

**CITY OF LOCKPORT**  
**COMMON COUNCIL MEETING AGENDA**  
**REGULAR MEETING**  
**September 25th, 2024**  
**6:00 P.M.**

**5:30 P.M.** Committee of the Whole Meeting

**6:00 P.M.** Common Council Meeting

**ROLL CALL**

**APPROVAL OF MINUTES**      **Fogle:**      Approve Common Council minutes of  
092524.1      September 11th, 2024

**COMMUNICATIONS**

**MOTIONS &  
RESOLUTIONS**

**xxxx:**      Halloween Trick or Treating  
092524.2

**xxxx:**      Outwater Park Roof Asbestos Abatement  
092524.3

**xxxx:**      Homecoming Parade  
092524.4

**xxxx:**      Award Lockport Raw Water Pump Station  
092524.5      Improvements GENERAL CONTRACT

**xxxx:**      Lockport Elks Veteran's Run 5K  
092524.6

**ADJOURNMENT**      **Fogle:**      Adjourn meeting to October 9th, 2024  
092524.7

**CITY OF LOCKPORT**  
**COMMON COUNCIL PROCEEDINGS**

Lockport Municipal Building

Regular Meeting  
Official Record

September 25th, 2024  
6:00 P.M.

Mayor John Lombardi III called the meeting to order.

**ROLL CALL**

The following Common Council members answered the roll call:

Aldermen Craig, Devine, Fogle, Kirchberger, Lupo, Mullane

**INVOCATION**

**ANNOUNCEMENTS**

**RECESS**

Recess for public input.

**092524.1**

**APPROVAL OF MINUTES**

On motion of Alderman Fogle, seconded by Alderman \_\_\_\_\_, the minutes of the Regular Meeting of September 11<sup>th</sup>, 2024 are hereby approved as printed in the Journal of Proceedings. Ayes \_\_\_\_\_. Carried.

**FROM THE MAYOR**

**Appointments:**

Clayton C. Dimmick, 12 Grosvenor St, Lockport, is hereby appointed to Director of Streets, Parks and Water Distribution for the City of Lockport effective September 13<sup>th</sup>, 2024. Said appointment is permanent and subject to the City of Lockport Municipal Civil Service Rules and regulations.

Rodney J. Livergood, 5338 Ernest Road, Lockport, is hereby appointed to Public Works Supervisor of the Highway and Parks Department for the City of Lockport effective September 13<sup>th</sup>, 2024. Said appointment is permanent and subject to the City of Lockport Municipal Civil Service Rules and regulations.

Jeffrey B. White, 40 Gaffney Road, Lockport, has been appointed to Heavy Equipment Operator for the Highway and Parks Department for the City of Lockport effective September 13<sup>th</sup>, 2024. Said appointment is provisional and subject to the City of Lockport Municipal Civil Service Rules and regulations.

Jeffrey S. Dunn, 18 Harrison Ave, Lockport has been appointed to Tree Trimmer for the Highway and Parks Department for the City of Lockport effective September 13<sup>th</sup>, 2024. Said appointment is provisional and subject to the City of Lockport Municipal Civil Service Rules and regulations.

**FROM THE CITY CLERK**

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

9/13/2024 Anthony Molinaro, Assistant Principal at Lockport City School District requesting permission to hold the Homecoming parade on Saturday October 5<sup>th</sup> 2024.

9/13/2024 Emily Stoddard, City Clerk - notification of bids for Wastewater Treatment Plant Sludge Hauling and Disposal received on September 13<sup>th</sup>, 2024

<b>Contractor Name</b>	<b>Phone Number</b>	<b>Bid Amount</b>
Casella	518-410-1687	3yr contract at \$1,093,556

**Notice of Claim:**

9/9/2024 Roger Donovan vs. City of Lockport

Referred to the Corporation Counsel.

**Notice of Complaint:**

9/18/2024 Hydraulic Race Co. Inc, Hydraulic Race Co. LTD and Niagara Zipper, LLC vs City of Lockport, Jason Dool, Michelle Roman, Steven Abbott, Luca Quagliano, Steven Tarnowski, Paul Beakman, Megan Brewer, Richelle Pasceri and John Doe(s) individually and in their official capacities.

Referred to the Corporation Counsel.

**MOTIONS & RESOLUTIONS**

**092524.2 Halloween**

By Alderman: \_\_\_\_\_

**Resolved** that Thursday, October 31, 2024 is hereby designated as Halloween Day in the City of Lockport, with the hours for trick or treating scheduled from 4 pm to 7 pm.

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

**092524.3 Outwater Park Roof Asbestos Abatement**

By Alderman: \_\_\_\_\_

**Whereas** the City of Lockport previously authorized a contract with Progressive Roofing for the Roof-Stand Pipe Roof Replacement at Outwater Park through Resolution No. 072424.9; and

**Whereas** during the commencement of the roofing project, Progressive Roofing identified the presence of asbestos, requiring immediate abatement to ensure safety and compliance with environmental regulations; and

**Whereas** the cost of the asbestos abatement has been estimated at an additional \$10,000; and

**Whereas** the necessary funds for this asbestos abatement are available in the H204 Capital Project Fund;

**Now therefore be it resolved**, that the City of Lockport hereby authorizes an additional expenditure of \$10,000 for asbestos abatement in connection with the Roof-Stand Pipe Roof Replacement Project at Outwater Park, with said funds to be drawn from the H204 Capital Project Fund; and be it

**Further resolved** that the Council of the City is hereby authorized to execute any necessary amendments to the contract with Progressive Roofing to include the asbestos abatement work.

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

**092524.4 Homecoming Parade**

By Alderman: \_\_\_\_\_

**Resolved** that pursuant to their request, Lockport High School is hereby granted permission to conduct a Homecoming Parade in the City of Lockport on Saturday, October 5th, 2024 starting at 11 am, subject to approval of the parade route by the Police Chief and issuance of a parade permit by the City Clerk.

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

**092524.5 Award Lockport Raw Water Pump Station Improvements GENERAL CONTRACT**

By Alderman \_\_\_\_\_:

Being prepared.

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

**092524.6 Lockport Elks Veteran's Run 5K**

By Alderman:\_\_\_\_\_:

**Resolved** that pursuant to their request, organizers at Elks Lodge #41 are hereby granted permission to conduct a 5K run on November 10, 2024, where proceeds help sponsor a service dog for a local Veteran through Pawsitive for WNY Heroes, subject to Elks Lodge #41 organizers filing a certificate of insurance with the City Clerk naming the City of Lockport as additional insured and subject to approval of the race route by the Police Chief, and be it further

**Resolved** that the Director of Streets and Parks is hereby authorized and directed to arrange for delivery of barricades to said area prior to the event.

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

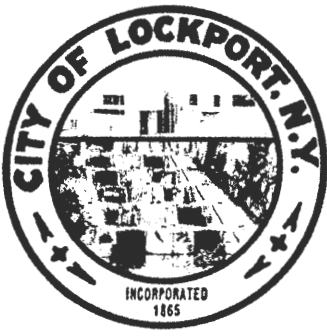
**092524.8**

**ADJOURNMENT**

At \_\_\_\_\_ P.M. Alderman Fogle moved the Common Council be adjourned until 6:00 P.M., Wednesday, October 9th, 2024.

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

EMILY STODDARD  
City Clerk



## CITY OF LOCKPORT, NEW YORK

Lockport Municipal Building

One Locks Plaza

Lockport, NY 14094

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September 13, 2024

TO: Common Council

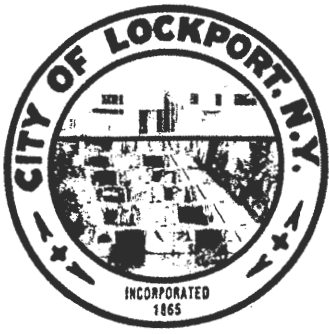
Under and by virtue of the authority conferred on me by the charter of the City of Lockport, New York, I, John Lombardi III, Mayor of said City, do hereby appoint Clayton C. Dimmick, of 12 Grosvenor St, Lockport, NY 14094 to Director of Streets, Parks and Water Distribution. This is a permanent position effective September 13, 2024.

Said appointment is permanent and subject to the City of Lockport Municipal Civil Service Rules and Regulations.

Witness by hand and the Seal of the City of Lockport this 13<sup>th</sup> day of September 2024.

John Lombardi III  
Mayor

cc: C. Dimmick  
City Clerk



## CITY OF LOCKPORT, NEW YORK

Lockport Municipal Building

One Locks Plaza

Lockport, NY 14094

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September 13, 2024

TO: Common Council

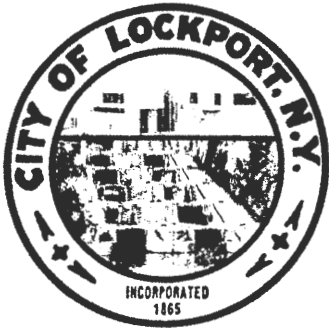
Under and by virtue of the authority conferred on me by the charter of the City of Lockport, New York, I, John Lombardi III, Mayor of said City, do hereby appoint Rodney J. Livergood, of 5338 Ernest Road, Lockport, NY 14094 to Public Works Supervisor of the Highway and Parks Department. This is a permanent position effective September 13, 2024.

Said appointment is permanent and subject to the City of Lockport Municipal Civil Service Rules and Regulations.

Witness by hand and the Seal of the City of Lockport this 13<sup>th</sup> day of September 2024.

John Lombardi III  
Mayor

cc: R. Livergood  
C. Dimmick  
City Clerk



**CITY OF LOCKPORT, NEW YORK**

Lockport Municipal Building

One Locks Plaza

Lockport, NY 14094

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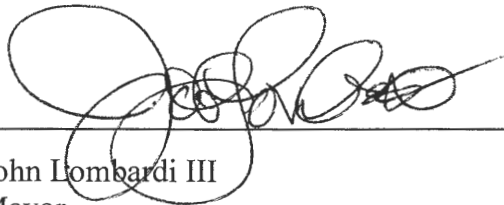
September 13, 2024

TO: Common Council

Under and by virtue of the authority conferred on me by the charter of the City of Lockport, New York, I, John Lombardi III, Mayor of said City, do hereby appoint Jeffrey B. White, of 40 Gaffney Rd, Lockport, NY 14094 to Heavy Equipment Operator of the Highway and Parks Department. This is a provisional position effective September 13, 2024.

Said appointment is provisional and subject to the City of Lockport Municipal Civil Service Rules and Regulations.

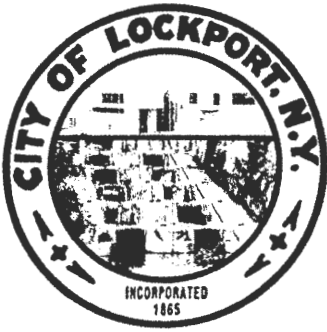
Witness by hand and the Seal of the City of Lockport this 13<sup>th</sup> day of September 2024.



John Lombardi III  
Mayor

cc: J. White  
C. Dimmick  
City Clerk





## CITY OF LOCKPORT, NEW YORK

Lockport Municipal Building

One Locks Plaza

Lockport, NY 14094

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September 13, 2024

TO: Common Council

Under and by virtue of the authority conferred on me by the charter of the City of Lockport, New York, I, John Lombardi III, Mayor of said City, do hereby appoint Jeffrey S. Dunn, of 18 Harrison Ave, Lockport, NY 14094 to Tree Trimmer of the Highway and Parks Department. This is a provisional position effective September 13, 2024.

Said appointment is provisional and subject to the City of Lockport Municipal Civil Service Rules and Regulations.

Witness by hand and the Seal of the City of Lockport this 13<sup>th</sup> day of September 2024.

  
\_\_\_\_\_  
John Lombardi III  
Mayor

cc: J. Dunn  
C. Dimmick  
City Clerk



# Lockport City School District

Lockport High School  
250 Lincoln Avenue  
Lockport, New York 14094-5530

Dawn Wylke, Principal (716) 478-4452  
Anthony Molinaro, Assistant Principal (716) 478-4489  
Michael Pickreign, Assistant Principal (716) 478-4454  
Amanda Schaus, Assistant Principal (716) 478-4455

September 10th, 2024

Sarah K. Lanzo,  
City Clerk  
1 Locks Plaza  
Lockport, NY 14094

RECEIVED  
SEP 13 2024  
CITY CLERK OFFICE

Dear Ms. Lanzo:

I am drafting this letter to request permission to hold our traditional Homecoming Parade before the football game on Saturday, October 5th, 2024. Chief Abbott has also been notified regarding this parade and the need for a patrol car.

We will begin lining up for the parade in the Lockport High School Locust Street parking lot at 12:30 p.m. The parade will leave the parking lot promptly at 11 a.m. The route is as follows:

Turn left onto Lincoln Avenue.

Turn right onto Pine Street

Turn right onto Walnut Street

Turn right onto Locust Street

Turn right into the circle at LHS.

Thank you for your consideration in this matter. If you would like to correspond through email, I can be reached at [amolinaro@lockportschools.net](mailto:amolinaro@lockportschools.net)

Sincerely,

Anthony Molinaro,  
Assistant Principal

## *We All Belong*

The Lockport City School District is a diverse community committed to fostering a sense of belonging and creating opportunities for continuous growth for all. We provide extensive learning experiences while ensuring a safe environment. With lion pride, we prepare our students for their future, support our staff, and partner with our community.

Richard J. Barnes 3  
Morvarid E. Ahmadi 1  
Richard P. Amico 3  
Mike Barchak 3  
Jeffrey L. Bodily 1, 2  
Alex Bouganim 3, 4  
Corinne D. Brophy 1, 11  
Joseph J. Capetola 3  
Cody Christiansen 1  
Michael J. Cooper 3, 5, 7  
Anthony M. Deliso 3  
Aybike Donuk 3, 4  
Jordan S. Finkelstein 3  
Steven M. Fleckner 3  
Igor Grichanik 3, 4  
Timothy R. Hedges 3  
Mark B. Hudoba 3  
Scott A. Kennedy 1  
Yoon S. Kim 1  
Ira Leshin 1  
Matthew A. Louisos 3

THE  
**BARNES**  
FIRM PC

Stephen E. Barnes  
1958 - 2020

Tel: (800) 800-0000  
Fax: (800) 853-5153

500 Pearl Street, Suite 700  
Buffalo, NY 14202  
www.TheBarnesFirm.com

CITY CLERK OFFICE

SEP 05 2024

RECEIVED

1,3,10 Richard B. Mackie  
3 Philip J. Maiarana  
3 Brett L. Manske  
1 G. Seth Mitchell  
3 John C. Murrett, Jr.  
1 Allen R. Oghassabian  
1, 3, 4 Christian R. Oliver  
3, 8 Joshua C. Olmstead  
3 Jake R. Otis  
3 Anna B. Robbins  
3 Derek J. Roller  
3, 4 Sean L. Sasso  
1, 3 John A. Sheehan  
3 Robert J. Schreck  
3 Robert Seigal  
3 Erica B. Tannenbaum  
3, 4 Christopher J. Trochiano  
3 Joe A. Vazquez  
1 Landon R. Vivian  
1 Michelle L. Weiss  
1, 9 Ronni Whitehead

Daryl P. Ciambella  
Chief Operating Officer

September 5, 2024

**SENT VIA REGULAR MAIL & CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

City of Lockport  
1 Locks Plaza  
Lockport, New York 14094

1 Admitted in California  
2 Admitted in Colorado  
3 Admitted in New York  
4 Admitted in New Jersey  
5 Admitted in Ohio  
6 Admitted in Washington  
7 Admitted in Pennsylvania  
8 Admitted in Florida  
9 Admitted in Illinois  
10 Admitted in District of Columbia  
11 Admitted in Connecticut

RE: Our Client : Roger Donovan  
Date of Incident : June 23, 2024

Dear Sir or Madam:

Enclosed please find a Notice of Claim that is hereby served upon you relative to the above matter.

