



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

OFFICE OF THE MAYOR

Telephone: (716) 286-4310

September 26, 2017

The City Council
Niagara Falls, New York

*RE: Temporary License to the State of New York Acting through State Parks –
Prospect Street*

Council Members:

The City's cooperative initiative with State Parks to improve traffic conditions and congestion in the downtown area is continuing. Improvements are planned by State Parks for an area of Prospect Street near the entrance to the State Park. These improvements will involve a portion of the City's right-of-way and will involve the construction of a new sidewalk, curbing, benches etc. These improvements will be undertaken by State Parks and paid for by State Parks. In order to accomplish this, State Parks needs a license agreement with the City in order to work in the portion of the right-of-way that is owned by the City. Attached is a draft grant of license for this purpose.

Will the Council so approve and authorize the Mayor to execute a temporary license agreement provided the same is in form and content acceptable to the Corporation Counsel?

Respectfully submitted,

PAUL A. DYSTER
Mayor

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Contract Number _____

GRANT OF LICENSE

This License is dated _____, and is between the CITY OF NIAGARA FALLS ("Grantor" or "the City") and the STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation ("Grantee" or "State Parks").

RECITALS

The land constituting Niagara Falls State Park in the City of Niagara Falls, New York ("Park") is owned by the People of the State of New York and under the jurisdiction of State Parks.

The City has title to certain real property adjacent to the Park known as Prospect Street (the "Property").

To undertake several minor improvements to the right of way of Prospect Street to reduce traffic congestion and reduce vehicle and pedestrian conflicts at the Prospect St./ Mayor Dr. intersection area, State Parks requires the right to use and occupy on a temporary basis a portion of the Property for such construction (the "Project"). The Project will include new sidewalk, curbing, benches, signage and stripping and will involve the removal of 13 trees. The improvements will be accomplished and paid for solely by State Parks.

The Parties therefore agree as follows:

Section 1. Grant of License

- a) The City hereby grants to State Parks and its employees, agents and contractors a non-transferable License to use and occupy the portion of the Property shown in Attachment A (the "Premises") for the sole purpose of designing, constructing and inspecting the improvements and staging equipment and materials during project work hours.
- b) This License does not convey to State Parks any interest in the Premises or the Property other than a license to use the same for the purposes described above. This license creates only a license and State Parks is not granted, and shall not have, any other estate or other real estate rights in or with respect to the Property or any part thereof. This License does not constitute an encumbrance on or with respect to the land or other interests of the City.
- c) This License shall not be assigned or transferred without the prior written approval of the City.

Section 2. Term

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This License begins on January 1, 2018 and expires on November 1, 2018 or sooner, once all improvements are made.

Section 3. Fees and Other Charges

State Parks shall pay to the City One Dollar (\$1.00) and other good and valuable consideration.

Section 4. Conditions of Use

- a) State Parks shall remove and dispose of all waste and refuse generated by its use and occupancy of the Premises.
- b) State Parks shall protect any existing utilities and structures, and shall repair, replace, or rebuild any part of the Premises or Property, or any improvements thereon, damaged or destroyed by its acts or omissions. State Parks shall restore disturbed areas of the Premises or Property to as close to their original condition as possible.
- c) State Parks shall coordinate the timing of work with the City and give the City twenty-four hours' notice prior to the start of work.
- d) State Parks shall comply with all reasonable requests made by the City with respect to State Parks use of the Premises.

Section 5. Termination; Extension

- a) In the event the City desires to terminate this License, it must first give State Parks thirty (30) day notice in writing (the "Termination Period"), stating the reasons for and giving the date of the termination. During the Termination Period, the City and State Parks shall confer on the reasons for said Termination and shall discuss resolution of said reasons for Termination. In the event the parties cannot come to an agreement on the continuation of this License, then this License shall terminate upon the date indicated in the notice.
- b) In the event State Parks desires to terminate this License it may do so by giving the City thirty (30) day notice in writing giving the date of the termination.
- c) In the event State Parks, has not completed the Project by the expiration date of this License, the City and State Parks may extend this License by a mutually agreed upon term under the same terms and condition.

Section 6. Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either via certified or registered mail, return receipt requested; by personal delivery; by expedited

1cont.

Contract Number: _____

Attachment A

DESCRIPTION OF THE PREMISES

[Map]

The Project Premises

PROSPECT HEIGHTS, ILL.

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Appendix A

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is

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Contract Number: _____

Attachment A

DESCRIPTION OF THE PREMISES

[Map]

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subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the

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sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law

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and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245

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Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and
- (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In

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the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded]

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delivery service; or by email. Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate.

If to State Parks:

If to the City:

Mark Mistretta, RLA
NYSOPRHP Capital Facilities Manager 2
3160 DeVeaux Woods Drive
Niagara Falls, NY 14305

Section 7. License Documents

This Grant of License also includes the following attached documents which are incorporated by reference:

- a) Attachment A – “Description of the Premises”
- b) Appendix A – “Standard Clauses for New York State Contracts”

Section 8. Indemnification and Insurance

State Parks shall require its contractors to name the City as an additional insured on any policies of insurance required under the State Parks contracts relating to the design and construction of the Premises. In addition, State Parks will require the contractors to indemnify, defend and hold the City harmless to the same extent it/they indemnify, defend and hold State Parks harmless.

Signature Page Follows

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Contract Number _____

In witness, whereof the parties are signing this License on the date stated in the introductory clause.

The City of Niagara Falls

By: _____
Name:
Federal EIN:

State of New York, Office of Parks, Recreation and Historic Preservation

By: _____
Ronald Peters, Deputy Regional Director

Attachments Follow

City Clerk



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

OFFICE OF THE MAYOR

Telephone: (716) 286-4310

September 26, 2017

The City Council
Niagara Falls, New York

RE: Approval of agreement with the County of Niagara for the current In Rem

Council Members:

Attached is a proposed Agreement with the County of Niagara for the current In Rem which sets forth the terms for the distribution of proceeds from the sale of properties acquired in the In Rem.

Will the Council so approve and authorize the Mayor to execute same?

Respectfully submitted,

PAUL A. DYSTER
Mayor

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Attachment

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Grandinetti _____ Scott _____ Tompkins _____ Touma _____ Walker _____



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THIS AGREEMENT made this _____ day of September, 2017, between the CITY OF NIAGARA FALLS, NEW YORK, a municipal corporation situate within the County of Niagara, New York, hereinafter called the "CITY", and the COUNTY OF NIAGARA, NEW YORK, being a municipal subdivision of the State of New York, hereinafter called the "COUNTY".

WITNESSETH:

WHEREAS, the CITY has instituted an action under Niagara County Supreme Court Index #156206 In Rem for the foreclosure of certain tax liens against various parcels of land situate within the City of Niagara Falls, New York, pursuant to the provisions of Article 11, Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, the provisions of said law authorize and empower tax districts having an interest in various parcels to enter into an agreement making provisions for conveyance of said parcels without public sale, and upon such terms as said districts may agree upon between themselves; and

WHEREAS, the parties hereto have conferred and negotiated as to the method of handling the various parcels included in said action.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth in the performance of which each of the parties agrees and consents, the parties hereto do agree as follows:

1. Provided that no answer is filed by an individual or any other tax district relating to a parcel, the CITY and COUNTY consent that a sale at public auction be waived and that the Court shall, in its discretion, dispense with sale and direct the City Controller of the CITY to make and execute to the CITY a conveyance of all parcels as to which no answer, other than the answer of the COUNTY, is interposed, which conveyance shall vest in CITY a fee simple absolute title subject to the rights and interest of COUNTY as set forth in this Agreement.

