

**THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Tuesday, October 5, 2010
6:30P.M.**

REGULAR SESSION CALLED TO ORDER BY PRESIDENT SCHWANDT

PLEDGE OF ALLEGIANCE

ROLL CALL

**Present: President Schwandt
Alderman Andres, Pasiak, Zadzilka, Donovan**

Absent: None

**Also Present: Mayor Robert G. Ortt
City Attorney Shawn P. Nickerson**

APPROVAL OF THE MINUTES OF THE REGULAR SESSION SEPTEMBER 21, 2010

**MOVED by Alderman Pasiak SECONDED by Alderman Andres
That the minutes of the regular session held September 21, 2010 be approved as circulated and
filed in the Office of the City Clerk-Treasurer.
CARRIED.**

PROOF OF PUBLICATION PUBLISHED JULY 1, 2010

- 1) Legal Notice – 2010 Final Assessment Roll – Assessor

PROOF OF PUBLICATION PUBLISHED JULY 7, 2010

- 1) Bid – Gas Powered Sand Trap Machine – Recreation

PROOF OF PUBLICATION PUBLISHED AUGUST 11, 2010

- 1) Public Hearing – Local Law for Flood Damage Prevention – Mayor

PROOF OF PUBLICATION PUBLISHED AUGUST 17 & 19, 2010

- 1) Legal Notice – Merchant Card Services & On-Line Bill Payment – Clerk-Treasurer

PROOF OF PUBLICATION PUBLISHED AUGUST 18, 2010

- 1) Bid – Incinerator Building Demolition – Engineer

**MOVED by Alderman Donovan SECONDED by Alderman Zadzilka
That the Common Council hereby receives and files the aforementioned Proofs of
Publication.
CARRIED.**

COMMUNICATIONS FROM CITY OFFICIALS

I.1 Mayor

September 22, 2010

City of North Tonawanda Common Council
City Hall
216 Payne Avenue
North Tonawanda, NY 14120

Re: Memorandum of Agreement between the City of North Tonawanda ("City")
and the Office and Professional Employees International Union ("OPEIU")

Dear Honorable Body:

In an effort to cut costs and save tax dollars, by sharing resources, this office has proposed sharing a Director of Water/Wastewater with the City of Lockport. This will save North Tonawanda residents \$60,000 per year on salary and benefits.

This office has negotiated a Memorandum of Agreement with the OPEIU, executed by the Union, regarding the sharing of this position. Please authorize me to execute this Agreement.

Thank you for your consideration and attention to this matter.

Faithfully,
Robert G. Ortt
Mayor
City of North Tonawanda

MOVED by Alderman Donovan SECONDED by Alderman Andres
WHEREAS, the parties are signatories to a Collective Bargaining Agreement dated January 1, 2007 to December 31, 2010; and

WHEREAS, the Union is the bargaining representative for a negotiating unit that includes the title "Superintendent of Water/Wastewater"; and

WHEREAS, the Employer intends to execute an inter-municipal cooperation agreement to share water treatment management services with the City of Lockport; and

WHEREAS, the parties have entered into this Memorandum of Agreement after good-faith discussions and agreement;

NOW THEREFORE, the Employer and Union agree as follows:

1. The "Superintendent of Water/Wastewater" position will not be filled as per the attached Inter-Municipal Agreement between the City of North Tonawanda and City of Lockport dated September 21, 2010. In the event the aforementioned position is filled in the future, said position will automatically be included in any existing Collective Bargaining Agreement between the City of North Tonawanda, New York (referred to herein as "Employer") and the Office and Professional Employees International Union and its affiliated Local Union No. 212 (referred to herein as "Union").
2. Pursuant to the terms of the Inter-Municipal Agreement dated September, 2010 between the City of North Tonawanda and the City of Lockport entitled "Director of Public Utilities", the job duties previously performed by the Superintendent of Water/Wastewater shall be assumed and performed by the City of Lockport's Director of Public Utilities. This change shall take effect upon the execution of the aforementioned Inter-Municipal Agreement.

