

RESOLUTION NO. 2023-

***RELATIVE TO APPROVAL OF NORTH EAST DATA, LLC, SEQRA DRAFT SCOPE,
ESCROW AGREEMENT, RETENTION OF NOISE EXPERT AND APPROVAL
OF LITIGATION SETTLEMENT AGREEMENT***

BY:

Council Member Kenny Tompkins

WHEREAS, the City Council of the City of Niagara Falls (“City Council”) is considering the applications of North East Data, LLC (“Applicant”) for a data center and digital asset mining facility at 5380 Frontier Avenue, Niagara Falls (the “Project”), and

WHEREAS, the City Council, after reviewing the applications and Full Environmental Assessment Form (“FEAF”) part 1 and other information, determined that the said Project is classified as a Type I Action under Part 617.4 of the State Environmental Quality Review (“SEQR”) Regulations; issued a Notice of Intent to Act as Lead Agency for the Project, and no involved or interested agency objected to the City Council acting as Lead Agency; and

WHEREAS, the City Council, after giving consideration to the criteria for determining significance as set forth in Section 617.7(c) (1) of the SEQR Regulations and the information contained in the FEAF part 1, after taking a hard look at the potential impacts of the Project; and completing part 2 and 3 of the FEAF; designated itself as the lead agency for the Project and issued a positive declaration of environmental significance focused solely on the issue of noise; and

WHEREAS, the Applicant was directed to prepare a Draft Scope for a Draft Environmental Impact Statement (“DEIS”), and has done so, and the proposed Draft Scope is attached hereto as Exhibit “A”; and

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WHEREAS, City wishes to retain an independent expert to evaluate the noise study to be prepared as part of the DEIS and has identified Ostergaard Acoustical Associates as a qualified firm, and the Mayor has negotiated an Escrow Agreement, attached hereto as Exhibit “B”, to provide a mechanism for the Applicant to fund the cost of the noise expert; and

WHEREAS, the Applicant, based on concerns about City regulations, commenced a hybrid proceeding styled *North East Data, LLC, d/b/a Blockfusion v. City of Niagara Falls*, Supreme Court, Niagara County Index No. E178915/2023 (“Action”) by filing a Verified Petition and Complaint, which the City has answered; and

WHEREAS, the Applicant and the City wish to set aside the litigation, while preserving their rights, and therefore have negotiated a proposed Settlement Agreement, a copy of which is attached hereto as Exhibit “C”.

THEREFORE, BE IT RESOLVED that the City Council of the City of Niagara Falls, NY hereby approves the Draft Scope, attached as Exhibit A and incorporated herein; and

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the retention of and approves the Escrow Agreement attached as Exhibit B and incorporated herein, and authorizes the execution of both contracts; and

BE IT FURTHER RESOLVED, the City Council approves the Settlement Agreement attached as Exhibit C and incorporated herein and authorizes its execution.