including SKF, Titan X, Monofrax and Trucklite. Growth and development of business and industry would bring new jobs to the area, as well as new workers, some of whom would undoubtedly opt to reside, shop and patronize businesses in the Village and/or Town. Thus, the proposed annexation could provide economic benefits to the Village and Town as well as to the City.

In comparison to the significant benefits that would accrue to the Property and the City – and to the Town, Village, and community at large by virtue of their receipt of electricity from the Substation – the detriment to the Town, the Village and the Falconer CSD would be minimal, resulting in only a modest loss of tax revenue that could be offset by a slight increase in the tax rate per \$1,000 in assessed value. By law, such circumstances do not constitute a detriment sufficient to defeat a finding that the annexation is in the overall public interest. Accordingly, the City Council has determined that the balance of the potential economic effects of the proposed annexation weighs in favor of the conclusion that the annexation is in the overall public interest.

C. The Property and the City Have the Requisite Unity of Purpose and Facilities to Constitute a Community.

The City Council has considered whether the existing or proposed use and character of the Property to be annexed is harmonious and consistent with that of the remainder of the City, and whether the Property and the City share the requisite “unity of purpose and facilities to constitute a community. The Property and the City are inextricably linked by their history and function, which revolves around the BPU's operation of the Substation on the premises. The Substation was originally sited on this Property in 1954 and the site was selected because of the need to interconnect with the then-Niagara Mohawk (now National Grid) transmission system, which is directly adjacent to the Substation. The Substation on the Property is an important component of the BPU's electric service system. Thus, the City Council has determined that the Substation does not merely share a “unity of facilities” with the City, it is an integral and inextricable part of the facilities of the City.

The BPU itself is also inextricably linked to the City since it was established as a municipal board pursuant to Article VII of the City Charter. The BPU consists of nine members, including the Mayor, the Director of Public Works, and seven appointed members, two of whom must be City Councilors. The BPU has full control of the public utility systems, including the management, regulation, operation and maintenance of those systems and the use and sale of the products of those systems. It is responsible for setting its own budget and maintaining the revenues and monies belonging to each system in separate accounts. However, if there is a deficit in the operation of its utility system, then the BPU can request the City Council to insert a sum to be levied on the City of Jamestown taxpayers to cover such deficit.

Moreover, nothing in the Charter authorizes the BPU to acquire real property. Instead, Section 52 of the Charter authorizes the City, not the BPU, to acquire any and all of the public

utilities required for its inhabitants. As a result, ownership of all property used for BPU purposes is in the name of the City of Jamestown. As evidenced by the Charter and the deeds, the Property proposed for annexation is titled in the City of Jamestown and dedicated to public utility purposes. In fact, all assets are the property of the City's taxpayers, and while day-to-day operation of these City assets has been delegated by the City Charter to the BPU, ultimate authority over all City utility assets rests with the City Council and Mayor.

Further, the character of the Property to be annexed is in harmony with that of the adjoining area of the City. The surrounding properties in the City are used for commercial/industrial/utility purposes and, therefore, Property proposed for annexation is consistent with zoning in the surrounding area of the City and the comprehensive plan. No change in use is planned for the Property following the annexation, if it is approved; the BPU will continue to operate the Substation on the Property. Indeed, given the multimillion-dollar Substation equipment located on the Property and the critical nature of the Substation's operations to electric services for the community, there is no reasonable expectation that the use or zoning for the Property should or would change in the future, whether the proposed annexation occurs or not.

Annexation would support the City's continued use of the Property to supply electricity to area residents and would leave the City better able to manage, preserve, and protect the Substation because the City would have full control over the Property as the owner, operator, and governing municipality. Accordingly, the City Council finds that the requisite unity of purpose exists and that the proposed annexation is in the overall public interest.