10-05-2010

3. By executing this Memorandum of Agreement, the parties agree that both have satisfied any obligations that may exist under the Collective Bargaining Agreement or applicable law with respect to the changes discussed in paragraphs "1" and "2" above.
4. Should the Employer determine, at some point in the future, that it will fill the "Superintendent of Water/Wastewater" position, such position will be within the collective bargaining unit represented by the Union and the terms and conditions of employment for the position will be governed by the Collective Bargaining Agreement that is in effect at that time. Should the City of Lockport's Director of Public Utilities retain the duties of the Superintendent of Water/Wastewater for a period of 18 months after the execution of the Inter-Municipal Agreement, such Director position's incumbent shall become a City of North Tonawanda employee and a member of the OPEIU bargaining unit pursuant to the Inter-Municipal Agreement.
5. This Memorandum of Agreement shall not establish any past practice or precedent with respect to any other matter, dispute or issue between the parties.

Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt (5)
 Nays: None (0)
CARRIED.

I.2 Mayor

October 1, 2010

North Tonawanda Common Council
 City Hall, 216 Payne Avenue
 North Tonawanda, NY 14120

Re: Municipal Cooperation Agreement with City of Lockport

Dear Honorable Body:

Over the past several months, my office has worked to share a single department head of Water and Wastewater with the City of Lockport, in an effort to lower the burden on our taxpayers. I interviewed 10 resumes before selecting Paula M. Sattelberg as the most qualified candidate. Paula is currently the Director of Utilities in the City of Lockport, where she oversees the water and wastewater operations. With this agreement, North Tonawanda taxpayers will save \$70,000 in salary and benefits. I believe we can achieve this savings while not sacrificing any quality of service. The economic challenges that we as a city face are very real and very serious; we must look to new solutions and opportunities to ease the burden on our residents. This agreement between our two cities, signals a new chapter in municipal cooperation. It should be seen as a clear signal to taxpayers in both cities that by working together, we can deliver basic services, while saving our taxpayers hard earned money. I wish to thank Mayor Tucker and his staff, including Paula Sattelberg, for their efforts and patience in this process.

I respectfully ask for your authorization to sign this municipal cooperation agreement with the City of Lockport. Thank you for your consideration of this request.

Respectfully yours,
 Robert G. Ortt
 Mayor

MOVED by Alderman Pasiak **SECONDED** by Alderman Donovan
WHEREAS, the Cities of Lockport, North Tonawanda and Niagara Falls have been working to complete a study aimed at achieving greater efficiencies and costs savings from sharing of water and wastewater services, and

WHEREAS, an initial study has been completed that recommends merging the provision of water treatment services between the City of Lockport and the City of North Tonawanda, and

WHEREAS, additional funding is being sought to develop a specific implementation plan for the consolidation of water services and consistent with the study and in the spirit of cooperation, the Cities have agreed to merge the overall management of the water and wastewater services through use of a single director, and

WHEREAS, in the interim, this will be achieved by North Tonawanda contracting with the City of Lockport to utilize the services of its Director of Public Utilities, and

WHEREAS, this is being done on a temporary basis as the Cities continue to cooperate in implementing the recommendations of the initial study.

WHEREAS, LKPT has a Director of Public Utilities, and

WHEREAS, NT desires to enter into a municipal cooperation agreement to share the services of said Director of Public Utilities, and

WHEREAS, the duties of the Director of Public Utilities are described in the Job Description approved by the LKPT on February 16, 1995, a copy of which is annexed hereto as Schedule "A", and

WHEREAS, the Director of Public Utilities shall remain the employee of the LKPT and notwithstanding this agreement the Director of Public Utilities shall not become an employee of the NT unless this agreement lasts over eighteen months from its execution. In the event said agreement is renewed after eighteen months, the agreement shall provide that the person holding the Director of Public Utilities position in LKPT is an employee of the NT, and

WHEREAS, the LKPT desires to share the services of its Director of Public Utilities with the NT by sharing the cost of said services (Director of Public Utilities), and

WHEREAS, the position of Director of Public Utilities is included in the Agreement between the LKPT and the City of Lockport Department Head (hereinafter "Union Contract").

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this agreement, LKPT and NT hereby agree as follows:

1. **TERM.** The term of this agreement shall be for a period of eighteen (18) months with an option to renew for an additional eighteen (18) months.

Either party may renew this agreement by mutual consent for an additional eighteen (18) months under the same terms and conditions by giving the other party written notice not less than 90 days prior to termination.