Thank you for your attention to this matter.

Very truly yours,



Derek J. Roller, Esq.  
(800) 800-0000 x205  
derek.roller@thebarnesfirm.com

DJR:kl  
Enc.

STATE OF NEW YORK  
SUPREME COURT : NIAGARA COUNTY

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ROGER DONOVAN

Claimant,

v.

CITY OF LOCKPORT,

Respondent.

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NOTICE OF CLAIM

**PLEASE TAKE NOTICE**, that the above-named Claimant, Roger Donovan, claims and demands from the Respondent, City of Lockport, and its subdivisions including the City of Lockport Park and Shade Tree Commission and City of Lockport Superintendent of Parks, and their agents, servants and/or employees (hereinafter collectively "Respondent"), recompense for personal injuries and damages sustained by reason of the wrongful, negligent and careless acts and omissions of the Respondent, and in support thereof, the Claimant states:

1. Claimant's address is 123 Hyde Park, Lockport, County of Niagara, State of New York 14094. The Claimant is represented by The Barnes Firm, P.C., Derek J. Roller, Esq., with offices located at 500 Pearl Street, Suite 700, Buffalo, NY 14202, telephone (716) 422-5905.

2. The nature of this Claim is for personal injuries and damages caused by the negligence of the Respondent.

3. The time when, place where, and manner in which the claim arose is as follows. Personal injuries and damages were sustained by the Claimant or about June 23, 2024, at approximately 1:00 pm, in the vicinity of 351 Ohio Street in the City of Lockport, County of Niagara, State of New York 14094. Claimant was driving his vehicle south on Ohio Street when a limb from a tree on the west side of the street in the vicinity of 351 Ohio Street fell from the tree and went through Claimant's front windshield and impaled his right leg (see Police Report, annexed as Exh. A). This incident was caused due to the negligence of the Respondent in failing to properly inspect, maintain and control said tree and its limbs overhanging the roadway in a reasonably safe condition for the protection of people in the vicinity of said tree including Claimant. Upon information and belief, Respondent had actual notice of the unsafe condition of the limbs of the tree overhanging the roadway in the area described above and/or constructive notice of said unsafe condition in that any reasonable inspection would have revealed the danger of the condition prior to Claimant's incident.

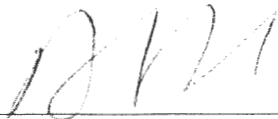
4. The damages or injuries sustained by Claimant include severe bodily injuries, namely an impalement injury to his right leg and subsequent infection, amongst other injuries for which Claimant is still being diagnosed and treated, and Claimant hereby makes a claim for personal injuries, conscious pain and suffering, and economic damages including medical expenses and property damage.

**PLEASE TAKE FURTHER NOTICE**, that Claimant demands payment of this claim as set forth above.

DATED: Buffalo, New York  
September 5, 2024

Yours, etc.,

THE BARNES FIRM, P.C.

By: \_\_\_\_\_

Derek J. Roller, Esq.  
Attorneys for Claimant  
500 Pearl Street, Suite 700  
Buffalo, NY 14202  
Tel. (716) 422-5905

TO: City of Lockport

City of Lockport Park and  
Shade Tree Commission

City of Lockport Superintendent of Parks


ATTORNEY VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss.:  
CITY OF BUFFALO        )

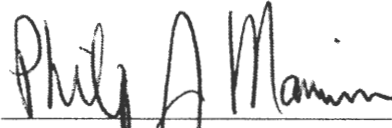
Derek J. Roller, Esq., being duly sworn, deposes and says:

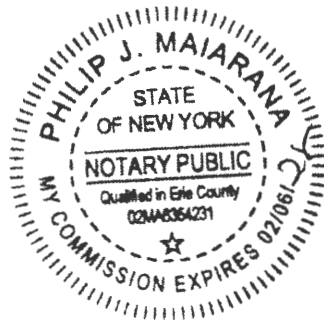
That he is the attorney for the Claimant in the above-entitled action with offices located at 500 Pearl Street, Suite 700, Buffalo, County of Erie, State of New York, 14202; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the reason why this verification is made by deponent instead of the Claimant is because the Claimant is not within the County of Erie, which is the county where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the Verified Bill of Particulars not stated to be upon his knowledge are based upon discussions with the Claimant, review of accident reports, photographs, witness statements and medical records.

  
\_\_\_\_\_  
Derek J. Roller, Esq.

Sworn to before me the  
5<sup>th</sup> day of September 2024

  
\_\_\_\_\_  
Notary Public



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

**HYDRAULIC RACE CO., INC.**  
5978 Washington Street  
Olcott, New York 14126

**HYDRAULIC RACE CO., LTD.**  
5978 Washington Street  
Olcott, New York 14126

**NIAGARA ZIPPER, LLC**  
5978 Washington Street  
Olcott, New York 14126

**Plaintiffs,**

**v.**

**CITY OF LOCKPORT**  
One Lock's Plaza  
Lockport, New York 14094

**JASON DOOL**, individually and in his official  
capacity as Building Inspector,  
One Lock's Plaza  
Lockport, New York 14094

**MICHELLE ROMAN**, individually and in  
her official capacity as Mayor,  
One Lock's Plaza  
Lockport, New York 14094

**STEVEN ABBOTT**, individually and in his  
official capacity as Police Chief,  
One Lock's Plaza  
Lockport, New York 14094

**LUCCA QUAGLIANO**, individually and in  
his official capacity as Fire Chief,  
One Lock's Plaza  
Lockport, New York 14094

**COMPLAINT  
AND JURY DEMAND**

Civil Action No. 24-CV-857



**STEVEN TARNOWSKI**, individually and in his official capacity as a detective lieutenant with the City of Lockport's Police Department, One Lock's Plaza  
Lockport, New York 14094

**PAUL BEAKMAN**, individually and in his official capacity as the President of the Lockport Common Council, One Lock's Plaza  
Lockport, New York 14094

**MEGAN BREWER**, individually and in her official capacity as the Inspection Data Coordinator / Zoning Officer of Lockport's Building Inspection Department, One Lock's Plaza  
Lockport, New York 14094

**RICHELLE PASCERI**, individually and in her official capacity as the Clerk for the City of Lockport, One Lock's Plaza  
Lockport, New York 14094

**JOHN DOE(s)**, individually and in their official capacities, One Lock's Plaza  
Lockport, New York 14094

Defendants.

Plaintiffs, Hydraulic Race Co., Inc., Hydraulic Race Co., Ltd., and Niagara Zipper, LLC (hereinafter, collectively referred to as "Plaintiffs"), by their attorneys, Rupp Pfalzgraf LLC, as and for their complaint against the defendants, the City of Lockport, Jason Dool, Mayor Michelle Roman, Steven Abbott, Lucca Quagliano, Steven Tarnowski, Paul Beakman, Megan Brewer, Richelle Pasceri, and John Doe(s) (hereinafter, collectively referred to as "Defendants"), allege as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), as Plaintiffs' claims arise under the Constitution and laws of the United States, specifically 42 U.S.C. § 1983.

2. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a), as these claims are so related to the federal claims that they form part of the same case or controversy.

**VENUE**

3. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b) because all Defendants reside within this district and a substantial part of the events or omissions giving rise to the claims occurred within this district.

**PARTIES**

4. Plaintiff Hydraulic Race Co., Inc. is a corporation organized under the laws of the State of New York with its registered principal place of business at 5978 Washington Street, Olcott, New York 14126, but at all relevant times doing business out of 5 Gooding Street (aka "Hydraulic Race-Way"), Lockport, New York 14094.

5. Plaintiff Hydraulic Race Co., Ltd. is a corporation organized under the laws of the State of New York with its registered principal place of business at 5978 Washington Street, Olcott, New York 14126, but at all relevant times doing business out of 5 Gooding Street (aka "Hydraulic Race-Way"), Lockport, New York 14094.

6. Plaintiff Niagara Zipper, LLC is a limited liability company organized

under the laws of the State of New York with its registered principal place of business at 5978 Washington Street, Olcott, New York 14126, but at all relevant times doing business out of 5 Gooding Street (aka "Hydraulic Race-Way"), Lockport, New York 14094.

7. Defendant City of Lockport is a municipal corporation duly organized and existing under the laws of the State of New York and has an address at One Locks Plaza, Lockport, New York 14094.

8. Defendant Jason Dool was and is a resident of the County of Niagara, and State of New York. He was and is the Building Inspector employed by the City of Lockport at all times hereinafter mentioned, and he was acting within the scope of his employment and official capacity as Building Inspector at the time of the incidents giving rise to this lawsuit. He is being sued in both his individual and official capacities.

9. Defendant Michelle Roman was and is a resident of the County of Niagara, and State of New York. She was and is the Mayor of the City of Lockport at all times hereinafter mentioned, and she was acting within the scope of her employment and official capacity as Mayor at the time of the incidents giving rise to this lawsuit. She is being sued in both her individual and official capacities.

10. Defendant Steven Abbott was and is a resident of the County of Niagara, and State of New York. He was and is the Chief of Police for the City of Lockport at all times hereinafter mentioned, and he was acting within the scope of his employment and official capacity as Chief of Police at the time of the incidents giving rise to this lawsuit. He is being sued in both his individual and official capacities.

11. Defendant Lucca Quagliano was and is a resident of the County of Niagara, and State of New York. He was and is the Fire Chief for the City of Lockport at all

times hereinafter mentioned, and he was acting within the scope of his employment and official capacity as Fire Chief at the time of the incidents giving rise to this lawsuit. He is being sued in both his individual and official capacities.

12. Defendant Detective Lieutenant Steven Tarnowski was and is a resident of the County of Niagara, and State of New York. He was and is a Detective Lieutenant employed by the City of Lockport Police Department at all times hereinafter mentioned, and he was acting within the scope of his employment and official capacity as Detective Lieutenant at the time of the incidents giving rise to this lawsuit. He is being sued in both his individual and official capacities.

13. Defendant Paul Beakman was and is a resident of the County of Niagara, and State of New York. He was and is the President of Lockport's Common Council at all times hereinafter mentioned, and he was acting within the scope of his employment and official capacity as President of the Common Council at the time of the incidents giving rise to this lawsuit. He is being sued in both his individual and official capacities.

14. Defendant Megan Brewer was and is a resident of the County of Niagara, and State of New York. She was and is the Inspection Data Coordinator / Zoning Officer of Lockport's Building Inspection Department at all times hereinafter mentioned, and she was acting within the scope of her employment and official capacity as the Inspection Data Coordinator / Zoning Officer for the City at the time of the incidents giving rise to this lawsuit. She is being sued in both his individual and official capacities.

15. Defendant Richelle Pasceri was and is a resident of the County of Niagara, and State of New York. She was the Clerk for the City of Lockport at all relevant times, and she was acting within the scope of her employment and official capacity as the City Clerk at the time

of the incidents giving rise to this lawsuit. She is being sued in both his individual and official capacities.

16. Defendants John Doe(s) are individuals whose identities are not yet known to Plaintiffs. Upon information and belief, they are employees of the City of Lockport who participated in the events giving rise to this lawsuit. They are being sued in both their individual and official capacities.

#### **NOTICE OF CLAIM**

17. On September 12, 2023, Plaintiffs timely filed a Notice of Claim with the City of Lockport, setting forth the facts underlying Plaintiffs' claims against the City of Lockport and those affiliated with and employed by the City.

18. The City of Lockport examined Mr. Thomas Callahan, representative of the Plaintiffs, pursuant to General Municipal Law Section 50-h on March 26, 2024.

19. Since the 50-h examination, settlement or payment by Defendants, including the City of Lockport, has been neglected or refused.

20. This action has been commenced within one year and ninety days of the date of occurrence of the events giving rise to those state law causes of action stated herein that are subject to the requirements of General Municipal Law.

#### **FACTUAL BACKGROUND**

18. Plaintiffs operate businesses located at 5 Gooding Street, Lockport, New York 14094, including the Lockport Cave and Underground Boat Ride and Niagara Zipper, which are popular tourist attractions in Lockport, New York.

19. Hydraulic Race Co., Inc. is a non-profit entity associated with the historic facilities at the same location.

20. The Lockport Cave and Underground Boat Ride has been in operation for 27 years. It provides historic guided walking tours of the Erie Canal, Locks 34 & 35, Locks 67-71, the underground power tunnels, and an underground boat ride for tourists and visitors.

21. On June 12, 2023, at approximately 11:10 AM, an incident occurred during a boat tour in the Lockport Cave involving a vessel operated by Plaintiffs.

22. At the time of the incident, the boat was being operated by an employee of Lockport Cave & Underground Boat Ride.

23. The boat left the dock at approximately 10:50 AM with 28 passengers and 1 employee/operator.

24. Approximately 15 minutes after the vessel left the dock, electricians working at the dock heard a loud noise coming from down in the Cave but couldn't see anything. They reported hearing screaming afterwards.

25. During the June 12, 2023 incident, Plaintiff Thomas Callahan was present at the site with electricians when the accident occurred. He heard initial screams, which he later learned were the sounds of the boat beginning to flip.

26. Plaintiff Callahan attempted to call 911 twice immediately after the incident but was unable to connect. He was forced to contact the mayor's secretary, Molly Lawson, to initiate emergency response.

27. During the tour, the boat capsized, causing all 29 individuals on board to enter the water involuntarily.

28. Tragically, one individual lost their life as a result of this incident.

29. Immediately following the incident, emergency services were called, and first responders arrived at the scene to assist in the rescue and recovery efforts.

30. The Lockport Police Department, Lockport Fire Department, and other emergency services responded to the incident and conducted rescue operations.

31. Shortly thereafter, Police Chief Steven Abbott declared the underground tour area a crime scene. Based on Plaintiff's review of records they have received via FOIL, they are able to confirm that the City of Lockport Police Department was the lead agency that investigated the incident, and that they were assisted by the New York State Office of Parks, Recreation, and Historic Preservation.

32. Upon information and belief, other agencies were involved in the investigation, including, but not limited to, the New York State Department of Environmental Conservation, the United States Coast Guard, and the United States Army Corps of Engineers. However, because the City of Lockport will not answer Plaintiffs' FOIL requests, as described in more detail below, Plaintiffs have been unable to confirm this fact at this point in the litigation. Upon further information and belief, the City's failure to respond to Plaintiffs' FOIL requests was coordinated by Defendants to prevent Plaintiffs from adequately investigating these claims.

33. Despite the tragic nature of this incident, Plaintiffs believe that the more likely explanation for why the boat capsized is that a very heavy-set woman, upon information and belief, potentially weighing 300 pounds or more, jumped over the side of the boat because it was rocking when she was moving on the boat.

34. This explanation is supported by eyewitness accounts and is consistent with the physical evidence at the scene.



35. The Lockport Police Department, however, failed to properly identify and interview key witnesses present at the scene, including a tour guide who was with Plaintiff Callahan when police arrived. This tour guide remains unidentified in official reports, despite being present and interacting with investigators.

36. On the day Defendant Jason Dool appeared at Plaintiffs' property and informed them they could not open, the aforementioned tour guide suggested to Plaintiff Callahan that Dool might be seeking a "kickback" to allow the business to reopen, indicating a potential pattern of corrupt behavior among city officials.

37. In addition, safety instructions provided to passengers by Plaintiffs and their employees included not rocking the boat, not reaching out or dropping anything out of the boat, and loading one row at a time.

38. However, instead of conducting a thorough and impartial investigation into the incident, Defendants engaged in a series of actions that violated Plaintiffs' constitutional rights and caused significant harm to their businesses.

39. On or about June 13, 2023, Defendants ordered that the electrical meters at Plaintiffs' properties be dismantled and removed.

40. This action was taken without proper notice to Plaintiffs and without providing Plaintiffs an opportunity to address any alleged issues or concerns.