2. Upon delivery of such conveyance, the CITY shall, within a reasonable time, make reasonable efforts to sell said parcels so conveyed, at public auction for cash, or in its discretion, to sell at private sale, provided the terms and conditions of such private sale shall be submitted to and approved by the COUNTY. Upon delivery of such conveyance, the CITY shall advertise said parcels for sale as soon as practicable.

3. The interests of the CITY and COUNTY in each parcel or in the proceeds of the sale thereof shall be that proportion of the parcel or proceeds of the sale thereof that the unpaid taxes, tax liens and other charges assessable against the parcels owed to or owned by the CITY and COUNTY, respectively bear to the total CITY and COUNTY taxes and tax liens in arrears and other charges unpaid and assessable against each parcel. For purposes only of calculating the respective interests of the CITY and COUNTY in each parcel or in the distribution of the proceeds thereof, no penalties or interest shall be computed on any unpaid tax or tax lien.

4. The date to determine the respective interests or liens of the CITY and COUNTY and the amounts thereof, shall be the date of conveyance to the CITY.

5. The CITY shall collect the proceeds of sale, and after deducting School Taxes for the Niagara Falls School District which the CITY has paid pursuant to Real Property Tax Law Section 1332, in addition to any taxes or assessments which CITY may have paid while title to any parcel was in the CITY, and also after deducting the disbursements of this action, which shall include the filing and recording fees, actual title searches, charges incurred, certification of copies of delinquent tax lists, special guardian allowance, cost of publishing the notice to redeem, publishing of the lists of parcels for sale by the CITY, and the cost of New York State transfer tax to be affixed on deeds resulting from such sale, the sum of \$50.00 per parcel for

2 cont

costs of collection, and any other necessary cost incurred, and unless full tax payments can be made to CITY and COUNTY from the proceeds of the sale, shall distribute the net proceeds between CITY and COUNTY in the agreed proportion. Any surplus remaining from the proceeds of the sale of each parcel after payment of all tax liens to the CITY and COUNTY, shall be the property of the CITY. The CITY shall provide the COUNTY with an accounting of the proceeds of sale upon completion thereof.

6. The provisions of the Real Property Tax Law of the State of New York as now in effect or as hereinafter amended shall determine when and if parcels remaining unsold by the CITY shall be placed on the assessment roll.

7. Should any parcel of property remain unsold by CITY at the end of two (2) years from the date of conveyance to the CITY, the CITY shall, during the third year after said date, advertise and hold a public auction of each parcels and shall distribute proceeds of such sale in the agreed proportions. CITY may, at its sole discretion, retain parcels for municipal purposes, provided that CITY furnish the COUNTY TREASURER with a statement that the CITY is retaining such parcels with a statement of anticipated use.

8. Upon the expiration of the third year from the date of conveyance to CITY, all the right, title and interest of the COUNTY for unpaid taxes existing prior to the above date of conveyance to the CITY, shall cease and the COUNTY shall have no further interest in any parcels then remaining unsold, and no further interest in the proceeds of sale of any parcel thereafter sold by the CITY.

9. CITY shall not permit any parcel to be removed from such list of delinquent taxes by way of installment agreements or redemption or otherwise upon which there are unpaid COUNTY tax liens until receiving written notice from the County Treasurer that satisfactory arrangements for payment of such COUNTY tax liens have been made.

10. If any answer should be interposed in the action In Rem other than by the COUNTY, as a result of which it shall be necessary that judgment in said action direct that there be a sale at public auction by the City Controller of the CITY, the proceeds of sale, less an amount equal to the total costs of advertising and all other disbursements incurred in such sale, divided by the number of parcels placed for sale, shall be distributed in accordance with the method of distribution of proceeds of sale set forth hereinabove.

11. The provisions of this agreement shall relate to and be binding upon the parties hereto in reference to the 2017 In Rem Action, (the lists of delinquent taxes set forth therein being incorporated herein by reference) Index No. 162265.

12. This Agreement may be modified or amended only by written instrument, duly executed by the authorized officer of each of the parties hereto, as authorized by the City Council of Niagara Falls and the Niagara County Legislature.

IN WITNESS WHEREOF, the CITY and COUNTY have executed this Agreement, the day and year first above written.

2 cont.

ATTEST:

CITY OF NIAGARA FALLS, NEW YORK

LISA A. VITELLO
City Clerk

By:

PAUL J. DYSTER
Mayor

ATTEST:

COUNTY OF NIAGARA, NEW YORK

MARY JO TAMBURLIN
Clerk of Legislature

By:

WM. KEITH MCNALL
Chairman, Niagara County Legislature

STATE OF NEW YORK)
COUNTY OF NIAGARA : ss.:
CITY OF NIAGARA FALLS)

On the ____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF NIAGARA : ss.:
CITY OF LOCKPORT)

On the ____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, personally appeared WM. KEITH MCNALL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

OFFICE OF THE MAYOR
Telephone: (716) 286-4310

September 26, 2017

The City Council
Niagara Falls, New York

RE: NYS Division of Criminal Justice Services (DCJS) Funding Award

Council Members:

The Superintendent of Police and I have been made aware that the DCJS has awarded the City continued funding in the amount of \$66,750.00 under the Federal Fiscal Year 2017 STOP Violence Against Women (VAWA) grant program. This funding will cover the period January 1, 2018 through December 31, 2018. Attached hereto is a copy of the Letter of Award. There are applications which must be submitted and documents to be executed along the way.

Will the Council so approve and authorize the Mayor to execute any documents required to obtain this grant provided the same are in form and content satisfactory to the Corporation Counsel?

Respectfully submitted,

PAUL A. DYSTER
Mayor

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CITY OF
NIAGARA FALLS
CITY CLERK'S OFFICE
2017 SEP 27 AM 9:26

OCT 02 2017

Grandinetti _____ Scott _____ Tompkins _____ Touma _____ Walker _____



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Division of Criminal
Justice Services

ANDREW M. CUOMO
Governor

MICHAEL C. GREEN
Executive Deputy Commissioner

September 19, 2017

The Honorable Paul Dyster
Mayor, City of Niagara Falls
City of Niagara Falls
745 Main St.
P.O. Box 69
Niagara Falls, NY 14302

RE: Project ID#: SV17-1056-D00

Dear Mayor Dyster:

I am pleased to advise you that the NYS Division of Criminal Justice Services (DCJS) has awarded your organization continued funding in the amount of \$66,750.00 under the Federal Fiscal Year (FFY) 2017 STOP Violence Against Women (VAWA) grant program. The funding will be for the period of January 1, 2018 through December 31, 2018 and the award is contingent on the finalization of federal award amounts for FFY 2017.