Either party may also terminate this agreement at any time without cause upon six (6) months written notice to the other.

In light of this agreement, the NT will not be filling the "Superintendent of Water/Wastewater" position listed in the Collective Bargaining Agreement dated January 1, 2007 to December 31, 2010 between the NT and the Office and Professional Employees International Union and its affiliated Local Union No. 212. However, in the event the Director of Public Utilities is no longer employed by the LKPT and the person holding this position becomes a NT employee, he or she shall automatically become a member of the aforementioned bargaining unit.

2. **PAYMENT.** The NT shall reimburse the LKPT for fifty percent (50%) of the Total Cost to the LKPT to employ the Director of Public Utilities. Salary shall be fixed at \$90,000.00 per year plus a \$10,000.00 per year stipend. Said stipend shall include, but not be limited to overtime compensation, mileage and expenses for traveling between the NT and LKPT facilities, attending Department Head meetings and attending Common Council meetings. In addition to salary and stipend reimbursement, NT shall reimburse LKPT for (50%) of the difference in benefits due over and above the current benefits paid by LKPT. Total Cost shall include salary and benefits as provided by the LKPT at this time (Schedule "B"), FICA, Unemployment Insurance, NYS Retirement, any Workers Compensation costs (direct or indirect), any employee earned post-employment/retirement benefits, and any incidental costs such as travel, training,

conferences, etc. Future costs for the Director of Public Utilities shall be determined by the adopted City of Lockport annual budget and the Union Contract.

4. **COST OVER-RUNS.** The parties agree that no additional monies shall be due from either party without mutual consent.
5. **EXECUTION.** The LKPT and NT agree to execute all necessary agreements, certifications or reimbursement requests for said Director of Public Utilities.
6. **PROJECT DESCRIPTION AND BUDGET.** The LKPT agrees to limit the expenditure of money paid by the NT pursuant to this agreement to the position of Director of Public Utilities. Both parties also agree that the Director of Public Utilities' actual hours of work shall be allocated proportionally to the NT and LKPT as identified in Section 2 above – 50% of the time working on behalf of the NT and 50% on behalf of the LKPT. The work week shall consist of not less than 40 hours per week.
7. **WORK RESPONSIBILITIES AND REPORTING.** The responsibilities and duties of the Director of Public Utilities shall be consistent with the Job Description (Schedule A) and will be specifically determined on an ongoing basis by the Mayor of the NT and the Mayor of the LKPT. The Director of Public Utilities shall report to the Mayor of NT and to the Mayor of LKPT for work in each respective municipality.
8. **AMENDMENTS.** Changes may not be made to the Director of Public Utilities' duties and budget without the prior written approval of the LKPT and NT. Such approval will be granted provided that the changes are not substantive and do not alter the scope, intent or basic elements of the employment or duties of the Director of Public Utilities. Any changes which are substantive or alter the scope, intent or basic elements of the employment or duties of the Director of Public Utilities will be implemented by an amendment to this agreement. Any amendment that proposes to alter the NT and LKPT 50/50% allocation must be done by mutual consent of both parties.
9. **PAYMENT PROCESS.** The LKPT shall issue invoices each quarter accompanied by such receipts and documents verifying expenditures made to employ the Director of Public Utilities. The NT shall reimburse the LKPT within 30 days of receipt of each invoice.
10. **RECORD.** The LKPT shall keep accurate and separate books and records of all receipts and disbursements of all funds attributed to this agreement and shall produce such records for examination at such reasonable time as shall be deemed necessary by the LKPT, NT or the State Comptroller. Records must be maintained so that they can be provided for examination at any time during the employment of the Director of Public Utilities and for a period of six years following its completion.
11. **TERMINATION.** The LKPT shall employ the Director of Public Utilities as set forth in this agreement, and failure of the Director of Public Utilities to render satisfactory services to the LKPT or the NT may be deemed a cause for the suspension or termination of this agreement. In the event the LKPT or the Director of Public Utilities should be deemed to have failed to provide services to the NT for any reason other than a national emergency or an Act of God, this agreement shall terminate. In such case, the NT shall reimburse the LKPT for only their share of those post-employment/retirement benefits the Director of Public Utilities may have earned during his/her course of employment with the LKPT.
12. **INDEMNIFICATION.** The LKPT and NT agree to indemnify, save and hold harmless each other, their agents and employees from any and all claims, demands, actions, or causes of action arising out of the performance or non-performance of the work and services provided for in this agreement, and further agrees to defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim arising out of this agreement.
13. **NON-DISCRIMINATION.** The LKPT and NT shall not limit access or discriminate in the operation of the facilities against any person on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.