41. The removal of the electrical meters caused a complete loss of power to all of Plaintiffs' operations, including their visitor center, which contains telephones, Wi-Fi systems, cameras, alarm systems, reservation systems, and other critical business infrastructure.

42. The power outage affected Plaintiffs' properties over a stretch of approximately 3,800 feet.



43. Defendants' actions resulted in the shutdown of multiple revenue-generating operations, including the Lockport Cave Walking Tour, the Ghost Hunters Experience tour, the Lockport Haunted Cave tours, and the Niagara Zipper zipline.

44. Defendants improperly declared Plaintiffs' entire property a "crime scene," including areas unrelated to the June 12, 2023 incident, such as the zipline operation.

45. This overly broad designation of a "crime scene" prevented Plaintiffs from accessing their property and conducting business operations that were unrelated to the incident.

46. Defendants failed to secure the property adequately after declaring it a crime scene, resulting in break-ins that caused damage to underground facilities and equipment.

47. On or about June 15, 2023, Defendant Jason Dool, in his capacity as Building Inspector for the City of Lockport, issued a letter to Plaintiffs citing several alleged electrical issues and code violations at the Lockport Cave and Underground Boat Ride facility.

48. Mr. Dool's letter did not cite any specific code sections that Plaintiffs were allegedly in violation of, making it difficult for Plaintiffs to address the purported issues.

49. Without proper notice or justification, Mr. Dool ordered the power company (NYSEG) to interrupt power to the entire property, not just the cave portion where the incident occurred.

50. This action effectively shut down all of Plaintiffs' business operations, including the Niagara Zipper attraction and the Lockport Cave Building, which were unrelated to the boat tour incident.

51. The power interruption was unnecessary and overly broad, as the cave portion could have been easily isolated from the main power source without affecting the other business operations.

52. Defendants' actions in shutting down Plaintiffs' entire business operations were arbitrary, capricious, and in violation of Plaintiffs' due process rights.

53. Upon information and belief, defendant Jason Dool of the City of Lockport Code Enforcement Department was on site and entered the Lockport Cave facility on multiple occasions in July and August 2023 without authorization from Plaintiffs to conduct an inspection, however, by ordering the shutdown of Plaintiffs' power and thereby disabling their cameras Plaintiffs cannot be sure of this fact.

54. This unauthorized entry constituted a violation of Plaintiffs' Fourth Amendment rights against unreasonable searches and seizures.

55. Throughout the summer and fall of 2023, Defendants and other city officials, made numerous public statements and comments to the media that were defamatory and damaging to Plaintiffs' reputation and business interests.

56. These statements included false and misleading claims about the safety of Plaintiffs' operations, the condition of their facilities, and their compliance with applicable laws and regulations.

57. Plaintiffs maintain, however, that their safety practices were in line with industry standards and that they had operated for 27 years without a major incident prior to June 12, 2023.

58. Nevertheless, Defendants made inaccurate statements and unfounded claims about Plaintiffs' businesses, directors, and employees to the public and media.

59. These statements were derogatory, inflammatory, and misrepresented Plaintiffs and their officers to the public, causing reputational harm and loss of business.

60. Defendants' conduct took place at One Lock's Plaza, in writing, and orally to various sources, including media outlets.

61. On June 12, 2023, immediately following the fatal incident, Lockport Police Chief Steven Abbott made a statement to the media, saying, "We have one individual who has passed, we have a lot of questions that need to be answered. Whether or not that leads to charges in the future, I do not know, but as of right now we're treating it as a crime scene."

62. Chief Abbott's statement falsely implied that the Plaintiffs may have engaged in criminal conduct, despite having no evidence to support such an implication. This statement caused immediate harm to the Plaintiffs' reputation and business interests.

63. Throughout the summer of 2023, Mayor Roman consistently declined to provide updates on the status of the investigation into the June 12 incident, despite multiple inquiries from the media and the public.

64. Mayor Roman's persistent refusal to provide information about the ongoing investigation fostered an atmosphere of suspicion around the Plaintiffs and their business practices, implicitly suggesting that there might be serious wrongdoing or negligence on the part of the Plaintiffs that warranted an extended investigation.

65. This lack of transparency and failure to clarify the status of the investigation caused ongoing harm to the Plaintiffs' reputation and business interests, as it allowed public speculation about potential wrongdoing to continue unchecked.

66. Mayor Roman's silence on the progress of the investigation, coupled with her earlier false statements about the attraction's safety record, created a narrative of suspicion and potential coverup that was deeply damaging to the Plaintiffs' public image and business prospects.

67. On June 13, 2023, Lockport's chief building inspector, Jason Dool, conducted an inspection of the Lockport Cave premises and made several defamatory statements to the media regarding the safety conditions of the attraction.

68. Dool stated that he found "a broken conduit that left wiring exposed, including to water; areas where the wrong wiring was used; and a rusted panel box."

69. Dool further stated that "There were quite a few issues" and that some of the exposed wiring was "exposed to water."

70. On June 13, 2023, Dool posted a sign on the door leading to the underground boat tour stating that the venue was unsafe for occupancy because of "electrical hazards."

71. In fact, Defendant Dool posted multiple signs declaring the property unsafe for occupancy on various doors of Plaintiffs' property, including the Upson Park door, the Holly door, and the office door, demonstrating an excessive and potentially retaliatory approach to enforcement.

72. Dool's statements and actions falsely implied that the Plaintiffs had been operating their business in an unsafe manner and in violation of applicable codes and regulations, causing significant harm to the Plaintiffs' reputation and business prospects.

73. On August 28, 2023, after the Lockport Cave announced its reopening for walking tours, Dool made additional defamatory statements to the media.

74. Dool stated, "To my knowledge, they have not corrected any of the electrical issues that were identified in the cave."

75. Dool's statement falsely implied that the Plaintiffs were reopening their business without addressing safety concerns, despite having no recent communication with the

Plaintiffs regarding the status of the alleged electrical issues. This statement further damaged the Plaintiffs' reputation and ability to conduct business.

76. On August 28, 2023, Lockport Common Council President Paul Beakman made several defamatory statements to the media regarding the safety of the Lockport Cave attraction.

77. Beakman stated, "If you go back to the day of the incident, it was really chilling to have to see the police chief and fire chief claw through that wall with their bare hands to help initiate the rescue."

78. Beakman further stated, "There's gotta be proper safety measures in place," implying that the Plaintiffs had been operating without proper safety measures.

79. On August 29, 2023, Beakman made additional defamatory statements, saying "The owner was proposing that they do Lantern tours. It's just not a safe thing to do. There's no lit emergency exits. There still is only the exits down below."

80. Beakman's statements falsely implied that the Plaintiffs were operating their business in an unsafe manner and without proper emergency exits or safety measures, causing further harm to the Plaintiffs' reputation and business interests.

81. Throughout the summer of 2023, Mayor Roman and Police Chief Abbott repeatedly declined to provide updates on the status of the police-led investigation into the June 12 incident, fostering an atmosphere of suspicion around the Plaintiffs and their business practices.

82. The statements and actions of Defendants, individually and collectively, have caused significant damage to Plaintiffs' reputation, business interests, and ability to operate their attraction safely and profitably.

83. Defendants' false and defamatory statements were made with actual malice or with reckless disregard for their truth or falsity, as evidenced by their failure to properly investigate the facts before making public statements and their continued efforts to imply wrongdoing by Plaintiffs even in the absence of evidence.

84. Defendants acted in bad faith to deprive and frustrate Plaintiffs' rights, making deceptive and misleading statements and producing misleading documentation.

85. Defendants' actions and statements caused significant financial harm to Plaintiffs, including loss of business revenue, damage to their reputation, and inability to operate their businesses.

86. On multiple occasions, Plaintiffs attempted to communicate with Defendants to address the alleged issues and work towards a resolution, but these efforts were largely ignored or rebuffed by Defendants.

87. In addition, following the June 12, 2023 incident, Plaintiffs made multiple attempts to obtain information about the incident and the subsequent investigation through proper channels, including Freedom of Information Law (FOIL) requests.

88. Despite these requests, the City of Lockport failed to disclose crucial public information to the Plaintiffs that would have assisted in their investigation of the incident. This information included, but was not limited to, police reports, investigation findings, and other relevant documents.

89. This pattern of behavior is consistent with Defendants' persistent failure over the last ten years to properly respond to Plaintiffs' Freedom of Information Law (FOIL) requests to the City of Lockport, which seek various public records available under FOIL related

to their business operations, including but not limited to permits, inspections, and communications involving City officials.

90. Throughout this period, the City of Lockport, under the direction of former City Clerk Richelle Pasceri, consistently failed to respond to these FOIL requests in a timely and complete manner as required by New York State law.

91. Pasceri's pattern of obstructing and delaying responses to Plaintiffs' FOIL requests continued for over a decade, demonstrating a clear bias against Plaintiffs and their business interests.

92. Following the June 12, 2023 incident, Plaintiffs, through their attorney George Muscato, made multiple attempts to obtain information about the incident and the subsequent investigation through proper channels, including FOIL requests.

93. On or about July and August 2023, Muscato repeatedly requested the status of the investigation and the release of Plaintiffs' property, which had been locked and sealed by the Lockport Police Department.

94. On August 10, 2023, Muscato sent correspondence to Police Chief Steven Abbott regarding the release of Plaintiffs' property, including locks and tape. The property remained locked at this time.

95. On August 10, 2023, owner Thomas Callahan was forced to cut locks that had been unnecessarily placed on the access points to the property by the Lockport Police Department.

96. Throughout August, September, and October 2023, Muscato continued to seek the release of Plaintiffs' property and the status of the investigation, but no investigation report was provided.

97. On November 8, 2023, local news reported that no criminal charges would be filed in relation to the June 12, 2023 incident, yet Plaintiffs still had not received a copy of the investigation report.

98. On November 9, 2023, Muscato again requested a copy of the investigation report, but no report was provided.

99. On December 5, 2023, Muscato was notified that a formal FOIL request must be submitted to obtain the investigation report, despite his numerous previous requests.

100. On December 12, 2023, the Lockport City Clerk, Sarah K. Lanzo, responded to Muscato's FOIL request, failing to meet the legal requirement of responding within 5 days. No report was provided at this time.

101. On January 3, 2024, Muscato called the City Clerk regarding the status of the report and was told that Plaintiffs could obtain the report for a fee of \$19.20 or more.

102. On March 5, 2024, Plaintiffs submitted another FOIL request seeking specific information about the investigation report and its handling by city officials.

103. On April 8, 2024, an attorney for the City of Lockport responded to the March 5 FOIL request, stating that additional time was needed and that a response would be provided by May 10, 2024, nearly two months after the initial request.

104. The City's response also indicated that it would not provide answers to specific questions about the report's delivery and handling, despite these being crucial to understanding the City's treatment of information related to the June 12, 2023 incident.

105. The consistent pattern of delays, incomplete responses, and failure to provide requested information demonstrates a coordinated effort by city officials, including



Defendant Richelle Pasceri, to obstruct Plaintiffs' access to public records and impede their ability to conduct their business and defend their interests.

106. Upon information and belief, Defendant Megan Brewer, in her capacity as Inspection Data Coordinator / Zoning Officer for the City Building Inspection Department, has participated in this pattern of obstruction by failing to provide timely and complete responses to FOIL requests related to building inspections and zoning matters affecting Plaintiffs' business.

107. Defendant Paul Beakman, as President of the Lockport Common Council, has been aware of these persistent FOIL violations and has failed to take appropriate action to ensure the City's compliance with state law, thereby perpetuating the discriminatory treatment of Plaintiffs.

108. The actions and inactions of Defendants Pasceri, Brewer, and Beakman, in concert with other city officials, have caused significant harm to Plaintiffs, including but not limited to:

- a) Impeding Plaintiffs' ability to respond to safety concerns and regulatory issues in a timely manner;
- b) Preventing Plaintiffs from accessing crucial information needed to defend their business interests;
- c) Causing financial harm through unnecessary delays in resuming business operations; and
- d) Damaging Plaintiffs' reputation by allowing misleading or incomplete information to circulate without providing access to full and accurate records.

109. The coordinated efforts of these Defendants to obstruct and delay Plaintiffs' access to public records constitute a violation of Plaintiffs' rights under the New York

State Freedom of Information Law and demonstrate a conspiracy to deprive Plaintiffs of their constitutional rights to due process and equal protection under the law.

110. Conversely, the City of Lockport was providing the same documents and information to news media outlets and other third parties, demonstrating a clear bias against the Plaintiffs and an attempt to control the narrative surrounding the incident.

111. The police report, which was eventually obtained by the Plaintiffs in December 2023, revealed that law enforcement had attempted to obtain a search warrant for Plaintiffs' properties. This information was not initially disclosed to the Plaintiffs.

112. Upon information and belief, Judge DiMillo denied the request for a search warrant due to lack of probable cause. This fact was omitted from information provided to the public and the media, further demonstrating the Defendants' attempts to portray the Plaintiffs in a negative light without proper justification.

113. The delay in providing this information to the Plaintiffs significantly hampered their ability to conduct a thorough and timely investigation into the incident, protect their legal rights, and address any potential safety concerns promptly.

114. Plaintiffs have been experiencing persistent issues with Freedom of Information Law (FOIL) requests to the City of Lockport for approximately ten years, particularly during the tenure of former City Clerk Rochelle Pasceri.

115. For example, between 2018 and 2023, Plaintiffs submitted multiple FOIL requests to obtain audio recordings of various city meetings relevant to their business operations.

116. On at least five occasions, Defendant Rochelle Pasceri, in her capacity as City Clerk, failed to comply with the FOIL law, ignoring Plaintiffs' requests and conspiring with the Building Inspection Department to withhold requested information.

117. Defendant Megan Brewer, in her capacity as an employee of the Building Inspection Department, colluded with other city officials to deny Plaintiffs' requests and prevent them from obtaining information necessary for potential legal actions.

118. In one specific instance in 2018, Plaintiffs requested audio recordings of a city meeting they had attended. Despite Plaintiffs' knowledge that such recordings were routinely made to compile meeting minutes, city officials, including Defendant Brewer, claimed that no such recordings existed.

119. City officials, including Defendant Pasceri, repeatedly denied or obstructed Plaintiffs' FOIL requests for audio recordings of planning board meetings, offering various contradictory excuses such as losing the tapes, claiming they were in archives, or denying that meetings were recorded at all.

120. Upon information and belief, the planning board members, if questioned, would confirm that every meeting is recorded, contradicting the excuses provided by city officials for not producing the requested recordings.

121. Upon information and belief, city officials, including Defendants, used alias email addresses to communicate about city business in an apparent attempt to avoid disclosure through FOIL requests, in violation of applicable laws requiring the use of official email addresses for city business.

122. When Plaintiffs submitted FOIL requests for email communications, city officials responded that they had no information from the requested email addresses, effectively concealing communications conducted through alias email addresses.

123. The pattern of withholding crucial public information and providing misinformation by city officials has significantly impeded Plaintiffs' ability to operate their business and defend their interests.

124. This coordinated effort to obstruct Plaintiffs' access to public records and information demonstrates a conspiracy among city officials to violate Plaintiffs' constitutional rights and impede their business operations.

125. Plaintiffs were forced to file an appeal in accordance with the Freedom of Information Law and notify the main office of the Committee on Open Government in Albany, New York of the City's failure to comply with their FOIL requests.

126. The persistent failure of the City to respond to Plaintiffs' FOIL requests has significantly impeded Plaintiffs' ability to conduct their business operations and defend their interests in various matters.

127. In addition, as stated above, prior to the June 12, 2023 incident, the Lockport Cave and Underground Boat Ride had been operating safely for approximately 27 years without any significant safety incidents.

128. Regarding a 2015 incident involving a capsized boat that was discussed by Defendants in the media after this incident, contrary to statements made by city officials implying Plaintiffs' culpability, the incident was caused by the deliberate actions of passengers from the Father Baker organization.