To receive this funding, applications must be submitted to DCJS. The VAWA Program Representative assigned to your project will contact you within two weeks with guidance on how to proceed with your application. Simultaneously, agencies should be prepared to discuss any proposed changes to the 2017 program goals and objectives prior to application submission. It is important to ensure that your program goals and objectives can be achieved within your contract period.

Thank you for the work you are doing to help prevent violence against women.

Very truly yours,



Michael C. Green
Executive Deputy Commissioner

Attachment
MCG:wms:tmv



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

OFFICE OF THE MAYOR

Telephone: (716) 286-4310

September 26, 2017

The City Council
Niagara Falls, New York

RE: *Lease with Niagara Falls Underground Railroad Heritage Commission, Inc.*
("NFURHC")

Council Members:

Attached is the proposed lease agreement with NFURHC for the use of the new train station.

It is for an initial term of ten (10) years and is subject to NFURHC's option for four additional ten (10) year terms.

NFURHC is responsible for a pro rata share of certain expenses related to the building on the ratio of its use in the amount of 2,880 square feet of the total 46,430 square feet of the building (6.2%).

Will the Council so approve and authorize the Mayor to execute the agreement in a form acceptable to the Corporation Counsel?

Respectfully submitted,

PAUL A. DYSTER
Mayor

Attachment

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NIAGARA FALLS
CITY CLERK'S OFFICE
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OCT 02 2017

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LEASE AGREEMENT (Niagara Falls, New York - Station)

This Lease Agreement ("Lease") is made and entered into as of this _____ day of _____, 2017, by and between the **CITY OF NIAGARA FALLS, NEW YORK**, a municipal corporation, hereinafter referred to as "LESSOR," and **NIAGARA FALLS UNDERGROUND RAILROAD HERITAGE COMMISSION INC.**, a New York State not-for-profit corporation, hereinafter referred to as "NF-URHC".

BACKGROUND

LESSOR owns certain land, a building and other improvements in the City of Niagara Falls, Niagara County, New York (collectively, the "Property"), being more particularly shown on **Exhibit "A"**, attached hereto and made a part hereof, that includes principally a two-story forty six thousand four hundred thirty (46,430) square feet building and adjoining space (the building and adjoining space are collectively the "Station"), consisting of the following areas described in **Exhibit "B"** attached hereto and made a part hereof: museum, future retail, lobby/atrium, common space, United States Department of Homeland Security facilities, and Amtrak facilities.

NF-URHC desires to lease a portion of the Station to develop and operate a facility and undertake related activities to preserve, promote, demonstrate and inform the general public, visitors, tourists, students, academicians and others on the history and heritage of the role of the Niagara Falls area and its residents in the Underground Railroad (the "Underground Railroad Heritage Center").

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, LESSOR and NF-URHC, intending to be legally bound, do hereby agree as follows:

1. PREMISES

- a. LESSOR hereby leases to NF-URHC, and NF-URHC leases from LESSOR, for the "Term" (as defined below), and pursuant to the terms and conditions set forth herein, that area within the Station as shown on Exhibit B as "Museum" (also described herein as the "Premises") consisting of two thousand eight hundred eighty (2,880) square feet of space. LESSOR and NF-URHC agree that this square feet figure will be used for purposes of calculating NF-URHC's pro-rata share of the expenses set forth in Section 3.

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- b. LESSOR also hereby grants to NF-URHC, its employees, agents, licensees, contractors, patrons and invitees, the nonexclusive right in common with LESSOR and all others designated by LESSOR for the use of the common areas and common facilities on the Property, including but not limited to the lobby/atrium/common space set forth in Exhibit "B" (the "Common Areas").
- c. Common Areas include sidewalks, plazas, parking areas, driveways, hallways, stairways, elevators, public bathrooms, loading areas (if any), common entrances, lobbies, other public portions of the Property and the pipes, ducts, conduits, wires and appurtenant meters and equipment serving the Station.
- d. LESSOR shall consult and seek concurrence with the NF-URHC in approving any license, permit, or any other exclusive uses within the Lobby/Atrium (including, by way of example pushcarts or signage for Station tenants), which shall not be unreasonably withheld provided only that any such uses do not unreasonably interfere with the NF-URHC's reasonable use thereof, (ii) NF-URHC shall consult and seek concurrence with the LESSOR in curating and/or decorating the walls of the Lobby/Atrium with respect to the Underground Railroad Heritage Center's operations; (iii) NF-URHC shall maintain any and all such Common Area decorations, installations, or other curated materials; and (iv) NF-URHC may temporarily cordon off reasonable areas of the Common Area as may be necessary to queue visitors to the "Heritage Center," to hold special events for the Heritage Center, provided that the same does not unreasonably interfere with ingress and egress to the Station's Amtrak facilities, the DHS facilities or any other tenants operating at the property.
- e. Further, NF-URHC shall have the preferential right in programming uses and/or activities within the Harriet Tubman plaza area ("Plaza") directly adjacent the "Customhouse" north façade, provided such uses and activities are related to NF-URHC's mission, that NF-URHC shall seek collaboration with the LESSOR in doing so, and that the LESSOR's use of the remaining Common Areas are not unreasonably restricted. LESSOR shall notice and seek concurrence with the NF-URHC at least 10 business days prior of any other proposed use of the Plaza.

2. TERM

- a. The initial term of this Lease shall be for ten (10) years ("Term") commencing no later than the first day of the next full month after signing. The Term will end ten (10) years thereafter, unless sooner terminated by NF-URHC giving ninety (90) days' prior written notice to LESSOR.
- b. NF-URHC shall have the option to extend the Term of this Lease for four (4) additional ten (10) year terms by giving notice of its intent to exercise this option at least sixty (60) days before the end of the then current term, and provided that NF-

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URHC is current with any Reimbursements required under Section 3 below. Any extended term shall be upon all the same terms and conditions as set forth in this Lease.

3. FEES and REIMBURSEMENTS

- a. NF-URHC shall pay a fee in the amount of One Dollar (\$1.00) per Term ("Fee"); receipt of the Fee is hereby acknowledged by LESSOR.
- b. Except as otherwise specifically provided herein, NF-URHC shall reimburse LESSOR on a quarterly basis for a pro-rata share ("Reimbursement") of LESSOR'S actual costs and expenses associated with the ongoing operation and maintenance, non-structural repairs and services set forth in Section 10 of this Lease "Maintenance, Repair and Services of the Property" ("Common Costs"). For sake of clarity, the Reimbursement does not include, and LESSOR shall be responsible for and shall pay all capital expenditures and structural repairs and replacements relating to the Property. NF-URHC's pro-rata share shall be calculated as the ratio of two thousand eight hundred eighty (2,880) to forty six thousand four hundred thirty (46,430). LESSOR shall provide NF-URHC with detailed quarterly invoices, including copies of LESSOR's statements identifying LESSOR's actual costs and expenses in order to obtain Reimbursement from NF-URHC, which NF-URHC shall pay on a quarterly basis.
- c. The cost of any renovations or alterations necessary to maintain compliance with any State, Federal, and/or local rules, laws, codes, or regulations on the Property, including but not limited to the Americans with Disabilities Act (other than those necessitated by improvements, alterations, or renovations to the Heritage Center by the NF-URHC), shall be the responsibility of, and paid by, the LESSOR. The cost of any improvements, renovations, or alterations necessary to establish the ongoing operation of the Heritage Center in the Premises, the Common Area and the Plaza shall be the sole responsibility of, and paid for by, the NF-URHC.
- d. NF-URHC shall deposit with the LESSOR, within thirty (30) days of the signing of this Lease, a lump sum Advance Payment of five thousand dollars (\$5,000.00).
- e. The LESSOR shall apply the Advance Payment to the first quarter Reimbursement expenses and the balance, if any, shall be applied toward subsequent Reimbursement expenses.