14. APPROVALS. This agreement shall not take effect until it is approved by the Common Council of the City of North Tonawanda and the Common Council of the City of Lockport.

Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt (5)
Nays: None (0)
CARRIED.

I.3 Mayor

October 1, 2010

**North Tonawanda Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120**

Re: Appointment to North Tonawanda Board of Assessment Review Committee

Dear Honorable Body:

Please be advised that I am appointing Peter Mancuso, 794 Deerfield Drive, North Tonawanda, NY 14120, to the Board of Assessment Review committee. Effective October 1, 2010 and expiring on September 30, 2015.

Thank you for your attention to this matter.

**Sincerely,
Robert G. Ortt
Mayor**

**MOVED by Alderman Pasiak SECONDED by Alderman Zadzilka
That the Common Council hereby receives and files the aforementioned communication.
Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt (5)
Nays: None (0)
CARRIED.**

II. Attorney

October 1, 2010

**Hon. Mayor and Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120**

**Re: Local Law #5 for 2010 – Amending the City Charter of the
City of North Tonawanda – Division 2, Budget**

Dear Honorable Body:

Attached for your consideration is a proposed local law, which would establish new dates, later in the fiscal year, for the commencement of the budget process, as well as the adoption of annual budgets. This would give department heads and city officials a better picture of the current fiscal climate before planning for the next year’s budget. The language changes are highlighted as attached.

As with all local laws, it is necessary that this local law be formally laid on the table for a period of at least 7 days wherein it must stay in its final form prior to adoption by the Common Council. This local law must then be referred to the mayor’s office for a public hearing on its provisions before its recommended adoption by the mayor. After said public hearing and formal filing with the Secretary of State, this local law will become effective.

Consistent with state law, the appropriate motion for today's action would be to formally lay this local law on the table and allow it to remain so in its final form for at least 7 days.

Very truly yours,
Shawn P. Nickerson
City Attorney

MOVED by Alderman Donovan SECONDED by Alderman Andres
That the Common Council hereby lays the following Local Law on the table for 7 days:

**LOCAL LAW NO. 5 FOR 2010
A LOCAL LAW TO AMEND THE CITY CHARTER
OF THE CITY OF NORTH TONAWANDA, DIVISION 2, BUDGET**

Section 5.021. Budget and budget message.

(a) On or before October 1 each year, the mayor shall submit to the common council a budget for the ensuing fiscal year and an accompanying message.

Section 5.022. Common council action on budget.

(c) The common council by resolution shall adopt the budget on or before November 15 of the fiscal year currently ending. The mayor may disapprove the entire budget or one or more specific appropriations or budget items pursuant to section 2.023 of this charter. The common council may then override the mayor's disapproval pursuant to section 2.023 of this charter. The common council shall meet no later than November 15 to consider overriding the mayor's veto of budget items. If the common council fails to adopt the budget by December 31, the budget submitted by the mayor pursuant to section 5.021 of this charter shall be deemed adopted for the ensuing fiscal year. Adoption of the budget shall constitute appropriations of the amounts specified therein as expenditures from the funds indicated and if authorized by state law shall constitute a levy of the property taxes, and fees therein proposed.

Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt (5)

Nays: None (0)

CARRIED.

VII. Accountant

September 30, 2010

Honorable Robert G. Ortt, Mayor
and Common Council
City Hall
North Tonawanda, New York 14120

Dear Honorable Body:

In accordance with Article V, Division 1, Section 5.002 and 5.003 of the City Charter, an Abstract Sheet, comprised of a Warrant of Claims, has been submitted by this office for your review and approval.

Accordingly, please authorize for payment the current Warrant of Claims for Common Council audit, dated October 5, 2010 and further authorize the Mayor and City Clerk-Treasurer to respectively sign and countersign said Warrant.