129. The passengers on the boat in the 2015 incident, who were described as having juvenile delinquency records, intentionally rocked the boat despite multiple warnings from Plaintiffs' staff to stop.

130. Following the 2015 incident, Plaintiffs' insurance company made a payment to the Father Baker organization, which was accepted, and a settlement agreement was signed, avoiding litigation.

131. Approximately five years after the 2015 incident, a chaperone from the Father Baker group visited Plaintiffs' office and admitted that the boat was intentionally flipped over by the passengers, despite warnings from Plaintiffs' staff.

132. Despite having knowledge of the true circumstances of the 2015 incident, Defendant Mayor Michelle Roman and other city officials have repeatedly mischaracterized this incident in public statements, falsely implying that it was due to negligence or misconduct on the part of Plaintiffs.

133. The mischaracterization of the 2015 incident by city officials, including Mayor Roman, has contributed to a false narrative about Plaintiffs' safety record and business practices, causing significant harm to Plaintiffs' reputation and business interests.

134. The Mayor's public statements and actions regarding both the 2015 incident and the June 12, 2023 incident demonstrate a pattern of falsely attributing wrongdoing to Plaintiffs without proper investigation or consideration of available evidence.

135. Throughout the summer of 2023, Mayor Roman consistently avoided reporters' questions about whether criminal charges would be filed against Plaintiffs in relation to the June 12, 2023 incident, despite having information that no such charges were warranted.

136. Mayor Roman's evasiveness in responding to media inquiries left an air of suspicion about Plaintiffs' potential criminal liability, causing further damage to Plaintiffs' reputation and business interests.

137. The actions of Mayor Roman, former City Clerk Pasceri, and other city officials in withholding information, mischaracterizing past incidents, and creating a false impression of Plaintiffs' culpability demonstrate a coordinated effort to harm Plaintiffs' business interests and reputation in the community.

138. Plaintiffs maintained a comprehensive Emergency Action Plan, which included detailed procedures for various emergency scenarios, communication protocols, and safety measures.

139. All tour guides, including the operator involved in the June 12, 2023 incident, received thorough training on safety procedures and emergency protocols.

140. Despite the Defendants' implications of negligence, Plaintiffs had implemented and maintained safety measures that met or exceeded industry standards for similar attractions.

141. Plaintiffs' commitment to safety is further evidenced by their regular inspections, maintenance procedures, and ongoing staff training programs.

142. In the immediate aftermath of the June 12, 2023 incident, Plaintiffs made multiple attempts to contact emergency services. Due to connectivity issues, they were unable to reach 911 directly and had to contact the mayor's secretary to summon help.

143. The police report failed to mention the presence of the fire department on the scene and did not accurately describe the initial response, including the fact that police initially went to the wrong location.

144. These omissions and inaccuracies in the official reports further demonstrate the Defendants' failure to conduct a thorough and unbiased investigation into the incident.

145. Upon information and belief, eyewitness accounts suggest that a passenger's actions may have contributed to the capsizing of the boat. Specifically, a video posted on social media appears to show a large woman jumping overboard, which could have destabilized the boat.

146. Despite the existence of this potentially exculpatory evidence, Defendants failed to thoroughly investigate this aspect of the incident, instead focusing their efforts on attempting to assign blame to Plaintiffs.

147. Defendants' actions throughout the investigation and subsequent proceedings demonstrate a clear bias against Plaintiffs, a rush to judgment without proper evidence, and a failure to conduct a thorough and impartial investigation.

148. As a result of Defendants' actions and omissions, Plaintiffs have suffered significant damage to their reputation, loss of business, and ongoing financial hardship.

149. Defendants' conduct has also caused Plaintiffs to incur substantial legal and professional fees in their efforts to obtain information, protect their rights, and defend against unwarranted accusations.

150. On or about August 28, 2023, Mr. Dool appeared at Plaintiffs' property without notice and stated that they could not be operational due to alleged violations that had not been addressed. Mr. Dool failed to provide any written documentation of these alleged violations at that time.

151. Plaintiffs, through their representative George Muscato, repeatedly requested meetings with city officials, including Mayor Roman and the Corporate Counsel, to discuss the situation and work towards a resolution. These requests were often ignored or delayed without justification.

152. The electrical service to Plaintiffs' properties remained disconnected from approximately June 13, 2023, through the end of August 2023.

153. During this period, Defendants failed to provide Plaintiffs with a clear explanation of alleged violations or a reasonable timeline for addressing any legitimate concerns.

154. Defendants' actions prevented Plaintiffs from operating their businesses during the peak summer tourist season, resulting in substantial lost revenue.

155. Throughout this period, Defendants continued to make public statements and take actions that were damaging to Plaintiffs' business interests and reputation, without providing Plaintiffs with an opportunity to address the alleged issues or defend themselves against the accusations.

156. Defendants' actions demonstrate a pattern of targeting Plaintiffs' businesses for unfair and discriminatory treatment, in violation of their constitutional rights to equal protection under the law.

157. The conduct of Defendants has caused Plaintiffs to suffer significant financial losses, including but not limited to lost revenue from the closure of their businesses, costs associated with addressing the alleged violations, legal fees, and damage to their business reputation.

158. Defendants' conduct has caused irreparable harm to Plaintiffs' unique business interests and their ability to operate in the future.

159. Defendants' actions have forced Plaintiffs to incur significant legal fees, expert fees, and other costs in their efforts to protect their rights and resume business operations.

160. Upon information and belief, Defendants' actions were motivated by improper influences and personal vendettas rather than legitimate public safety concerns.



161. Defendants have continued to pursue baseless enforcement actions against Plaintiffs, despite the lack of evidence of any imminent danger to the public.

162. Defendants have treated Plaintiffs differently from other similarly situated businesses in the City of Lockport, including other boat tour operations and attractions.

163. Defendants' conduct has violated multiple provisions of the Lockport City Code, state law, and federal law, including due process requirements and equal protection guarantees.

164. Plaintiffs further contend that Defendants' failure to provide timely and complete information in response to FOIL requests, while simultaneously sharing information with media outlets, demonstrates a bias against Plaintiffs and an attempt to control the narrative surrounding the incident.

165. The denial of the search warrant request by Judge DiMillo, due to lack of probable cause, further supports the Plaintiffs' assertion that the investigation was rushed and potentially biased.

166. Plaintiffs maintain that they have suffered significant reputational and financial damage as a result of Defendants' actions and omissions throughout the investigation and subsequent proceedings.

167. As a result of Defendants' actions, Plaintiffs have suffered and continue to suffer monetary damages, loss of business goodwill, reputational harm, and severe emotional distress.

168. As a result of Defendants' actions, Plaintiffs have been deprived of their property rights without due process of law, have been subject to unreasonable searches and seizures, have had their reputation damaged by false and misleading statements, and have been

treated differently from other similarly situated businesses in violation of their right to equal protection under the law.

169. In addition, on or about June 30, 2024, Plaintiffs discovered that the City of Lockport intended to launch Fourth of July fireworks from 71 Clinton Street, a property adjacent to Plaintiffs' property at 2 Green Street and in close proximity to their property at 5 Gooding Street.

170. The City of Lockport failed to include Plaintiffs in the planning process for this event, despite the fireworks launch location being within 100 feet of Plaintiffs' zipline platform.

171. This failure to inform or involve Plaintiffs in the planning process stands in stark contrast to previous years, when the City had included Plaintiffs as an additional insured on relevant insurance policies and involved them in security, transportation, EMS, and fire safety plans.

172. On June 30, 2024, Plaintiffs alerted Mayor Lombardi to this situation, seeking an immediate dialogue with City officials.

173. On or about July 1, 2024, Plaintiff Thomas Callahan met with Mayor Lombardi, Police Chief Abbott, Fire Chief, and City Clerk Sarah Lanzo to discuss the fireworks event.

174. During this meeting, Police Chief Abbott acknowledged the existence of a safety plan for the event but refused to share it with Plaintiffs.

175. The City's decision to proceed with fireworks plans without notifying or involving Plaintiffs represents a continuation of their pattern of withholding crucial public information from Plaintiffs.

176. The City of Lockport not only failed to obtain permission from Plaintiffs to use their property for the fireworks event, but actually launched fireworks from Plaintiffs' property at 2 Green Street without any agreement or authorization.

177. The safety zone required by law for the fireworks event extended well beyond 150 feet, encompassing both Plaintiffs' 2 Green Street property and their 5 Gooding Street property, including the area near Plaintiffs' zipline.

178. The fireworks contractor expressed concern about proceeding with the event without a proper contract with the City, stating, "We're not firing these off if we don't have a contract with the city," further demonstrating the City's failure to follow proper procedures and obtain necessary agreements.

179. This action by the City effectively constitutes an illegal taking of Plaintiffs' property without notice or compensation, endangering Plaintiffs' investment and security.

180. The City's failure to proactively disclose this information to Plaintiffs, despite its clear relevance to their property and business operations, further demonstrates the ongoing pattern of FOIL violations and lack of transparency.

181. This incident provides additional evidence of the City's retaliatory behavior towards Plaintiffs.

182. The Lockport Police Department failed to include Plaintiffs in the planning and safety considerations for this event, despite the proximity of the launch site to Plaintiffs' property.

183. When Plaintiffs attempted to contact the Lockport Police Department about an issue before the event, they were unavailable, demonstrating a lack of proper coordination and communication.

184. The City of Lockport failed to obtain a contract or permission from Plaintiffs to use their property, which borders the fireworks launch area on two sides.

185. Upon information and belief, the City of Lockport may have failed to obtain required mass gathering permits for the fireworks event.

186. The Lockport Fire Department, unlike other city departments, did attempt to assist and coordinate with Plaintiffs regarding the fireworks event.

187. The City of Lockport's actions regarding the 2024 fireworks event are part of a pattern of behavior, as similar exclusions of Plaintiffs from event planning occurred in 2019 and 2020.

188. The City's failure to involve Plaintiffs in the fireworks planning process, as they had done in previous years, represents a departure from established procedure that appears to be motivated by bias against Plaintiffs.

189. This change in the City's approach to involving Plaintiffs in events affecting their property rights occurred after Plaintiffs filed notices of claim related to the June 12, 2023 incident, suggesting a retaliatory motive.

190. The City's actions regarding the fireworks event demonstrate a continued pattern of treating Plaintiffs differently from other similarly situated property owners, in violation of their right to equal protection under the law.

191. The coordinated efforts of city officials, led by Police Chief Abbott, to exclude Plaintiffs from the planning process and withhold safety information related to the

fireworks event further evidences the ongoing conspiracy to violate Plaintiffs' constitutional rights.

192. The City's actions regarding the fireworks event demonstrate a continued disregard for Plaintiffs' right to access public information that directly affects their property and business interests.

193. This incident further illustrates the conspiracy among City officials, including Defendants Pasceri, Brewer, and Beakman, to withhold crucial public information from Plaintiffs, in violation of New York State's Freedom of Information Law and Plaintiffs' constitutional rights.

194. The City's failure to involve Plaintiffs in the fireworks planning process, as they had done in previous years, represents a departure from established procedure that appears to be motivated by bias against Plaintiffs.

195. This change in the City's approach to involving Plaintiffs in events affecting their property rights occurred after Plaintiffs filed notices of claim related to the June 12, 2023 incident, suggesting a retaliatory motive.

196. The City's actions regarding the fireworks event demonstrate a continued pattern of treating Plaintiffs differently from other similarly situated property owners, in violation of their right to equal protection under the law.

197. Defendants' conduct was willful, malicious, oppressive, and in reckless disregard of Plaintiffs' constitutional rights.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

**Violation of the Fourteenth Amendment  
Procedural Due Process Violation under 42 U.S.C. § 1983  
Against All Defendants**

198. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 183 of this complaint as if fully set forth here.

199. Under the Fourteenth Amendment to the United States Constitution, no government official shall “deprive any person of life, liberty, or property, without due process of law.”

200. Plaintiffs had a property right to operate their businesses at the premises located at 5 Gooding Street, Lockport, New York 14094.

201. Defendants deprived Plaintiffs of this property right without due process of law by: a) Arbitrarily shutting down Plaintiffs’ businesses; b) Removing electrical meters without proper notice or justification; c) Declaring Plaintiffs’ entire property a “crime scene” without proper basis; d) Preventing Plaintiffs from accessing their property and conducting business operations unrelated to the June 12, 2023 incident; e) Failing to provide Plaintiffs with a clear explanation of alleged violations or a reasonable timeline for addressing any legitimate concerns; f) Withholding crucial information obtained during the investigation while simultaneously sharing such information with media outlets.

202. Defendants, including Rochelle Pasceri, Megan Brewer, and Paul Beakman, systematically deprived Plaintiffs of their procedural due process rights by consistently failing to respond to FOIL requests in a timely and complete manner as required by New York State law, with this pattern of obstruction persisting for approximately ten years.

203. Defendants' actions in withholding audio recordings of city meetings, despite Plaintiffs' knowledge of their existence, constitutes a deliberate attempt to deny Plaintiffs access to information crucial for protecting their business interests and legal rights.

204. The coordinated efforts of these Defendants to obstruct and delay Plaintiffs' access to public records, including audio recordings and other documents related to city meetings and decisions affecting Plaintiffs' business, constitutes a violation of Plaintiffs' procedural due process rights under the Fourteenth Amendment.

205. As a result of their actions and inactions, Defendants deprived Plaintiffs of their procedural due process rights.

206. Defendants' conduct was committed under the color of state law.

207. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

208. The conduct by Defendants was willful, malicious, oppressive, and reckless, and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

## SECOND CAUSE OF ACTION

**Violation of the Fourteenth Amendment  
Substantive Due Process Violation under 42 U.S.C. § 1983  
Against All Defendants**

209. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 194 of this complaint as if fully set forth here.

210. Defendants acted arbitrarily, oppressively, and in a conscience-shocking manner in shutting down Plaintiffs' businesses, including but not limited to: a) Removing electrical meters and causing a complete loss of power to all of Plaintiffs' operations; b) Preventing Plaintiffs from operating unrelated business activities such as the Niagara Zipper zipline; c) Making false and misleading public statements about the safety of Plaintiffs' operations and their compliance with applicable laws and regulations.

211. Defendants' actions deprived Plaintiffs of their substantive due process rights guaranteed by the Fourteenth Amendment.

212. Defendants' conduct was committed under the color of state law.

213. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

214. The conduct by Defendants was willful, malicious, oppressive, and reckless, and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

### **THIRD CAUSE OF ACTION**

#### **Violation of the Fifth and Fourteenth Amendments Unlawful Taking under 42 U.S.C. § 1983 Against All Defendants**

215. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 200 of this complaint as if fully set forth here.



216. The actions of Defendants in shutting down Plaintiffs' businesses and preventing Plaintiffs from operating their businesses constituted a taking of Plaintiffs' property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution, including but not limited to: a) Preventing Plaintiffs from operating revenue-generating activities such as the Lockport Cave Walking Tour, Ghost Hunters Experience tour, Lockport Haunted Cave tours, and the Niagara Zipper zipline; b) Causing Plaintiffs to lose business during the peak summer tourist season.

217. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

218. The conduct by Defendants was willful, malicious, oppressive, and reckless, and was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

#### **FOURTH CAUSE OF ACTION**

**Violation of the Fourteenth Amendment  
Violation of the Equal Protection Clause under 42 U.S.C. § 1983  
Against All Defendants**

219. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 204 of this complaint as if fully set forth here.

220. The Fourteenth Amendment to the United States Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

221. The allegations described above demonstrate that Plaintiffs appear to have been singled out and treated very differently from other business owners in the City of Lockport.

222. Defendants violated Plaintiffs' well-established rights under the Equal Protection Clause of the Fourteenth Amendment in that they deprived and/or seriously intruded on Plaintiffs' property rights, without due process of law, as well as denying them equal protection of the law by singling Plaintiffs out and treating them very differently from other businesses who may be in violation of one or more building codes but are actively working with the City to remediate those violations.