4. USE

- a. NF-URHC may occupy and use the Premises for any lawful purpose reasonably related to NF-URHC's corporate mission, including but not limited to the operation of the Heritage Center and NF-URHC's current and future related business operations (the "Use"). Operations and activities characteristic of NF-URHC's business shall include

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(but not be limited to): exhibition display and heritage interpretation —static and interactive; arrival and assembly of patrons or groups —inside the Premises, in the Atrium, and outside of the Station; NF-URHC back of house, research, employee offices and restrooms; NF-URHC related retail; NF-URHC and related parties' fundraising events, NF-URHC live events —with docents and re-enactors, workshops, symposiums, live and recorded music, and related activities incidental to NF-URHC's business. NF-URHC shall have the ability to assign or sublet portions of the Premises to third parties for any permitted Use (having the meaning ascribed to such term hereinabove). Revenues associated with such Use, activities and events, shall be the property of NF-URHC.

- b. Use shall exclude retail food service of any kind without the express permission of the LESSOR.

5. PARKING

NF-URHC shall have the non-exclusive right to use parking spaces, not otherwise marked, in the parking area located at the Property as shown on Exhibit "A" attached hereto and made a part hereof.

6. HOURS OF OPERATION

NF-URHC shall have the right to keep the Premises open at all such times as it desires.

Providing daily operations shall commence no earlier than 6 o'clock AM, and continue no later than midnight.

The NF-URHC shall be open on a regular basis, with regular hours and days of operations, and such regular operations shall consist of a minimum of 20 hours per week / 20 weeks per year.

7. UTILITIES

Except as provided for elsewhere, LESSOR shall make all arrangements and installations for the provision of and pay for all utilities necessary for NF-URHC's occupancy and use of the Premises. If NF-URHC causes the Premises to be sub-metered for individual use by NF-URHC, then NF-URHC shall pay for all related costs of such metering and utility consumption directly. If NF-URHC pays for the costs of such utility consumption directly to the providing utility, utility costs shall not be made a part of the Reimbursement.

8. COMPLIANCE

LESSOR represents and warrants that the Station, the Property and all improvements thereon were constructed in accordance with all applicable statutes, laws, rules, regulations,

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ordinances and codes, including without limitation, the Americans with Disabilities Act of 1990, as amended (42 USC 12101 et seq.).

9. SIGNAGE AND COMMUNICATION SYSTEMS

NF-URHC's business signs and signs needed for security, patron information display, including audio components, ADA compliance, or other signs required for NF-URHC to be in compliance with any laws, statutes, regulations or government requirements are deemed approved by LESSOR ("Business Signs"). NF-URHC may (a) erect, keep, and maintain Business Signs (including audio components) on the Property throughout the Term of this Lease. NF-URHC shall not erect or install any other sign in the Station or on the Property without the prior approval of LESSOR, which approval shall not be unreasonably denied, delayed, or conditioned.

10. MAINTENANCE, REPAIR AND SERVICES

- a. Except as otherwise specifically provided herein, LESSOR, shall at its sole cost and expense, be responsible for the maintenance, repair and upkeep of the Property, including the maintenance, repair, replacement and alteration of the interior and exterior of the Station and all fixtures, equipment, components and systems that are necessary for the use of the Station as well as NF-URHC's use and occupancy of its Premises. This includes, but is not limited to, stairways and elevators, structural and roof repairs and maintenance and exterior landscaping, paving and maintenance. Lessor reserves the right to contract with a third party to augment these services.
- b. LESSOR shall pay all costs, expenses, fees, and sums related to its ownership, operation, and maintenance of the Station and the Property before delinquency.
- c. LESSOR shall provide at its expense:
 - (i) Heating, ventilation and air conditioning ("HVAC") for the Station, including the Premises, to maintain temperatures in the interior portions of the Station at commercially reasonable levels, provided that in no event shall LESSOR maintain heating settings below 68 degrees DB, or air-conditioning settings above 72 degrees DB, 50 % relative humidity, as appropriate depending on the outside weather conditions. LESSOR may stop the heating and cooling systems when necessary due to accident or emergency or for repairs, alterations, replacements, or improvements, which, in the reasonable judgment of LESSOR, are desirable or necessary. LESSOR agrees to make any necessary repairs, alterations, replacements or improvements to the heating and cooling systems as quickly as possible, with due diligence, and with the minimum interference with NF-URHC's use of the Premises.

- 4 cont
- (ii) Janitorial and general maintenance, cleaning, and upkeep to the Property (excluding the Premises) shall be performed by LESSOR. NF-URHC shall be responsible to perform general maintenance, cleaning and upkeep to the Premises, including the NF-URHC business office.
 - (iii) Hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes to be drawn from approved fixtures in the Premises or Common Areas;
 - (iv) Electricity to the Station in quantities necessary for NF-URHC's purposes and use permitted hereunder and in accordance with the previously approved Station construction documents and local codes and ordinances;
 - (v) Replacement of lighting tubes, lamp ballasts, starters and bulbs in fixtures not installed by NF-URHC;
 - (vi) Extermination and pest control as often as may be deemed necessary in the exercise of prudent management practices. To the greatest extent possible, such work shall be performed at times other than when the Museum is open to the public;
 - (vii) Maintenance, cleaning, and upkeep of Common Areas. Such maintenance shall include, without limitation, cleaning, the provision of paper products and soap for the public bathrooms, HVAC, illumination, repairs, replacements, snow and ice removal, lawn care and landscaping;
 - (viii) A building manager or engineer capable of responding to NF-URHC's requests for service (including but not limited to elevator) within one business day or within four hours during normal business hours, which are Monday through Friday, 8AM till 5PM; Question - what happens if there are problems at other times? *Unless it is an emergency, the City has one business day to respond. Practically speaking, if a maintenance issue arises that needs attention, there will be a person there who can contact the City of Niagara Falls personnel necessary or NF-URHC staff will have a number to call.*
 - (ix) Police and/or Security services in a manner reasonably acceptable to NF-URHC;
 - (x) Insurance required to be carried by LESSOR under this Lease.
- d. LESSOR shall cause utilities (electricity, water, sewer, etc.) to be supplied to the Property sufficiently for the operation of a commercial facility, including provision of such utilities to the Premises at levels and in amounts sufficient for NF-URHC's use and occupancy of the Premises including normal telecommunication and/or internet connection points (not the service, but a line into the Property). NF-URHC shall be responsible for contracting with appropriate service providers for specific equipment

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and/or services for NF-URHC's sole use and benefit, which shall be arranged for by NF-URHC separately from the services provided by or to be provided by LESSOR under this Lease.