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Pasiak

SECONDED by Alderman Zadzilka

That the Common Council hereby authorizes for payment the current Abstract of Claims for Common Council Audit dated October 5, 2010 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$612,035.20
02	Water Fund	57,515.08
04	Sewer Fund	119,625.24
06	Capital Project Fund	84,206.44
07	Trust & Agency Fund	2,603.00
09	Capital – Buffalo Bolt	90,361.94
11	General Fund Encumbered	48.00
	Final Total	<u>\$966,394.90</u>

Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

XXV. Monthly Reports

.1 City Clerk

MOVED by Alderman Schwandt

SECONDED by Alderman Andres

That the Common Council hereby receives and files the aforementioned Monthly Reports.

CARRIED.

XXXII. Community Development

**Honorable Robert G. Ortt
and Common Council Members
City Hall - 216 Payne Avenue
North Tonawanda, NY 14120**

**Re: 2010 Application - Brownfields Opportunity Area Program - Step 3
New York State Departments of State and Environmental Conservation**

Dear Honorable Body:

After lengthy discussion with representatives from the Department of State and the Department of Environmental Conservation, it has come to this Department's attention that the City of North Tonawanda may have the ability to secure a New York State grant pertaining to the development of a site analysis, market study, and redevelopment plan for Tonawanda Island.

The application for a "Step 3 Implementation Strategies" will be a continuation of the City's current efforts lead by the Brownfield Opportunity Area Steering Committee. The "Step 2 Nomination Study" has involved numerous public meetings and has incorporated significant public involvement. Step 3 is an opportunity to implement some of the findings and recommendations developed in Step 2.

The grant will cover 90% of eligible project costs and the additional 10% can be covered by in-kind services provided by this Department and the Engineering Department.

I therefore respectfully request that the Common Council authorize the Mayor to sign and submit all necessary documentation for the above noted application. Please contact me with any questions or concerns.

Thank you in advance for your anticipated review and cooperation.

Sincerely,
James B. Sullivan
Director of Community Development

MOVED by Alderman Pasiak

SECONDED by Alderman Donovan

WHEREAS, the City of North Tonawanda, herein called the "Applicant", after thorough consideration, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable; and

WHEREAS, §970-r of the General Municipal Law authorizes State assistance to eligible parties for Brownfield Opportunity Areas Program grants by means of a State Assistance Contract (SAC) and the Applicant deems it to be in the public interest and benefit under this law to enter into a contract therewith;

NOW, THEREFORE, BE IT RESOLVED BY the City of North Tonawanda, that

- 1. The Mayor of North Tonawanda is the representative authorized to act in behalf of all applicants in all matters related to State assistance under §970-r of the General Municipal Law for the Project. The representative is also authorized to sign and submit the application, execute the SAC, request SAC advances and reimbursements, redistribute SAC reimbursements as appropriate, submit Project documentation, and otherwise act for all applicants in all matters related to the Project and to State assistance;**
- 2. That the Applicant agrees that it will complete the Project;**
- 3. That the Applicant agrees that it will fund its portion of the Applicant's 10% share of the Project; and**
- 4. That this Authorization take effect immediately.**

Ayes: Andres, Pasiak, Zadzilka, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

AUDIENCE PARTICIPATION

Ann Finkle, 896 Sun Valley Drive – Stated that the City is wasting her tax dollars on street paving. Cracks in streets should be coated with tar to prevent further cracking. On Sun Valley Drive where it meets Sun Valley Court there is a big lip between the streets. This will not hold up for the winter.

Cathy Kern, 1248 Greenbrier Lane – Thanked everyone who participated in the TCCO Basket Raffle. Commented on what she read about Wheatfield not contributing to the Library System anymore. Wondered if that would be allowed.

Ed Burg, 1785 Ellwood – Spoke on road repairs and agreed that we need to do better job on repairing roads. Inquired about the use of the “Pothole Killer”. Was it a success and are we currently utilizing this process.

ADJOURNMENT

MOVED by Alderman Andres

SECONDED by Alderman Zadzilka

That this regular session of the Common Council be and hereby is adjourned.

CARRIED.

Time of Adjournment: 6:57 P.M.

Respectfully submitted,

**Scott P. Kiedrowski
City Clerk–Treasurer**