223. Defendants Pasceri, Brewer, and Beakman, along with other city officials, engaged in a pattern of discriminatory behavior by consistently obstructing and delaying Plaintiffs' FOIL requests over a period of approximately ten years, while presumably responding to similar requests from other individuals or businesses in a timely manner.

224. This disparate treatment in handling FOIL requests, particularly regarding audio recordings of city meetings and documents related to the 2015 incident, demonstrates a violation of Plaintiffs' right to equal protection under the law, as guaranteed by the Fourteenth Amendment.

225. The actions of these Defendants show an intentional and arbitrary discrimination against Plaintiffs, as there is no rational basis for the differential treatment in processing FOIL requests or in the public characterization of incidents involving Plaintiffs' business.

226. Plaintiffs have been singled out and treated differently without any rational basis for the differential treatment.

227. The differential treatment accorded to Plaintiffs has been the result of intentional, malicious behavior by Defendants.

228. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

229. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

### **FIFTH CAUSE OF ACTION**

#### **Violation of the Fourth, Fifth, and Fourteenth Amendments Abuse of Process under New York State Law and 42 U.S.C. § 1983 Against All Defendants**

230. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 215 of this complaint as if fully set forth here.

231. Defendants committed an abuse of process by utilizing proper processes to accomplish improper purposes, including but not limited to:

a) Declaring Plaintiffs' entire property a "crime scene" to prevent access to areas unrelated to the June 12, 2023 incident;

b) Using building code enforcement processes to shut down Plaintiffs' entire business operations rather than addressing specific safety concerns.

232. Defendants Pasceri, Brewer, and Beakman abused the FOIL process by using it as a means to obstruct Plaintiffs' access to public information, including audio recordings of city meetings and documents related to the 2015 incident, thereby impeding Plaintiffs' ability to conduct business and defend their interests.

233. This misuse of the FOIL process, persisting over a period of approximately ten years, demonstrates an ulterior motive and willful act in the use of process not proper in the regular conduct of the proceeding.

234. Defendants' actions in repeatedly delaying, obstructing, and providing incomplete responses to Plaintiffs' FOIL requests constitute an abuse of process under New York State law and 42 U.S.C. § 1983.

235. The improper purposes for Defendants' actions included, inter alia, to cause financial harm to the Plaintiffs due to Defendants' personal animus towards Plaintiffs; to harm the Plaintiffs' personal and professional reputation; to deprive the Plaintiffs of their property rights without affording the Plaintiffs proper notice and an opportunity to be heard; and to violate the Plaintiffs' rights secured to them by the Constitution of the United States.

236. In accomplishing these improper purposes, Defendants employed legal process in an improper manner and with ulterior motives.

237. Defendants deprived the Plaintiffs of the rights secured to them by the Constitution of the United States.

238. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

239. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

#### **SIXTH CAUSE OF ACTION**

**Violation of the Fourth, Fifth, and Fourteenth Amendments  
Conspiracy to Violate Plaintiffs' Constitutional Rights under 42 U.S.C. § 1983**

**Against All Defendants**

240. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 225 of this complaint as if fully set forth here.

241. Employees for the City of Lockport, while acting under the color of state law, conspired to deprive Plaintiffs of their rights guaranteed under the Fourth, Fifth, and Fourteenth Amendments.

242. The deprivation of Plaintiffs' constitutionally protected rights was carried out by all Defendants collectively as co-conspirators.

243. Defendants entered into an agreement and acted in concert to inflict unconstitutional injury on Plaintiffs.

244. Defendants had an agreement with each other to intrude on Plaintiffs' property rights without providing them adequate process and without following the City's procedure for doing the same.

245. Defendants Pasceri, Brewer, and Beakman, in concert with other city officials including Mayor Roman, engaged in a conspiracy to deprive Plaintiffs of their constitutional rights by coordinating efforts to obstruct and delay responses to FOIL requests over a period of approximately ten years.

246. This conspiracy involved a tacit understanding among the Defendants to use their official positions to prevent Plaintiffs from accessing public records necessary for the operation and defense of their business, including audio recordings of City meetings and documents related to the 2015 incident.

247. The actions taken in furtherance of this conspiracy included, but were not limited to, deliberately delaying responses to FOIL requests, providing incomplete information,

denying the existence of known audio recordings, and mischaracterizing past incidents involving Plaintiffs' business to create a false narrative of negligence or misconduct.

248. Defendants are liable under 42 U.S.C. § 1983 for conspiring with each other to deprive the Plaintiffs of their constitutionally protected rights.

249. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

250. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged here.

#### **SEVENTH CAUSE OF ACTION**

#### **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENT First Amendment Retaliation under 42 U.S.C. § 1983 Against All Defendants**

251. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 236 of this complaint as if fully set forth here.

252. Immediately following the June 12, 2023 incident, Plaintiffs engaged in protected speech by:

- a) Attempting to communicate with City officials about the incident and the status of their business operations;
- b) Making public statements to the media about the incident and their safety practices;
- c) Questioning the basis for the shutdown of their operations and removal of electrical meters;

d) Requesting information about the investigation and the criteria for reopening their businesses.

253. Plaintiffs' speech addressed matters of public concern, including public safety, the operation of a local business attraction, and the actions of city officials in response to the incident.

254. Defendants' actions were motivated by retaliatory animus towards Plaintiffs' protected speech, including but not limited to:

- e) Shutting down Plaintiffs' businesses;
- f) Removing electrical meters without proper notice or justification;
- g) Declaring Plaintiffs' entire property a "crime scene" without proper basis;
- h) Preventing Plaintiffs from accessing their property and conducting business operations unrelated to the June 12, 2023 incident;
- i) Making false and misleading public statements about Plaintiffs' operations and safety practices;
- j) Withholding crucial information obtained during the investigation while simultaneously sharing such information with media outlets;

255. Defendants' retaliatory actions would deter a person of ordinary firmness from continuing to engage in the protected speech.

256. There was a causal connection between Plaintiffs' protected speech and Defendants' adverse actions, as evidenced by:

- a) The temporal proximity between Plaintiffs' attempts to communicate and question officials and the subsequent adverse actions;

- b) Disparaging comments made by Defendants about Plaintiffs' public statements;
- c) The selective enforcement of regulations against Plaintiffs' businesses;
- d) The continued adverse actions even after Plaintiffs attempted to cooperate with the investigation and address any legitimate safety concerns.

257. As a direct and proximate result of Defendants' retaliatory actions, Plaintiffs have suffered substantial damages, including but not limited to, loss of business income, damage to business reputation, emotional distress, and costs associated with attempting to address the unjustified shutdown and investigation.

258. Defendants' conduct was willful, wanton, and malicious, entitling Plaintiffs to punitive damages against the individual Defendants.

#### **EIGHTH CAUSE OF ACTION**

##### **Violation of the Fourteenth Amendment Policy, Custom, and Practice of Defendants and Failure to Supervise and Train under 42 U.S.C. § 1983 Against the City of Lockport**

259. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 244 of this complaint as if fully set forth here.

260. Defendant the City of Lockport developed and maintained policies, customs, and practices exhibiting deliberate indifference to the Plaintiffs' property rights.

261. At all relevant times, the City was aware that its employees and agents were inadequately trained regarding citizens' property and procedural due process rights under the Fifth and Fourteenth Amendments, yet the City of Lockport maintained a policy or custom of



failing to provide its employees and agents training on the Fifth and Fourteenth Amendments or adequate supervision over them.

262. It was the policy or custom, or both, of the City of Lockport to inadequately supervise and train its employees and agents, thereby failing to prevent the constitutional violations against Plaintiffs.

263. Upon information and belief, the City of Lockport maintained a policy, custom, or practice of interfering with Plaintiffs' property rights and retaliating against Plaintiffs for exercising their First Amendment rights in criticizing the City of Lockport and its agents by interfering with and affecting their personal and business relationships and reputation.

264. The City of Lockport failed to properly screen and supervise the employees who worked for the City, which allowed Defendants to retaliate against Plaintiffs for a valid exercise of their First Amendment rights. The City of Lockport retained or allowed its agents to be retained despite their history of inappropriate and unlawful acts that were documented and known to the appropriate policymakers in the City.

265. Upon information and belief, City of Lockport policymakers, including, but not limited to, Mayor Michelle Roman and Police Chief Steven Abbott, condoned and encouraged the inappropriate behavior by Defendants herein.

266. Defendant City of Lockport's policies, customs, and practices demonstrate a deliberate indifference to the constitutional rights of persons and businesses within the City of Lockport, including Plaintiffs, and it therefore caused the violation of Plaintiffs' rights.

267. Defendant City of Lockport ratified and acquiesced in the unlawful conduct of the other defendants, as is evidenced by the City of Lockport's failure to discipline and/or correct the bad behavior of the other defendants.

268. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

269. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that the Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged here.

### NINTH CAUSE OF ACTION

#### **VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENT Unreasonable Search and Seizure under 42 U.S.C. § 1983 Against Jason Dool**

270. Plaintiffs incorporate the allegations contained in paragraphs 1 through 255 of this complaint as if fully set forth herein.

271. At all times, Plaintiffs enjoyed and possessed a right under the Fourth and Fourteenth Amendment of the Constitution of the United States to be free from unreasonable searches and seizures and to be secure in their person, home, personal effects, and property.

272. As described above, defendant Jason Dool, in his capacity as Building Inspector for the City of Lockport, appeared at Plaintiffs' property on numerous occasions without notice and conducted an unreasonable inspection without proper authorization.

273. Defendant Dool's actions constituted an unreasonable search and seizure in violation of Plaintiffs' Fourth Amendment rights.

274. As a direct and proximate result of the unlawful actions of defendant Dool, as alleged herein, this defendant deprived Plaintiffs of their rights under the Fourth and Fourteenth Amendment to be free from unreasonable search and seizure.

275. The conduct of defendant Dool was outrageous, intentional and malicious, or at the very least grossly negligent, exhibiting a reckless disregard and deliberate indifference for Plaintiffs' rights.

276. As a direct and proximate result of the foregoing, Plaintiffs were damaged and injured in an amount to be determined at trial.

277. The aforesaid conduct by defendant Dool was willful, malicious, oppressive, and/or reckless and was of such a nature that Plaintiffs claim punitive damages against him in an amount commensurate with the wrongful acts alleged herein.

#### **TENTH CAUSE OF ACTION**

#### **TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS IN VIOLATION OF NEW YORK STATE LAW Against All Defendants**

278. Plaintiffs incorporate the allegations contained in paragraphs 1 through 263 of this complaint as if fully set forth herein.

279. Defendants' actions, including but not limited to shutting down Plaintiffs' businesses, removing electrical meters, and declaring the entire property a "crime scene," intentionally interfered with Plaintiffs' existing contractual relationships.

280. Defendants' interference caused Plaintiffs' customers to breach their contracts or rendered performance of these contracts impossible.

281. Defendants' actions were not justified and were carried out with the intent to harm Plaintiffs' business interests.

282. As a direct and proximate result of Defendants' tortious interference, Plaintiffs have suffered substantial economic losses and damage to their business reputation.

283. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

### **ELEVENTH CAUSE OF ACTION**

#### **TRESPASS IN VIOLATION OF NEW YORK LAW Against Defendant Jason Dool**

284. Plaintiffs incorporate the allegations contained in paragraphs 1 through 269 of this complaint as if fully set forth herein.

285. Plaintiffs are the lawful owners and/or occupants of the property located at 5 Gooding Street, Lockport, New York 14094.

286. On the dates above, Defendant Jason Dool, without Plaintiffs' consent or lawful authority, intentionally entered upon Plaintiffs' property.

287. Defendant Dool's entry onto Plaintiffs' property was unlawful and unauthorized.

288. Defendant Dool's trespass interfered with Plaintiffs' right to exclusive possession of their property.

289. As a direct and proximate result of Defendant Dool's trespass, Plaintiffs have suffered damages, including but not limited to loss of use of their property and business interruption.

290. The aforesaid conduct by Defendant Dool was willful, malicious, oppressive, and/or reckless and was of such a nature that Plaintiffs claim punitive damages against him in an amount commensurate with the wrongful acts alleged herein.

**TWELFTH CAUSE OF ACTION**

**DEFAMATION IN VIOLATION OF NEW YORK STATE LAW  
Against All Defendants**

291. Plaintiffs incorporate the allegations contained in paragraphs 1 through 276 of this complaint as if fully set forth herein.

292. Defendants, as described above, made numerous public statements and comments to the media that were false and defamatory regarding Plaintiffs' business operations, safety practices, and compliance with applicable laws and regulations.

293. These statements were published to third parties, including various media outlets and the general public.

294. The statements were false and Defendants knew or should have known they were false at the time they were made.

295. The statements were made with actual malice or with reckless disregard for their truth or falsity.

296. These false statements have caused significant damage to Plaintiffs' reputation and business interests.

297. As a direct and proximate result of Defendants' defamatory statements, Plaintiffs have suffered substantial economic losses and damage to their business reputation.

298. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

**THIRTEENTH CAUSE OF ACTION**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

**IN VIOLATION OF NEW YORK STATE LAW**  
**Against All Defendants**

299. Plaintiffs incorporate the allegations contained in paragraphs 1 through 284 of this complaint as if fully set forth herein.

300. Defendants' conduct, including but not limited to arbitrarily shutting down Plaintiffs' businesses, making false public statements, and interfering with Plaintiffs' property rights, was extreme and outrageous.

301. Defendants acted with the intent to cause, or in reckless disregard of a substantial probability of causing, severe emotional distress to Plaintiffs.

302. As a direct and proximate result of Defendants' conduct, Plaintiffs have suffered severe emotional distress.

303. The conduct by Defendants was willful, malicious, oppressive, and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

**FOURTEENTH CAUSE OF ACTION**

**NEGLIGENCE/NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**IN VIOLATION OF NEW YORK STATE LAW**  
**Against All Defendants**

304. Plaintiffs incorporate the allegations contained in paragraphs 1 through 289 of this complaint as if fully set forth herein.

305. Defendants owed a duty of care to Plaintiffs to exercise reasonable care in the performance of their official duties and in their interactions with Plaintiffs' business operations.

306. Defendants breached this duty of care by, among other things:

a. Failing to properly investigate the June 12, 2023 incident before taking drastic actions against Plaintiffs' businesses;

b. Negligently declaring Plaintiffs' entire property a "crime scene" without proper justification;

c. Failing to provide Plaintiffs with adequate notice and opportunity to address alleged violations before shutting down their businesses;

d. Negligently making public statements about Plaintiffs' operations without verifying the accuracy of such statements.

307. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered substantial economic losses, including but not limited to loss of business income, damage to business reputation, and costs associated with addressing the consequences of Defendants' actions.

308. The conduct by Defendants was grossly negligent and reckless, and it was of such a nature that Plaintiffs claim punitive damages against each of them in an amount commensurate with the wrongful acts alleged.

#### **DEMAND FOR JURY TRIAL**

309. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

**PRAYER FOR RELIEF**

Plaintiffs pray for relief and demand judgment as follows:

1. That Plaintiffs be awarded compensatory damages against all Defendants in an amount to be determined at trial;
2. That Plaintiffs be awarded punitive damages against all Defendants in an amount to be determined at trial;
3. That this Court, pursuant to 42 U.S.C. § 1988, issue an order awarding Plaintiffs reasonable attorneys' fees, together with the costs of this action against all Defendants; and
4. That this Court award such other further relief, together with any other legal or equitable relief, or both, as the Court deems just and proper.