- e. NF-URHC shall be responsible for the maintenance and repair of any trade fixtures, equipment or other personal property of NF-URHC located on or within the Premises and charges for any services for NF-URHC's sole use and benefit arranged for by NF-URHC separately from the services provided by or to be provided by LESSOR under this Lease.
- f. Notwithstanding anything to the contrary in this Lease, if LESSOR fails in any of its obligations under this Section 10, and such failure continues for more than three (3) consecutive calendar days after notice from NF-URHC of such failure, NF-URHC may provide any such maintenance, repairs and services or arrange for the provision of such. In the event NF-URHC provides any such maintenance, repairs or service, LESSOR shall reimburse NF-URHC for its pro-rata share of the cost and expense of such maintenance, repairs and services within forty-five (45) days of notice from NF-URHC for such payment. Upon request of LESSOR, NF-URHC shall supply LESSOR with verification of all costs.

11. ALTERATIONS AND IMPROVEMENTS

NF-URHC shall have the right to make alterations and improvements to the Property subject to the following terms and conditions:

- a. No alterations or improvements made by NF-URHC shall in any way risk impairment of the structural stability of the Property.
- b. NF-URHC shall request LESSOR's approval before making any alterations, or improvements to the Premises and to Common Areas used by NF-URHC, and the LESSOR must approve, in writing, all such requests for alterations or improvements, which approval shall not be unreasonably denied, delayed or conditioned.
- c. NF-URHC shall cause the Premises to be kept free and clear of any liens that may arise out of the construction of any such alterations or improvements by NF-URHC.
- d. Except for NF-URHC's personal property and trade fixtures (including machinery, equipment and furnishings), all alterations and improvements that are permanently affixed to the Property shall become the property of the LESSOR and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease or any extension of the Term of this Lease.
- e. NF-URHC's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of NF-URHC and may be removed by NF-URHC at any time during the Term or upon the expiration or sooner termination of

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this Lease (including any extension term). NF-URHC shall repair any damage to the Premises or Property caused by NF-URHC's removal of its personal property, trade fixtures, or equipment.

- f. LESSOR shall not alter or remove any previously approved alterations or improvements made by NF-URHC to the Property during the Term of this Lease or as long as NF-URHC occupies the Premises, without prior written approval of NF-URHC, which approval may be withheld for any reason or no reason at all.

12. INSURANCE AND INDEMNIFICATION

- a. NF-URHC shall indemnify, defend, and hold harmless LESSOR from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by NF-URHC's, its officers, officials, directors, employees or agents, sole and direct willful misconduct in the use of the Property.
- b. NF-URHC shall cover its indemnity obligations hereto under **Exhibit "C."**
- c. NF-URHC shall cause all its subcontractors who perform work at the Station to add LESSOR and NF-URHC as additional insureds on subcontractors' general and auto liability insurance policies.

13. ACCEPTANCE

NF-URHC hereby acknowledges that when it occupies the Premises it shall be deemed to have received the Premises in good order and condition unless NF-URHC notifies LESSOR of defects or problems with the Premises within six (6) months after NF-URHC takes occupancy. If NF-URHC notifies LESSOR as previously mentioned, LESSOR shall take action to correct and repair any defects or problems identified by NF-URHC within thirty (30) days after the date of the notice.

14. SUBLEASE AND ASSIGNMENT

- a. NF-URHC shall not assign or sublet the whole or any part of the Premises without LESSOR's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned. This provision requiring LESSOR's consent shall not apply, and NF-URHC shall be permitted to assign or sublet to any entity whose management and operation is indirectly or directly controlling, controlled by or under common control with NF-URHC or if such assignment or subletting is due to or arises out of any judicial or legislative action or mandate, and any such transfers shall not be deemed an assignment or subletting.

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- b. Notwithstanding the preceding paragraph, NF-URHC shall have the right to sublet or license the use of space within the Premises for the Use and purposes permitted in accordance with the terms of Section 4 hereinabove and retain any revenue from such subleases or licenses.
- c. NF-URHC shall take no actions that, individually or collectively, would negatively affect the expansion of passenger rail services at the Station.

15. DEFAULT BY NF-URHC

The failure of NF-URHC to substantially perform or keep or observe any of the material terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease, within sixty (60) days after written notice from LESSOR identifying the specific term, covenant, or condition and requesting NF-URHC to correct or to commence correction for any such deficiency or default or such longer time period if the correction cannot be completed within said 60 days, provided that NF-URHC has commenced such correction, shall constitute an "Event of Default" by NF-URHC. Notwithstanding the foregoing, in the event of strikes, wars, natural disaster or other *force majeure* event that prevent NF-URHC's from performing its obligations under this Lease (including any delay or loss of revenue from the Tribal Compact pursuant to State Finance law section 99-h, NF-URHC's obligations to perform shall be suspended for not more than five years from the date of the last NF-URHC Reimbursement to the LESSOR.

16. RIGHTS OF LESSOR AFTER DEFAULT BY NF-URHC

If an Event of Default by NF-URHC occurs, as provided in Section 15, LESSOR shall have the right (unless otherwise specified in the termination notice), in addition to any rights of the LESSOR at law or in equity and after written notice to NF-URHC, to terminate this Lease on 90 days notice.

17. LESSOR'S DEFAULT

In the event LESSOR fails to perform any covenant or obligation required to be performed under this Lease, and such failure continues for more than thirty (30) days after notice from NF-URHC identifying such failure, such failure shall constitute an "Event of Default" by LESSOR. If an Event of Default by LESSOR occurs, NF-URHC, at its sole option and discretion, may: (1) negotiate with the LESSOR to perform such covenant or obligation, in place of LESSOR, in which event the NF-URHC shall not be liable for the pro rata costs; (2) terminate this Lease; or (3) pursue any and all rights and remedies available at law or in equity.

18. QUIET ENJOYMENT

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If and so long as NF-URHC shall keep all the covenants and agreements required by it to be kept under this Lease, LESSOR covenants and agrees that it, and anyone claiming by, through or under LESSOR, shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by NF-URHC.

19. RIGHT OF ENTRY UPON PREMISES

LESSOR and its agents and employees shall have the right to enter upon the Premises, without prior written notice or, if accompanied by an NF-URHC employee, to inspect the same to determine if NF-URHC is performing the covenants of this Lease, on its part to be performed, to post such reasonable notices as LESSOR may desire to protect its rights, and, at reasonable times and days, to perform service and maintenance pursuant to its obligations under this Lease.

20. COMPLIANCE WITH LAWS, ORDINANCES, AND RULES

NF-URHC agrees to comply with all applicable laws, ordinances, rules, regulations, and requirements of New York State authorities now existing or hereinafter created in its use of the Premises, which NF-URHC deems are applicable and which are not the responsibility of LESSOR.

21. CONDITION OF PREMISES UPON SURRENDER

When NF-URHC vacates the Premises at the expiration of the Term or earlier termination of this Lease, whichever occurs first, NF-URHC shall leave the Premises in the same condition as when NF-URHC received possession, ordinary wear and tear, damage by fire or other casualty, or condemnation excepted and as may be altered, modified or improved in accordance with the terms of this Lease.