NOW, THEREFORE, IT IS RESOLVED, by the City Council (a majority of the members thereof affirmatively concurring) that:

1. The City Council hereby incorporates all of the documents listed in Attachment A and the documents relating to the SEQRA review, as identified in Attachment B, as part of the record for the annexation process;
2. The Property adjoins the City and may properly be annexed to the City under the Municipal Annexation Law;
3. The Petition for Annexation complies with the form and content requirements set forth in the Municipal Annexation Law;
4. The proposed annexation is in the overall public interest;
5. The City Council will issue an Order approving the proposed annexation;
6. The City Council will file this Resolution, the Order approving the proposed annexation, a copy of the Petition, and a copy of the transcript of the Joint Public Hearing and written submissions, with the Clerks of the City, the Town, and the Village, pursuant to section 711(2)(b) of the Municipal Annexation Law; and
7. The Mayor, the City Clerk and Corporation Counsel are authorized to take such other steps as may be necessary to carry out this Resolution.

The adoption of the foregoing was moved by Councilmember _____, seconded by Councilmember _____, and duly put to vote, which resulted as follows:

	Yea	Nay	Abstain	Absent
Council President Anthony Dolce	[]	[]	[]	[]
Councilmember Brent Sheldon	[]	[]	[]	[]
Councilmember Vickye James	[]	[]	[]	[]
Councilmember Marie Carrubba	[]	[]	[]	[]
Councilmember Grant Olson	[]	[]	[]	[]
Councilmember Thomas Nelson	[]	[]	[]	[]
Councilmember Kimberly Ecklund	[]	[]	[]	[]
Councilmember Tamu Graham-Reinhardt	[]	[]	[]	[]
Councilmember Jeffery Russell	[]	[]	[]	[]

Attachment A

At the December 30, 2019 joint public hearing, the City Council, Town Council, and Village Board received the following written submissions:

- a) A package from the Special Counsel for the City containing:
 1. Petition for Annexation dated November 25, 2019;
 2. Short Environmental Assessment Form dated November 25, 2019;
 3. Survey/Map of Property to be Annexed;
 4. Pre-Annexation Map;
 5. Post-Annexation Map;
 6. City of Jamestown Resolution No. 30 (November 25, 2019);
 7. City of Jamestown Resolution No. 31 (November 25, 2019);
 8. City of Jamestown Resolution No. 32 (November 25, 2019);
 9. City of Jamestown Notices to Village of Falconer;
 10. City of Jamestown Notices to Town of Ellicott;
 11. City of Jamestown Notices to Falconer Central School District;
 12. City of Jamestown Notices to National Grid;
 13. Town of Ellicott Notices;
 14. Village of Falconer Notices;
 15. Publication of Notices;
 16. City of Jamestown Common Council Meeting Minutes November 25, 2019;
 17. Deed to the Properties from BJB to CCIDA;
 18. Deed to the Properties from CCIDA to City of Jamestown BPU;
 19. Corrective Deed to the Properties from CCIDA to City of Jamestown BPU;
 20. Town of Ellicott Tax Roll Excerpts 2019;
 21. 2019 Town of Ellicott Budget;
 22. Falconer Central School District Tax Roll Excerpts 2019;
 23. 2019-2020 Falconer Central School District Budget;
 24. City of Jamestown Good Neighbor Deeds;
 25. Taxes Paid by City/BPU Divisions 2000-2019;
 26. Ellicott/Falconer Top 10 Taxpayers by Assessed Value;
 27. City of Jamestown Restructuring Efforts;
 28. Trend Report for Falconer Central School District 2015-2019;
 29. Trend Report for Falconer Central School District 2010-2014;
 30. Multi-Year Comparison Report Falconer Central School District 2010-2014;
 31. Multi-Year Comparison Report Falconer Central School District 2015-2019;
 32. BPU Electric Budget;
 33. City of Jamestown Budget 2020;
 34. Tax Bills for the Properties 2017;
 35. Tax Bills for the Properties 2018;
 36. Tax Bills for the Properties 2019;
 37. Statement by Samuel Teresi December 2019; and
 38. Hearing Transcript October 2018;

- b) A letter dated December 30, 2019 from counsel for the Town, the Village, and the Falconer CSD concerning the Petition, with Exhibits A-O; and
- c) 226 signed documents entitled “Objections to Petition,” which are identical except for the signature blocks.

On January 8, 2020, the City Council also received a letter from Diane Crandall, dated December 31, 2019, opposing the proposed annexation.

Attachment B

The following materials were submitted in connection with the SEQRA review of the proposed annexation:

- a) Parts 1, 2, and 3 of the Environmental Assessment Form.