Dated: September 12, 2024  
Buffalo, New York

**RUPP PFALZGRAF LLC**  
*Attorneys for Plaintiffs*

*s/Chad A. Davenport*  
\_\_\_\_\_  
R. Anthony Rupp III, Esq.  
Chad A. Davenport, Esq.  
1600 Liberty Building  
Buffalo, New York 14202  
(716) 854-3400  
rupp@rupppfalzgraf.com  
davenport@rupppfalzgraf.com



### City of Lockport - Resolution Request Form

Agenda Description: <b>Outwater Park Roof Asbestos Abatement</b>													
Presented By: <b>Daniel Cavallari</b>	Date Submitted: <b>9/11/2024</b>												
<b>Topic Area (Select Most Applicable Option):</b>													
Community Event Budget Amendment Contract Approval Donation Acceptance Grant Application / Award Fund Utilization Request	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; border: 1px solid black; height: 15px;"></td><td style="width: 50%; border: 1px solid black; height: 15px;"></td></tr> <tr><td style="border: 1px solid black; height: 15px;"></td><td style="border: 1px solid black; height: 15px;"></td></tr> <tr><td style="border: 1px solid black; height: 15px; text-align: center;">✓</td><td style="border: 1px solid black; height: 15px;"></td></tr> <tr><td style="border: 1px solid black; height: 15px;"></td><td style="border: 1px solid black; height: 15px;"></td></tr> <tr><td style="border: 1px solid black; height: 15px;"></td><td style="border: 1px solid black; height: 15px;"></td></tr> <tr><td style="border: 1px solid black; height: 15px;"></td><td style="border: 1px solid black; height: 15px;"></td></tr> </table>					✓							
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<i>Please provide to Clerk at least 9 calendar days prior to Council meeting. Otherwise request will go to following meeting.</i>													
<b>Summary of Resolution:</b>  <p>The City of Lockport previously approved a contract with Progressive Roofing for the roof replacement at Outwater Park. During the project, asbestos was discovered, necessitating additional abatement work. This resolution authorizes an additional <del>\$0,500</del> to cover the cost of asbestos abatement, with funds to be drawn from the H204 Capital Project Fund. The Mayor is authorized to amend the contract with Progressive Roofing to include this additional work</p>													
<b>Explanation of Attachments:</b>  <p>1)Resolution 2)Progressive Roofing Quote 3) Stohl Environmental Report</p>													
Please include all backup correspondence, purchase order, quotes, meeting minutes, emails, etc... If any of this information is confidential and cannot be released publicly, please denote a check in this field: _____													
<b>Clerk/Legal/Finance Approval:</b>													
<b>Notes:</b>													
<b>Name:</b>	<b>Date of Approval:</b>												

September 12, 2024

Mr. Marc Smith  
Town of Lockport  
6560 Dysinger Road  
Lockport, New York 14094

**Re: Proposal for Asbestos Project Monitoring  
150 Outwater Drive  
Lockport, New York  
Brick Building Roof**

Dear Mr. Smith:

Thank you for allowing Stohl Environmental LLC to submit this proposal to provide asbestos project monitoring for the Roofing Project of the Brick Building at 150 Outwater Drive, Lockport, NY.

Stohl Environmental LLC is well qualified to perform the scope of work associated with this project, including the following credentials:

- **Experience:** Stohl Environmental LLC has successfully completed thousands of similar projects over the past 36 years, including projects for:
  - the former Deaconess Hospital in Buffalo, NY (Pre-Demolition Hazardous Materials Inspection)
  - the former Millard Fillmore Gates Hospital in Buffalo, NY (Pre-Demolition Hazardous Materials Inspection)
  - Western New York's largest architectural and engineering firms
  - New York Power Authority including the asbestos inspection of the entire Niagara Power Plant in Lewiston, NY and the St. Lawrence FDR Power Project in Massena, NY
  - the Buffalo Airport Center (Pre-Demolition Asbestos Inspection of the Former Westinghouse Plant)
  - the former Bethlehem Steel Plant in Lackawanna, NY
  - the City of Niagara Falls (over 500 Pre-Demolition Asbestos Inspection)
- **Capacity:** Stohl Environmental LLC has the largest staff of environmental professionals engaged in asbestos and lead-based paint inspections and design in WNY.
- **Documented Protocols and Quality Control:** A check of our references will reveal that Stohl Environmental inspection and abatement design projects are carefully managed and are targeted to bring our projects in on-time and on-budget.
- **Insurance:** Stohl Environmental carries \$6 million in professional and general liability coverage and will name the client as additional insured upon request.

**Scope of Services:**

Provide Project and Air Monitoring services during asbestos abatement in accordance with NYS Industrial Code Rule 56: Services include:

1. NYS certified and licensed Project Monitor
2. Final Clearance Monitoring after contractor has completed abatement work onsite
3. Daily log of all activities
4. Project summary report

**Project Involving EXTERIOR NON-FRIABLE Asbestos Abatement: Proposed Fees for Project Monitoring:**

**Visual Clearance Inspection Following Contractor Removal Completion**

Description	Unit Rate
Asbestos Project Monitor Visual Clearance Inspection	\$330 / Site Visit / Inspection
Project Monitoring Report	\$150

**Note 1: The number of Project Monitoring inspections required are directly and 100% dependent upon the project construction schedule, phasing schedule, and abatement contractor's schedule, their schedule, their available labor, their abatement means and methods, and their ability to achieve clearance of work areas. The client should be assured that Stohl Environmental's approach is highly disciplined and managed to assure that total project cost to the client is kept to the minimum possible.**

**Summary and Acceptance:**

If you have any questions on this proposal, or suggestions on how Stohl Environmental LLC can better serve you, please do not hesitate to call. Thank you for calling Stohl Environmental, LLC.

Sincerely,  
 Stohl Environmental, LLC.

Proposed by:

\_\_\_\_\_  
 Tony Franjoine, Jr.

Accepted by:

9/12/24

Date

\_\_\_\_\_  
 On behalf of Town of Lockport

\_\_\_\_\_  
 Date

Attn: Lockport

WE PROPOSED to furnish the material and labor under the heading of Roofing and Sheet Metal Work, (except as qualified below), for the above subject job, in the amount of: See below

SPECIFICATION: Below please find our price for Roof Repairs per your request

SCOPE OF WORK:

## Lockport

1. Remove existing asbestos in accordance with NYS regulations

Price: \$9,500



3860 California Road  
Orchard Park, New York 14127  
716-312-0070

7451 South Lake Road  
Bergen, New York 14416  
585-250-0070

[www.stohlenvironmental.com](http://www.stohlenvironmental.com)

---

September 5, 2024

Mr. Nick Kney  
The Garland Company  
3800 91<sup>st</sup> Street  
Cleveland, Ohio 44105

**Re: Pre-Renovation Asbestos Inspection – Roof of Brick Building Onsite  
150 Outwater Drive  
Lockport, New York**

Dear Mr. Kney:

Enclosed please find a copy of the Pre-Renovation Asbestos Inspection Report for the above-referenced property. Consistent with the requirements of NYS Industrial Code Rule 56; Subpart 56-5.1(g)(1), if a building permit is required for the planned Renovations/Addition, a copy of the Inspection Report must be forwarded as follows:

*"One (1) copy of the completed asbestos survey shall be sent by the owner or their agent to the local government entity charged with issuing a permit for such demolition, renovation, remodeling or repair work under applicable State or local laws."*

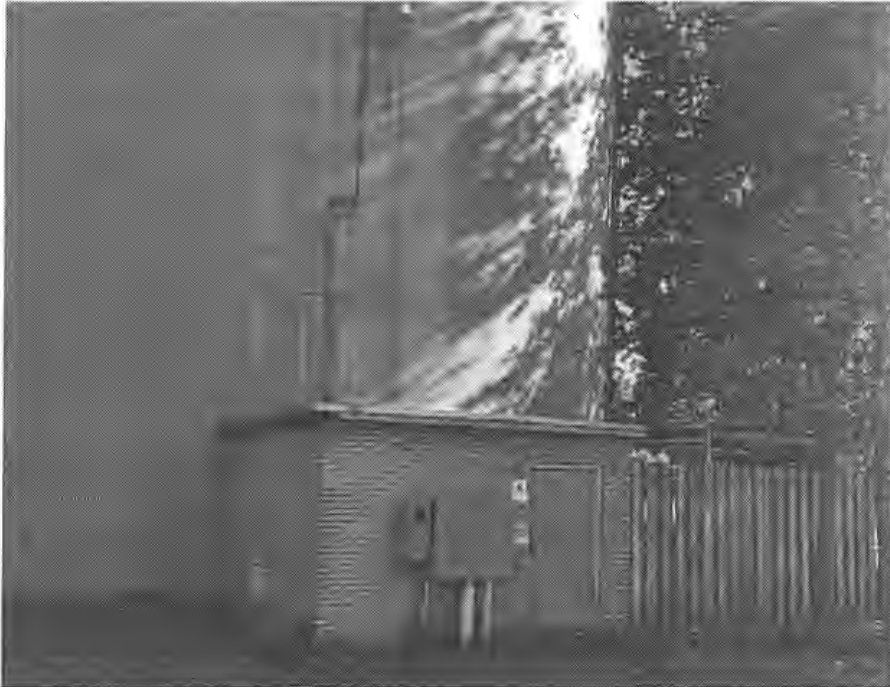
Thank you for the opportunity to be of service to The Garland Company.

Sincerely,  
Stohl Environmental, LLC.

Tony Franjoine, Jr.  
Partner

**Pre-Renovation Asbestos Inspection  
Roof of Brick Building Onsite**

**150 Outwater Drive  
Lockport, New York**



**Prepared for:**

**The Garland Company**

**Prepared by**



---

**3860 California Road, Orchard Park, New York 14127  
(P) 716-312-0070 (F) 716-312-8092  
[WWW.STOHLENVIRONMENTAL.COM](http://WWW.STOHLENVIRONMENTAL.COM)**

**Conditions as of August 27, 2024**



3860 California Road  
Orchard Park, New York 14127  
716-312-0070

7451 South Lake Road  
Bergen, New York 14416  
585-250-0070

[www.stohlenvironmental.com](http://www.stohlenvironmental.com)

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## PRE-RENOVATION ASBESTOS INSPECTION REPORT

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585-250-0070

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## 1. Introduction

Stohl Environmental, LLC was retained by The Garland Company to inspect the roof of the brick building onsite located at 150 Outwater Drive in Lockport, New York for the presence of asbestos containing building materials (ACBM) in areas of planned renovations.

Stohl Environmental, LLC was charged with locating suspect asbestos containing materials, sampling of these materials to ascertain asbestos content, and identifying the locations and estimated quantities of the confirmed asbestos containing materials.

Stohl Environmental, LLC is prepared to develop a specification and contract documents for the removal of these materials at the request of the client. The information following this introduction details the amount of asbestos present in this facility and the location of the asbestos containing building materials (ACBM).

Although the report is a comprehensive analysis of the asbestos inspection work performed, it would be helpful to review all applicable federal, state and local rules, laws and regulations regarding the handling and treatment of asbestos containing building materials (ACBM). The following is a list of suggested reading and information sources relating to asbestos:

- \* New York State Department of Labor Industrial Code Rule 56
- \* National Emission Standard for Hazardous Air Pollutants (NESHAPS)
- \* Occupational Safety and Health Administration (OSHA 1926.1101, 1910.134, 1910.1020, 1910.1200, 1910.145, 1910.95, 1926.58)
- \* Environmental Protection Agency rule CFR 763.46 Asbestos Hazard Emergency Response Act





3860 California Road  
Orchard Park, New York 14127  
716-312-0070

7451 South Lake Road  
Bergen, New York 14416  
585-250-0070

[www.stohlenvironmental.com](http://www.stohlenvironmental.com)

## 2. Executive Summary

The scope of services included the identification of suspect asbestos containing building materials in preparation for building renovation, sampling and analysis of the suspect materials, and approximate quantity of confirmed asbestos containing materials.

The inspection was conducted on August 27, 2024 and revealed the following materials as suspected of containing asbestos:

HAN	Description	ACM?
700	Fiberglass Insulation Board (White)	No
<b>701</b>	<b>Built Up Roofing Layers (Field)</b>	<b>Yes</b>
702	Isofoam Vapor Barrier (Field)	No
703	Roofing Deck Vapor Barrier - Tar	No
<b>704</b>	<b>Flashing Felt/Tar</b>	<b>Yes</b>

Bulk sampling and laboratory analysis of the suspect asbestos containing materials by the Polarized Light Microscopy (PLM) and, where necessary, Transmission Electron Microscopy (TEM) methods, revealed the following materials as asbestos containing building materials (ACBM):

HAN	Material Description and Approximate Location	Friability / Condition (Note 1)	Approximate Quantity (Note 2)
701	Built Up Roofing Layers (Field)- Located on the Roof of the Brick Building	NF / I	205 sq ft
704	Flashing Felt/Tar- Located on the Roof of the Brick Building	NF / I	Included in HAN 701

### Notes to Executive Summary

**Note 1:** Friability/Condition:  
 F=Friable: a material that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure, or is capable of being released into the air by hand pressure.  
 NF=Non Friable: a material that when dry cannot be crumbled, pulverized, or reduced to hand pressure, and is not capable of being released into the air by hand pressure.  
 I=Intact: Asbestos material that has not crumbled, been pulverized, or otherwise been damaged or disturbed, and the material's matrix has not noticeably deteriorated.  
 D=Damaged: Asbestos material that has deteriorated or sustained physical injury demonstrated by separation of the ACM into layers, separation of the ACM from the substrate, flaking, blistering, crumbling, water damage, scrapes, gouges, or other signs of physical injury.  
 SD=Significantly Damaged: Damaged asbestos where the damage is extensive and severe.

**Note 2:** Quantities are approximate, and are only associated with the areas of planned renovation. Additional asbestos containing materials may be located outside areas of planned renovation that were not surveyed, assessed or quantified during this inspection.



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### 3. Purpose

The purpose of the asbestos inspection was to identify and quantify the types of asbestos containing building materials (ACBM) in the facility in areas of planned renovations. Samples of the suspect materials were collected for analysis by an independent laboratory and the condition of each material noted in relation to its potential to be disturbed during normal operations. The potential for fiber release was also considered.

The report is generated for the exclusive use of The Garland Company and/or its representatives or agents and documents the inspection work, sampling and analysis performed. The report is not designed to serve as a specification for abatement.

### 4. Methodology for Inspection

All work performed by Stohl Environmental was conducted in accordance with applicable regulations including New York State Department of Labor standards 12 NYCRR Part 56, National Emission Standards for Hazardous Air Pollutants (NESHAPS), and Occupational Safety and Health Administration regulations 29 CFR 1910.1101 and 29 CFR 1910.134. All Stohl Environmental personnel assigned to conduct inspections have completed the Environmental Protection Agency (EPA) required training and New York State Department of Labor Division of Safety and Health certification program.

Each suspect asbestos containing building material (ACBM) was assigned a HOMOGENEOUS AREA NUMBER (HAN). Homogeneous areas are materials of like composition, color (in some instances), texture and appearance. As an example, homogeneous area #700 is Fiberglass Insulation Board.



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#### 4. Methodology for Inspection (Continued)

Based on the homogeneous areas, samples of suspect materials were collected. Techniques used for sample collection were designed to minimize damage to suspected areas, reduce any potential for fiber release, and ensure the safety of the sampling team and building occupants. Samples were collected by Stohl Environmental using the following procedures:

1. The surface to be sampled was sprayed with amended water (detergent and water) as necessary
2. A plastic sample bag was held to the surface sampled
3. The sample was collected using tools appropriate to the friability of the material sampled
4. Sample bags were labeled with a unique sample identification number
5. Samples were recorded on a Chain of Custody form, and submitted under strict chain-of-custody procedures to an ELAP and NYSDOH approved and certified laboratory for analysis.