22. NON-WAIVER

Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver. Any waiver shall not operate to bar or prevent the waiving party from declaring forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

23. PARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Lease is intended or shall be construed in any way as creating or establishing the relationship of partners or joint ventures between the parties hereto, or as constituting NF-URHC as an agent or representative of LESSOR for any purpose or in any manner whatsoever.

4 cont

24. PARTIES BOUND

Except as otherwise specifically provided in this Lease, this Lease shall bind and inure to the benefit of the parties hereto and each respective administrator, legal representatives, successors and/or assigns.

25. NOTICES

Notices given under the terms of this Lease must be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

To LESSOR:

CITY OF NIAGARA FALLS, NY
745 Main Street
Niagara Falls, NY 14302-0069
Attn: Corporation Counsel

To NE-URHC:

NIAGARA FALLS UNDERGROUND
RAILROAD HERITAGE
COMMISSION, INC.

In care of:

Laurence K. Rubin, Esq.
Kavinoky Cook LLP
726 Exchange Street, Suite 800
Buffalo, NY 14210

Notice mailed in accordance with the provisions hereof shall be deemed to have been given as of the date of hand delivery or the third business day following the date of such mailing, whichever is earlier.

26. NUMBER AND GENDER

All words used herein in the singular number shall include plural and the present tense shall include the future, and the masculine gender shall include the feminine and neuter.

27. ENTIRE AGREEMENT

This Lease contains the sole and only agreement of the parties as to the leasing of the Premises. Any prior agreements, promises, negotiations or representations, relating to the subject matter herein, not expressly set forth in this Lease are of no force or effect.

28. LANGUAGE CONSTRUCTION

The language of each and all paragraphs, terms and/or provisions of this Lease shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed

4 cont

as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identify or status of any person or persons who drafted all or any portion of this Lease.

29. HOLDING OVER

If NF-URHC shall hold over the Premises, after expiration of the Term or any extension thereof, such holding over shall be construed to be only a tenancy from month to month, for an additional rent of not more than \$500.00 per month beginning after the first month of such holdover and increasing \$500.00 per month beginning after the eighteenth month. Such month-to-month tenancy shall also remain subject to all of the covenants, conditions and obligations contained in this Lease provided, however, that nothing in this paragraph shall be construed to give NF-URHC any rights to so hold over and to continue in possession of the Premises without the consent of LESSOR.

30. AMENDMENT

This Lease, including any exhibits hereto, shall not be amended, except in writing signed by the parties. Any amendment or addendum to this Lease shall expressly refer to this Lease.

31. GOVERNANCE

The Laws of the State of New York shall govern this Agreement.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

"LESSOR"

"NF-URHC"

CITY OF NIAGARA FALLS,
NEW YORK

NIAGARA FALLS UNDERGROUND
RAILROAD HERITAGE COMMISSION,
INC.

By _____
Paul A. Dyster, Mayor

By _____
William Bradberry, Chairman

08789/33730/508976.3

4 cont

Exhibit A

NIAGARA FALLS STATION PROPERTY

[Graphic - placeholder]

4 cont

Exhibit B

NIAGARA FALLS STATION PREMISES
(Page 1 of 2)

4 cont

Exhibit B

NIAGARA FALLS STATION PREMISES
(Page 2 of 2)

4 cont

Exhibit C

INSURANCE REQUIREMENTS
NIAGARA FALLS UNDERGROUND NEW YORK RAILROAD HERITAGE
COMMISSION, INC. (NFURHC)

4 cont

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City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

OFFICE OF THE MAYOR

Telephone: (716) 286-4310

September 26, 2017

The City Council
Niagara Falls, New York

RE: *Encroachment/Modification of Encroachment at 2749 Lockport Road,
Niagara Falls, NY*

Council Members:

Sevenson Environmental Services Inc. ("Sevenson") has its principal place of business at 2749 Lockport Road. There is a City owned strip of right-of-way abutting Lockport Road that Sevenson presently utilizes for vehicle parking. This was apparently permitted in 1993 as an encroachment. The portion of City owned right-of-way involved is 85' long and 10' wide. Attached hereto is a sketch which also shows the building and the area in question. Attached hereto is a copy of the letter from Sevenson describing what it wishes to do with the area in question. As stated in the letter, the purpose of the Sevenson request is to facilitate the numerous deliveries it receives in an effort to increase public safety.

The Planning Board has recommended approval of this encroachment request. Attached hereto is a copy of the Planning Board approval. This encroachment is subject to the following conditions:

1. The owner/applicant must obtain all applicable permits and inspections.
2. The owner/applicant will add the City of Niagara Falls as an additional insured on its liability insurance policy.
3. The owner/applicant will agree to defend and indemnify the City from liability related to the encroachment.
4. The City can revoke the license for the encroachment on sixty (60) day's notice.
5. The owner/applicant must comply with any conditions imposed by the City Engineer with regard to sufficient space for pedestrian passage on the sidewalk right-of-way and to insure that no damage occurs to the City's right-of-way.

Will the Council so approve?

Respectfully submitted,

PAUL A. DYSTER
Mayor

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OCT 02 2017

Grandinetti _____ Scott _____ Tompkins _____ Touma _____ Walker _____



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May 22, 2017

Craig H. Johnson
Corporation Counsel
City of Niagara Falls, NY
745 Main Street
PO Box 69
Niagara Falls, New York 14302-0069

MAY 23 2017

Dear Mr. Johnson:

On Friday, May 19, 2017, I met with Robert Buzzelli from the City of Niagara Falls Engineering Department to discuss the need to create an area in front of our business for vehicles to pull into, instead of parking in front of our business along the curb.

With Lockport Road being a highly travelled roadway, when various delivery trucks including FedEx, UPS and US Postal Service, among many others park along our curb line, vehicles tend to move to the north, crossing the centerline posing a potential safety risk to the travelling public.

In the attachment enclosed with this correspondence we are proposing to construct a "Turn Off" to accommodate this traffic. This is a preliminary drawing for reference only.

This area would be constructed per City of Niagara Falls specifications and would include granite curbing and underdrain concurrent with City standards.

We will provide a drawing stamped by a local professional engineer for submittal and approval and will apply for the permits required by the Department of Engineering.

We are requesting your approval of our proposed project and once received we will submit the documents required by Mr. Buzzelli to undertake the work.

If you have any questions or require additional information, please contact me at your convenience.

Very truly yours,

SEVENSON ENVIRONMENTAL SERVICES, INC.



Frank A. Fracassi
Vice President/General Superintendent

Encls. .



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

September 13th, 2017

NIAGARA FALLS PLANNING BOARD

☒ **RECOMMENDATION TO CITY COUNCIL**
Disposition of Property – Real Property Sale

Pursuant to action taken by the Niagara Falls Planning Board on the 13th day of September 2017 your request is hereby **APPROVED**.

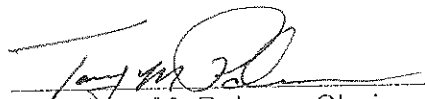
NAME OF OWNER: City of Niagara Falls

ADDRESS OF ACTION: 2749 Lockport Road

PURPOSE: Allow Severson Environmental Services Inc.
Encroachment of property as a Turn Off area.
Condition that Property Owners Use will not
Impede Walkway.