Samples were first analyzed using PLM, Polarized Light Microscopy in accordance with US Environmental Protection Agency Interim Method, 40 CFR Pt 763, Supt F, App A(7-1-87). For the sample results not considered definitive, additional analysis was performed under Transmission Electron Microscopy (TEM) in accordance with NYS DOH ELAP Item #198.4, for Non-friable Organically Bound Bulk Material (NOB). The results of this analysis confirmed whether or not a suspect material actually contained asbestos. The confirmed materials are listed in **SECTION 2 Executive Summary**.



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## 5. Inspection Report

The following table summarizes the results of the inspection work performed at:

### 150 Outwater Drive, Lockport, NY

HAN	Material Description	Sample Number	Sample Location	PLM Result (Note 1)	TEM Result (Note 2)	ACM? (Yes/No)
700	Fiberglass Insulation Board (White)	0827-532-700-1	Roof	NAD	N/A	No
		0827-532-700-2	Roof	NAD	N/A	
701	Built Up Roofing Layers (Field)	0827-532-701-1	Roof	NAD	N/A	Yes
		0827-532-701-2	Roof	Chr 7.6%	N/A	
702	Isofoam Vapor Barrier (Field)	0827-532-702-1	Roof	NAD	NAD	No
		0827-532-702-2	Roof	NAD	NAD	
703	Roofing Deck Vapor Barrier - Tar	0827-532-703-1	Roof	NAD	NAD	No
		0827-532-703-2	Roof	NAD	NAD	
704	Flashing Felt/Tar	0827-532-704-1	Roof	Chr 11.1%	N/A	Yes
		0827-532-704-2	Roof	NA/PS	N/A	

#### Notes to Inspection Report Table 5.:

**Note 1:** PLM= Analysis by Polarized Light Microscopy  
**Note 2:** TEM = Transmission Electron Microscopy. NYSDOH requires Non-friable Organically Bound (NOB) bulk materials be additionally analyzed by TEM if negative under PLM.

**NAD** = No Asbestos Detected  
**N/A** = Not applicable  
**NA/PS** = Not Analyzed / Positive Stop  
**Chr** = Chrysotile Asbestos



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## Appendix A General Conditions of the Inspection

1. The results of the laboratory analytical reports that may be contained herein are the product of the knowledge, experience and expertise of the laboratory retained to perform such services. Stohl Environmental, LLC neither accepts nor implies any liability for the sample analysis reports.
2. Stohl Environmental, LLC cannot be held responsible or liable for the misrepresentation of fact, misstatements or withholding of relevant information of those parties interviewed during this inspection.
3. This report is based on the condition and contents present at the site on the day of the inspection. Stohl Environmental, LLC is not liable for materials, chemicals or other substances of concern that may have been removed from the site, cleaned or disposed of prior to the inspection date or subsequent to that date.
4. Stohl Environmental, LLC cannot be held responsible or liable for the misrepresentation of fact, misstatements or withholding of relevant information of those parties interviewed during this inspection.
5. This report is based on the condition and contents present at the site on the day of the inspection. Stohl Environmental, LLC is not liable for materials, chemicals or other substances of concern that may have been removed from the site, cleaned or disposed of prior to the inspection date or subsequent to that date.
6. An asbestos inspection relies heavily upon identification of homogeneous building areas (materials of like kind), with sampling and laboratory analysis then determined by the quantity of each suspect homogenous material, generally accepted inspection protocols, regulatory requirements, and the asbestos inspector's judgment. Specific sample locations are determined with the objective of selecting representative samples. As with any type of sampling, the possibility of obtaining a false positive or false negative does exist, is inherent in the sampling process, and can at times result from the fact that asbestos fibers are not always uniformly distributed throughout suspect materials. Although Stohl Environmental attempts to minimize the risk of a false positive or false negative result through a comprehensive inspection protocol, the possibility does exist, and could only be completely eliminated through laboratory analysis of 100% of each suspect material, which of course is not practical.



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## Appendix B Certifications and Licenses

**WE ARE YOUR DOL**



DIVISION OF SAFETY & HEALTH LICENSE AND CERTIFICATE UNIT, STATE OFFICE CAMPUS, BLDG. 12, ALBANY, NY 12226

# ASBESTOS HANDLING LICENSE

Stohl Environmental LLC  
3860 California Road, Orchard Park, NY, 14127

License Number: 29408

License Class: FULL

Date of Issue: 02/09/2024

Expiration Date: 02/28/2025

Duly Authorized Representative: Christopher C Stohl

This license has been issued in accordance with applicable provisions of Article 30 of the Labor Law of New York State and of the New York State Codes, Rules and Regulations (12 NYCRR Part 56). It is subject to suspension or revocation for a (1) serious violation of state, federal or local laws with regard to the conduct of an asbestos project, or (2) demonstrated lack of responsibility in the conduct of any job involving asbestos or asbestos material.


This license is valid only for the contractor named above and this license or a photocopy must be prominently displayed at the asbestos project worksite. This license verifies that all persons employed by the licensee on an asbestos project in New York State have been issued an Asbestos Certificate, appropriate for the type of work they perform, by the New York State Department of Labor.

A handwritten signature in black ink, appearing to read "Amy Phillips".

Amy Phillips, Director  
For the Commissioner of Labor

## KYLE MAZUR

STATE OF NEW YORK - DEPARTMENT OF LABOR  
ASBESTOS CERTIFICATE



**KYLE A MAZUR**  
CLASS(EXPIRES)  
D INSP (05/25) C ATEC (05/25)  
H PM (05/25)

CERT# 24462705 SHAB  
DMV# 281736304

**MUST BE CARRIED ON ASBESTOS PROJECTS**

SEE REVERSE SIDE FOR RULES



01213 007200983 08

IF FOUND, RETURN TO:  
NYSDEL - L&C UNIT  
ROOM 161A BUILDING 12  
STATE OFFICE CAMPUS  
ALBANY NY 12226

## NYS ASBESTOS CERTIFICATIONS

PROJECT MONITOR

AIR MONITOR

INSPECTOR





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Orchard Park, New York 14127  
716-312-0070

7451 South Lake Road  
Bergen, New York 14416  
585-250-0070

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## Appendix C Laboratory Report and Chain of Custody

Laboratory Reports

Chain of Custody Documents



**AmeriSci New York**

117 EAST 30TH ST.  
NEW YORK, NY 10016  
TEL: (212) 679-8600 • FAX: (212) 679-3114

### PLM Bulk Asbestos Report

Stohl Environmental, LLC.  
Attn: Tony Franjoine  
3860 California Rd.  
  
Orchard Park, NY 14127

Date Received 08/29/24    **AmeriSci Job #** 224084058  
Date Examined 08/30/24    **P.O. #**  
**ELAP #** 11480    **Page** 1 of 3  
**RE:** 2024-532; Garland Company; 150 Outwater Dr., Lockport, NY -  
Water Tower Pump House

Client No. / HGA	Lab No.	Asbestos Present	Total % Asbestos
0827-532-700-1 700	224084058-01 <b>Location:</b> Roof - Fiberglass Insulation Board (White)	<b>No</b>	NAD (by NYS ELAP 198.1) by Bo Sun on 08/30/24
<b>Analyst Description:</b> White, Heterogeneous, Non-Fibrous, Bulk Material <b>Asbestos Types:</b> <b>Other Material:</b> Fibrous glass 20%, Non-fibrous 80%			
0827-532-700-2 700	224084058-02 <b>Location:</b> Roof - Fiberglass Insulation Board (White)	<b>No</b>	NAD (by NYS ELAP 198.1) by Bo Sun on 08/30/24
<b>Analyst Description:</b> White, Heterogeneous, Non-Fibrous, Bulk Material <b>Asbestos Types:</b> <b>Other Material:</b> Fibrous glass 25%, Non-fibrous 75%			
0827-532-701-1 701	224084058-03 <b>Location:</b> Roof - Built Up Roofing Layers (Field)	<b>No</b>	NAD (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Homogeneous, Non-Fibrous, Bulk Material <b>Asbestos Types:</b> <b>Other Material:</b> Non-fibrous 1.3%			
0827-532-701-2 701	224084058-04 <b>Location:</b> Roof - Built Up Roofing Layers (Field)	<b>Yes</b>	7.6% (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Homogeneous, Non-Fibrous, Bulk Material <b>Asbestos Types:</b> Chrysotile 7.6 % <b>Other Material:</b> Non-fibrous 11.3%			
0827-532-702-1 702	224084058-05 <b>Location:</b> Roof - Isofoam Vapor Barrier (Field)	<b>No</b>	NAD (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Heterogeneous, Non-Fibrous, Bulk Material <b>Asbestos Types:</b> <b>Other Material:</b> Non-fibrous 0.5%			

See Reporting notes on last page

Client Name: Stohl Environmental, LLC.

## PLM Bulk Asbestos Report

2024-532; Garland Company; 150 Outwater Dr., Lockport, NY -  
Water Tower Pump House

Client No. / HGA	Lab No.	Asbestos Present	Total % Asbestos
0827-532-702-2 702	224084058-06 <b>Location:</b> Roof - Isofoam Vapor Barrier (Field)	<b>No</b>	NAD (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Heterogeneous, Non-Fibrous, Bulk Material			
<b>Asbestos Types:</b>			
<b>Other Material:</b> Non-fibrous 0.6%			
0827-532-703-1 703	224084058-07 <b>Location:</b> Roof - Roofing Deck Vapor Barrier, Tar	<b>No</b>	NAD (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Homogeneous, Non-Fibrous, Bulk Material			
<b>Asbestos Types:</b>			
<b>Other Material:</b> Non-fibrous 0.9%			
0827-532-703-2 703	224084058-08 <b>Location:</b> Roof - Roofing Deck Vapor Barrier, Tar	<b>No</b>	NAD (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Heterogeneous, Non-Fibrous, Bulk Material			
<b>Asbestos Types:</b>			
<b>Other Material:</b> Non-fibrous 1.3%			
0827-532-704-1 704	224084058-09 <b>Location:</b> Roof - Flashing Felt / Tar	<b>Yes</b>	11.1% (by NYS ELAP 198.6) by Bo Sun on 08/30/24
<b>Analyst Description:</b> Black, Homogeneous, Non-Fibrous, Bulk Material			
<b>Asbestos Types:</b> Chrysotile 11.1 %			
<b>Other Material:</b> Non-fibrous 16.7%			
0827-532-704-2 704	224084058-10 <b>Location:</b> Roof - Flashing Felt / Tar		NA/PS
<b>Analyst Description:</b> Bulk Material			
<b>Asbestos Types:</b>			
<b>Other Material:</b>			

Client Name: Stohl Environmental, LLC.

## PLM Bulk Asbestos Report

2024-532; Garland Company; 150 Outwater Dr., Lockport, NY -  
Water Tower Pump House

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### Reporting Notes:

Analyzed by: Bo Sun  
Date: 8/30/2024



Reviewed by: Hongyan Ran



\*NAD/NSD =no asbestos detected; NA =not analyzed; NA/PS=not analyzed/positive stop, (SOF-V) = Sprayed On Fireproofing containing Vermiculite; (SM-V) = Surfacing Material containing Vermiculite; PLM Bulk Asbestos Analysis using Motic, Model BA310 Pol Scope, Microscope, Serial #: 1190000538, by Appd E to Subpt E, 40 CFR 763 quantified by either CVES or 400 pt ct as noted for each analysis (NVLAP 200546-0), ELAP PLM Method 198.1 for NY friable samples, which includes the identification and quantitation of vermiculite, or ELAP 198.6 for NOB samples, or EPA 400 pt ct by EPA 600-M4-82-020 (NY ELAP Lab 11480); Note:PLM is not consistently reliable in detecting asbestos in floor coverings and similar non-friable organically bound materials. NAD or Trace results by PLM are inconclusive, TEM is currently the only method that can be used to determine if this material can be considered or treated as non asbestos-containing in NY State (also see EPA Advisory for floor tile, FR 59,146,38970,8/1/94) National Institute of Standards and Technology Accreditation requirements mandate that this report must not be reproduced except in full without the approval of the lab.This PLM report relates ONLY to the items tested. RI Cert AAL-094, CT Cert PH-0186, Mass Cert AA000054, NJ Lab ID #NY031.

\_\_\_\_\_END OF REPORT\_\_\_\_\_

Client Name: Stohl Environmental, LLC.

**Table I**  
**Summary of Bulk Asbestos Analysis Results**  
 2024-532; Garland Company; 150 Outwater Dr., Lockport, NY - Water Tower Pump House

AmeriSci Sample #	Client Sample#	HG Area	Sample Weight (gram)	Heat Sensitive Organic %	Acid Soluble Inorganic %	Insoluble Non-Asbestos Inorganic %	** Asbestos % by PLM/DS	** Asbestos % by TEM
01	0827-532-700-1	700	----	----	----	----	NAD	NA
	Location: Roof - Fiberglass Insulation Board (White)							
02	0827-532-700-2	700	----	----	----	----	NAD	NA
	Location: Roof - Fiberglass Insulation Board (White)							
03	0827-532-701-1	701	0.604	98.2	0.5	1.3	NAD	NA
	Location: Roof - Built Up Roofing Layers (Field)							
04	0827-532-701-2	701	0.800	40.2	40.9	11.3	Chrysotile 7.6	NA
	Location: Roof - Built Up Roofing Layers (Field)							
05	0827-532-702-1	702	0.540	99.0	0.5	0.5	NAD	NAD
	Location: Roof - Isofoam Vapor Barrier (Field)							
06	0827-532-702-2	702	0.369	98.6	0.8	0.6	NAD	NAD
	Location: Roof - Isofoam Vapor Barrier (Field)							
07	0827-532-703-1	703	0.384	97.4	1.8	0.9	NAD	NAD
	Location: Roof - Roofing Deck Vapor Barrier, Tar							
08	0827-532-703-2	703	0.479	97.8	0.9	1.3	NAD	NAD
	Location: Roof - Roofing Deck Vapor Barrier, Tar							
09	0827-532-704-1	704	0.668	54.6	17.6	16.7	Chrysotile 11.1	NA
	Location: Roof - Flashing Felt / Tar							
10	0827-532-704-2	704	0.701	47.1	23.5	29.4	NA/PS	NA
	Location: Roof - Flashing Felt / Tar							

Analyzed by: Hongyan Ran  
 Date: 8/31/2024



Reviewed by: Hongyan Ran



\*\*Quantitative Analysis (Semi/Full); Bulk Asbestos Analysis - PLM by Appd E to Subpt E, 40 CFR 763 or NYSDOH ELAP 198.1 for New York friable samples or NYSDOH ELAP 198.6 for New York NOB samples; TEM (Semi/Full) by EPA 600/R-93/116 (or NYSDOH ELAP 198.4; for New York samples). Analysis using Hitachi, Model H7000-Noran 7 System, Microscope, Serial #: 747-05-06. NAD = no asbestos detected during a quantitative analysis; NA = not analyzed; Trace = <1%; (SOF-V) = Sprayed On Fireproofing containing Vermiculite; (SM-V) = Surfacing Material containing Vermiculite; Quantitation for beginning weights of <0.1 grams should be considered as qualitative only; Qualitative Analysis: Asbestos analysis results of "Present" or "NVA = No Visible Asbestos" represents results for Qualitative PLM or TEM Analysis only (no accreditation coverage available from any regulatory agency for qualitative analyses); NVLAP (PLM) 200546-0, NYSDOH ELAP Lab 11480, NJ Lab ID #NY031.

Warning Note: PLM limitation, only TEM will resolve fibers <0.25 micrometers in diameter. TEM bulk analysis is representative of the fine grained matrix material and may not be representative of non-uniformly dispersed debris for which PLM evaluation is recommended (i.e. soils and other heterogenous materia's).