This Recommendation is hereby **APPROVED**.

DATE: September 13th, 2017

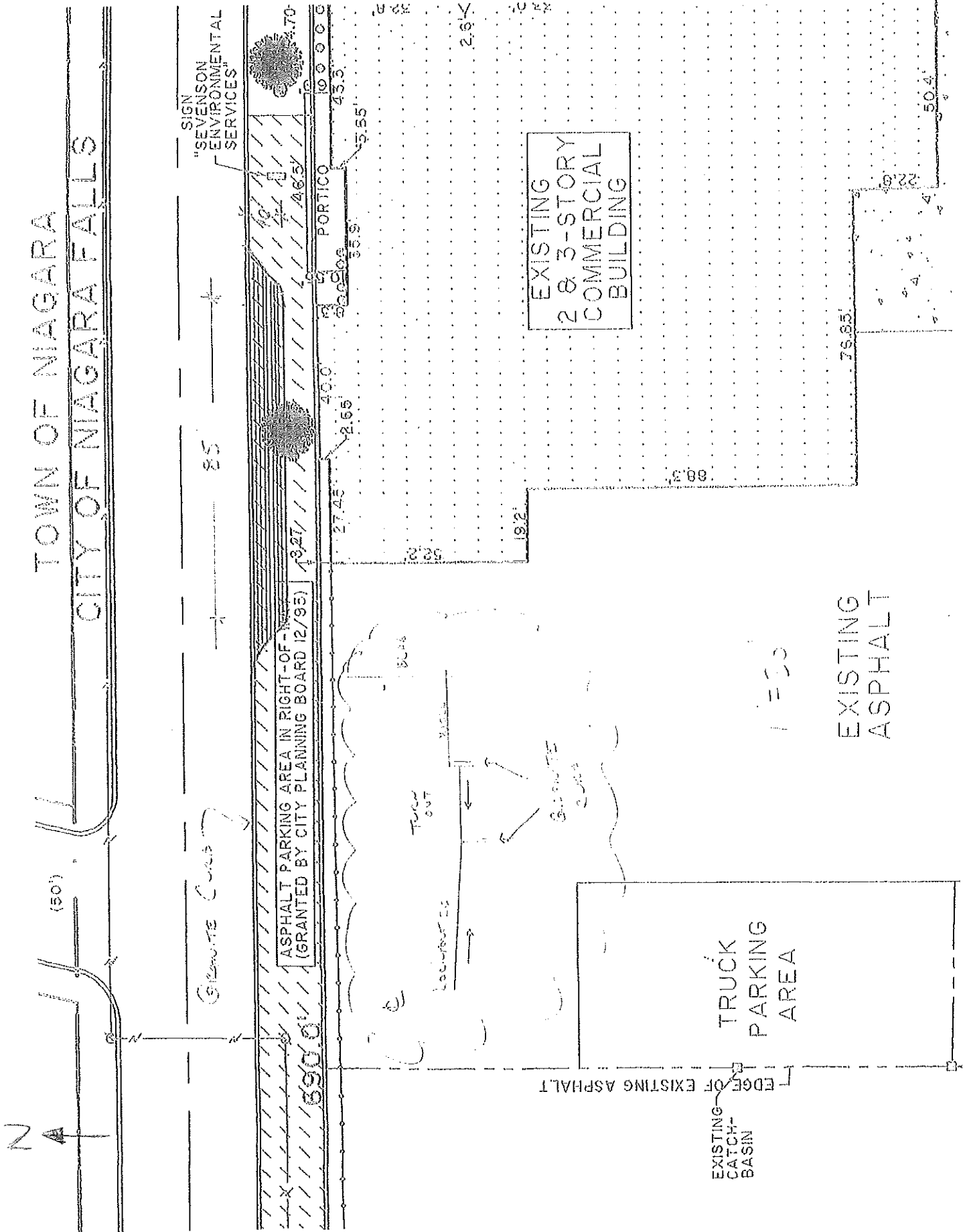


Tony M. Palmer, Chairman
Niagara Falls Planning Board

2017 SEP 14 PM 12:05

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5 cont



Project Area: "Sevenston"

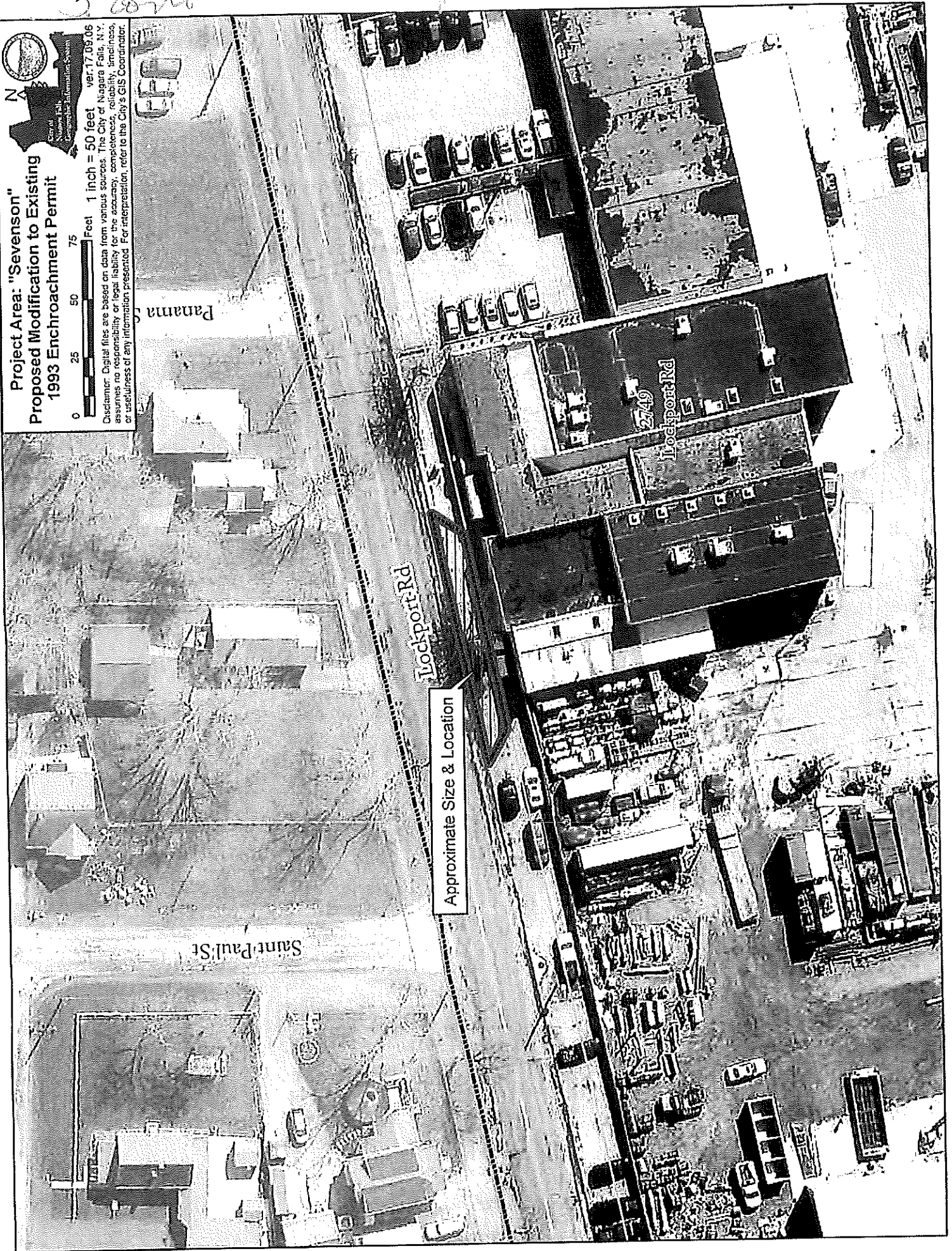
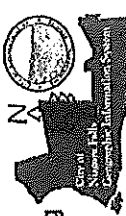
Proposed Modification to Existing
1993 Encroachment Permit