# Lockport City School District

Lockport High School  
250 Lincoln Avenue  
Lockport, New York 14094-5530

Dawn Wylke, Principal (716) 478-4452  
Anthony Molinaro, Assistant Principal (716) 478-4489  
Michael Pickreign, Assistant Principal (716) 478-4454  
Amanda Schaus, Assistant Principal (716) 478-4455

4

September 10th, 2024

RECEIVED  
SEP 13 2024  
CITY CLERK OFFICE

Sarah K. Lanzo,  
City Clerk  
1 Locks Plaza  
Lockport, NY 14094

Dear Ms. Lanzo:

I am drafting this letter to request permission to hold our traditional Homecoming Parade before the football game on Saturday, October 5th, 2024. Chief Abbott has also been notified regarding this parade and the need for a patrol car.

We will begin lining up for the parade in the Lockport High School Locust Street parking lot at 12:30 p.m. The parade will leave the parking lot promptly at 11 a.m. The route is as follows:

Turn left onto Lincoln Avenue.

Turn right onto Pine Street

Turn right onto Walnut Street

Turn right onto Locust Street

Turn right into the circle at LHS.

Thank you for your consideration in this matter. If you would like to correspond through email, I can be reached at [amolinaro@lockportschools.net](mailto:amolinaro@lockportschools.net)

Sincerely,

Anthony Molinaro,  
Assistant Principal

## *We All Belong*

The Lockport City School District is a diverse community committed to fostering a sense of belonging and creating opportunities for continuous growth for all. We provide extensive learning experiences while ensuring a safe environment. With lion pride, we prepare our students for their future, support our staff, and partner with our community.

### City of Lockport - Resolution Request Form

Agenda Description: **Lockport Elks Veterans Run 5k**

Presented By: **Denise Grudzinski**

Date Submitted: **9/18/24**

**Topic Area (Select Most Applicable Option):**

Community Event	<input checked="" type="checkbox"/>	Local Law Change	<input type="checkbox"/>
Budget Amendment	<input type="checkbox"/>	Community Development	<input type="checkbox"/>
Contract Approval	<input type="checkbox"/>	Community Event	<input type="checkbox"/>
Donation Acceptance	<input type="checkbox"/>	Engineering Process	<input type="checkbox"/>
Grant Application / Award	<input type="checkbox"/>	Code and Planning	<input type="checkbox"/>
Fund Utilization Request	<input type="checkbox"/>	Other	<input type="checkbox"/>

*Please provide to Clerk at least 9 calendar days prior to Council meeting. Otherwise request will go to following meeting.*

**Summary of Resolution:**

We, The Lockport Elks Lodge #41, wish to have a 5k run on Nov 10, 2024. All proceeds will go to help sponsor a service dog for a local Veteran through Pawsitive for WNY Heroes. The route will start on N Canal Rd and continue right on Old Niagara Rd. then will take a left turn onto Rt 78, continuing past Reid's and then down path under Matt Murphy Way bridge. Runners will then be on towpath until Cold Springs Rd bridge, where they will disembark onto parking lot, then continue onto N Canal Rd back to Elks Lodge. The race will start at 9:30 am, approximate end time 12:00 pm. No tents, music, vendors, or food will be set up on route. We will have certified CPR and First Aid personnel on site. We will also have volunteers with water on route.

**Explanation of Attachments:**

Insurance letter  
 map of route  
 Runners waiver

Please include all backup correspondence, purchase order, quotes, meeting minutes, emails, etc... If any of this information is confidential and cannot be released publically, please denote a check in this field: \_\_\_\_\_

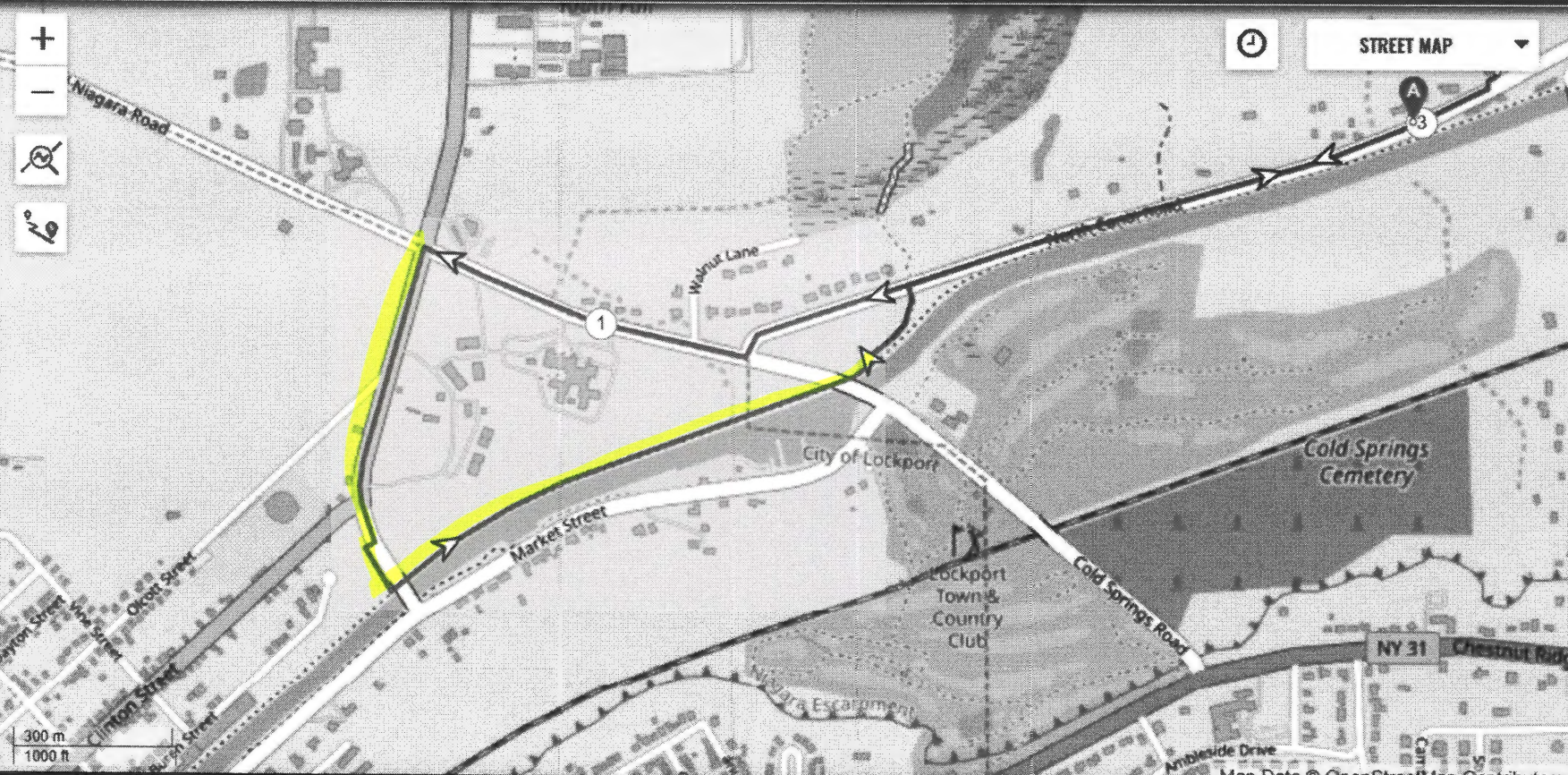
**Clerk/Legal/Finance Approval:**

**Notes:**

Name:

Date of Approval:







5909 Peachtree Dunwoody Road, Suite 800  
Atlanta, GA 30328  
USA Phone: 678.324.3300  
Fax: 678.324.3303  
<https://sports.epicbrokers.com>

Dear USATF Sanction holders and Insurance Certificate holders:

As the National Governing Body for track and field, long-distance running and race walking in the United States, USA Track & Field (USATF) provides sanctions which approve and license the hosting of competitive track & field, long distance running and race walking events in the United States. As part of sanctioning, USATF provides Commercial General Liability insurance coverage for the protection and benefit of its active member clubs, associations, event organizers, facility owners and individual members in connection with sanctioned events.

The current USATF General Liability program is scheduled to expire on 11/1/2024. In August we will begin the process of renewing the program for another annual term effective 11/01/2024-11/1/2025. The program will seek to provide similar limits to the expiring policies as follows:

Per Occurrence Limit	\$2,000,000
General Aggregate Limit (Per Event)	\$4,000,000
Personal and Advertising Injury	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Damage to Premises	
Rented to You (7 Days or Less)	\$2,000,000
Abuse and Molestation (Each Occurrence)	\$2,000,000*
Abuse and Molestation (Aggregate)	\$4,000,000*
Participant Legal Liability	Included

*\*Subject to a valid background check*

Excess coverage of \$10,000,000 is available for third parties who require additional coverage.

We expect to finalize the renewal by October 2024, and will immediately begin issuing certificates for those USATF sanctioned events taking place on or after November 1st, 2024.

Sincerely,

Cameron Walter  
Account Executive, EPIC Entertainment and Sports  
CC: Andrew Ondrejack, Senior Account Executive



## EVENT REGISTRATION AGREEMENT AND LIABILITY WAIVER (the Agreement and Waiver)

You must read and agree to the following Agreement and Waiver in order to use itsyourrace.com and to register and participate in the event entitled Pawsitive For Heroes 5K.

1. Authority to Register and/or to Act as Agent. You represent and warrant to Innovative Timing Systems, LLC (ITS) that you have full legal authority to complete this event registration on itsyourrace.com (IYR), a registration and results platform operated by ITS and any and all subsidiaries, affiliated entities, or entities that control or are controlled by ITS singly or together and its directors, members, officers, employees, contractors, subcontractors, agents and licensees, including full authority to make use of the credit or debit card to which registration fees, product fees or other transactions will be charged. In addition, if you are registering third parties, you represent and warrant that you have been duly authorized to act as agent on behalf of such parties in performing this event registration or purchasing products or other services. If you are registering for any incapacitated adult, you represent and warrant that you are the parent or legal guardian of that party and have the legal authority and capacity to enter into this Agreement and Waiver on his/her behalf. In addition, you represent and warrant that, in compliance with Children's Online Privacy Protection (COPPA), you are over thirteen (13) years of age, and that if you are registering a child under fourteen (14) years of age you are the parent of such child, and do hereby consent to the collection of such child's personal information by ITS and IYR. By proceeding with this event registration, you agree that the terms of this Agreement and Waiver shall apply equally to you and to any third parties for whom you are acting as agent or parent or legal guardian.

2. Waiver. You know and understand that indoor or outdoor exercising, racing, and other athletic activities can be potentially hazardous. You attest that you are medically able and properly trained for the Pawsitive For Heroes 5K and agree that you have been medically cleared by a qualified physician to participate and safely complete the event. You understand that the event may be held over public roads, water ways, off-road locations, private or public parks, private or public property, or in facilities or locations open to the public or subject to other hazards including, but not limited to, tornados, lightning, high winds, animals, or other dangers during the event and upon which hazards are to be expected. Participation carries certain inherent risks that cannot be eliminated completely. You assume all risks associated with participating in this event, including but not limited to: falls, contact with other participants, contact with other people who carry contagious diseases, broken bones, effects of the weather, traffic, terrorist acts, criminal activities, the condition of the course, viruses in the air, gastrointestinal discomfort and other physical discomfort, dehydration, illness or even death. All such risks are known and appreciated by you. You also agree to abide by any decisions of any race official or medical staff, should one be present at the event, relative to your ability to safely complete the event. Having read and understood this waiver and in consideration of accepting your entry, you and anyone entitled to act on your behalf, waive and release, IYR, ITS, Race Management Solutions Inc., race organizers, race vendors, race promoters, race benefactors, volunteers, sponsors, their officers, employees, agents, representatives and successors from all claims or liabilities of any kind resulting from

your participation in this event even though that liability may arise out of negligence or carelessness on the part of the persons named in this waiver. You grant permission to all foregoing to use any photographs, motion pictures, recordings, or any other record of this event for legitimate purposes. You hereby waive any right to inspect or approve the finished electronic, photograph, or printed matter that may be used in conjunction with them now or in the future. You will abide by these guidelines.

3. Limitation of Liability; Disclaimer of Warranties. ITS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, RESULTING FROM (A) THE USE OR THE INABILITY TO USE IYR OR (B) FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES OR (C) RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED OR TRANSACTIONS ENTERED INTO OR THROUGH IYR OR (D) RESULTING FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF ITS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU EXPRESSLY AGREE THAT USE OF IYR IS AT YOUR SOLE RISK. IYR IS PROVIDED ON AN 'AS IS' AND 'AS AVAILABLE' BASIS. ITS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

ITS makes no warranty that the IYR site or IYR services will be uninterrupted, secure or error free. ITS does not guarantee the accuracy, safety, security, or completeness of any information in, or provided in connection with, the IYR site. ITS is not responsible for any errors or omissions, or for the results obtained from the use of such information. You understand and agree that any material and/or data downloaded, uploaded or otherwise obtained through the use of the IYR site is at your own discretion and risk and that you will be solely responsible for any damage to your own computer system or loss of data that results from the upload or download of such material and/or data.

4. Refunds. You acknowledge that the event may be held for one or more days and that you should avoid inclement weather conditions and unsafe environments, and you should comply with all local regulations and laws, including keeping the appropriate social distance during the event. If the event cancels for any reason, including but not limited to, inclement weather, safety concerns, Force Majeure, equipment malfunctions, unforeseen events, labor problems, government orders or laws, problems outside of our control, or other Acts of God, you understand that the race WILL NOT be rescheduled. You also understand and agree that your entry fee WILL NOT be refunded. You hereby waive all rights to any refunds or any charge backs to your credit or debit card for all fees paid for the event or for any merchandise or other products or services sold or provided by the event.

5. Indemnification. You agree to indemnify and hold each of ITS and its partners and employees harmless from any damages, claims or demands, including reasonable attorneys' fees, made by any third party due to or arising out of your use of IYR or the violation of any term of this Agreement and Waiver or the IYR Terms of Use.

6. **Applicable Law; Consent to Jurisdiction.** All ITS sites including IYR (excluding linked sites) are controlled by ITS from its offices within the state of Missouri, United States of America. By completing this event registration, both you and ITS agree that the statutes and laws of Missouri, without regard to the conflict of laws principles thereof, will apply to all matters relating to this event registration, this Agreement and Waiver, or other use of any ITS sites including IYR. The parties agree that for any dispute, controversy or claim arising out of or in connection with this Agreement and Waiver, venue and personal jurisdiction shall be in the federal, state or local court with competent jurisdiction located in St. Louis County, Missouri, USA. The prevailing party will be entitled to an award of reasonable attorney's fees. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Agreement and Waiver shall continue in full force and effect.

7. **Severability.** You further expressly agree that this Agreement and Waiver is intended to be as broad and inclusive as is permitted by the law of the State of Missouri and that if any provision of this Agreement and Waiver shall be found to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and Waiver and shall not affect the validity and enforceability of any remaining provisions.

8. This Agreement and Waiver represents the complete understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements, whether written or oral, between the parties. This Agreement and Waiver may not be modified or amended, except by a written instrument executed by each of the parties hereto. This Agreement and Waiver is for the sole benefit of the parties hereto and is not for the benefit of any third party.

9. **ACCEPTANCE.** BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT AND WAIVER, YOU ARE AFFIRMING THAT YOU HAVE READ THIS AGREEMENT AND WAIVER AND FULLY UNDERSTAND ITS TERMS. YOU UNDERSTAND THAT YOU AND ALL REGISTERED PARTIES ARE GIVING UP SUBSTANTIAL RIGHTS, INCLUDING THE RIGHT TO SUE. YOU ACKNOWLEDGE THAT YOU ARE SIGNING THIS AGREEMENT AND WAIVER FREELY AND VOLUNTARILY AND INTEND BY YOUR ACCEPTANCE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW. IF THE PARTICIPANT IS A MINOR OR INCAPACITATED ADULT, YOU CERTIFY THAT YOU ARE THE PARTICIPANT'S PARENT OR LEGAL GUARDIAN AND AGREE TO THIS WAIVER AND RELEASE FROM LIABILITY ON BEHALF OF THE PARTICIPANT.