0 25 50 75 Feet

1 inch = 50 feet

ver. 17.09.06

Disclaimer: Digital files are based on data from various sources. The City of Niagara Falls, N.Y. assumes no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information presented. For interpretation, refer to the City's GIS Coordinator.





50' ant

TOWN OF NIAGARA
CITY OF NIAGARA FALLS

(50')

SIGN
"SEVENSON
ENVIRONMENTAL
SERVICES"

GRANITE CURBS

ASPHALT PARKING AREA IN RIGHT-OF-WAY
(GRANTED BY CITY PLANNING BOARD 12/93)

690.0'

48.5'

3.27'

27.45'

40.0'

2.65'

43.3'

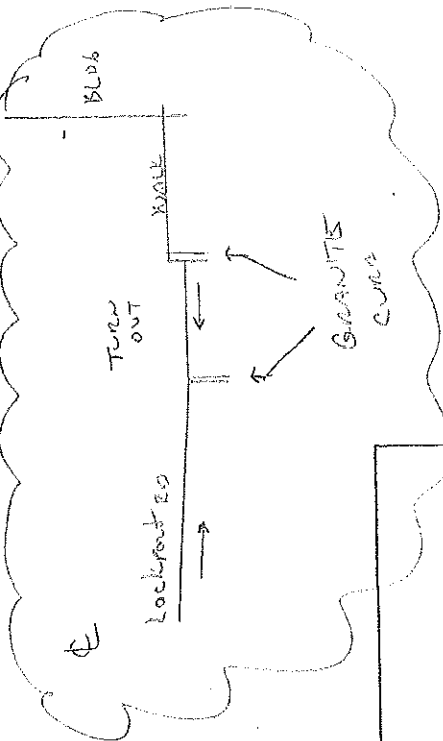
5.65'

43.3'

5.65'

43.3'

5.65'



EXISTING
2 & 3-STORY
COMMERCIAL
BUILDING

TRUCK
PARKING
AREA

EXISTING
CATCH-
BASIN

EDGE OF EXISTING ASPHALT

1" = 30'

EXISTING
ASPHALT

76.85'

50.4'

6

CITY OF NIAGARA FALLS, NEW YORK

TO: City Council
FROM: Mayor Paul A. Dyster
DATE: October 2, 2017
RE: **City Council Agenda Item:**
Reallocating \$70,000 from Rapid ReHousing to Homelessness Prevention
For YWCA Carolyn's House and Community Missions, Inc.

Council Members:

The 2017 Emergency Shelter Grant (ESG) budget contained a \$70,000 grant to Community Missions, Inc. and YWCA Carolyn's House to operate a Rapid Rehousing program for newly homeless people in Niagara Falls. After the 2017 ESG budget was approved by the City Council and submitted to the Department of Housing and Urban Development (HUD) for approval, the sub-recipients were awarded funding from an external source to operate a Rapid Rehousing program. At the suggestion of the sub-recipients, and after consultation with HUD on best practices, the decision has been made to fund YWCA Carolyn's House and Community Missions, Inc. to operate a Homelessness Prevention program.

It is proposed that the original amount reserved for Rapid Rehousing be reallocated to a Homelessness Prevention program to be operated by the same sub-recipients.

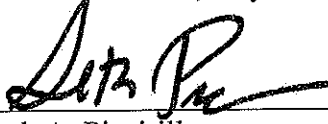
Will the Council vote to approve the proposal presented herein and to authorize the Mayor to execute any documents necessary to effectuate the same?

Respectfully submitted,



Paul A. Dyster, Mayor

Nicholas Melson, City Administrator



Seth A. Piccirillo
Director of Community Development

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OCT 02 2017

Grandinetti _____ Scott _____ Tompkins _____ Touma _____ Chairman Walker _____

7

CITY OF NIAGARA FALLS, NEW YORK

TO: City Council
FROM: Mayor Paul A. Dyster
DATE: October 2, 2017
RE: City Council Agenda Item:
\$147,937.94 CDBG Grant
North End Food Access RFP

Council Members:

The U.S. Department of Agriculture has identified the Highland Avenue area of Niagara Falls as a food desert, a low-income area where a significant number or share of residents is more than 1 mile from the nearest supermarket. Health problems associated with limited access to fresh food are exacerbated when the people most affected by this issue also have limited transportation and financial resources.

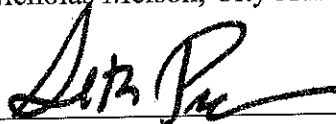
It is proposed that funding be made available from unexpended 2015 and 2016 CDBG funds previously budgeted for the Highland Avenue area. A request for proposals for this project has been issued publicly for this purpose and applications have been received, though no funds will be awarded until this reallocation is approved. This amendment will allow us to address a serious need in the Highland Avenue area and to expend the CDBG funds in a timely manner.

Will the Council vote to approve the proposal presented herein and to authorize the Mayor to execute any documents necessary to effectuate the same?

Respectfully submitted,


Paul A. Dyster, Mayor

Nicholas Melson, City Administrator


Seth A. Piccirillo
Director of Community Development

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8

CITY OF NIAGARA FALLS, NEW YORK

TO: City Council
FROM: Mayor Paul A. Dyster
DATE: October 2, 2017
RE: City Council Agenda Item:
\$40,000.00 CDBG Grant
Boy's Breakfast Club Program

Council Members:

The 2017 Community Development Block Grant budget contained a \$40,000.00 grant to Buffalo Federation of Neighborhood Centers, Inc. to operate a boy's breakfast club program for boys aged 8-11 at 2616 Highland Avenue in Niagara Falls. With reductions in the 2017 Community Development grant to the City, it is proposed that the grant to the program be made from unexpended 2016 CDBG funds previously budgeted for the Highland Avenue area. This will allow us to fund a worthy program and to expend the 2016 CDBG funds in a timely manner.

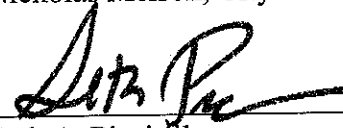
Will the Council vote to approve the proposal presented herein and to authorize the Mayor to execute any documents necessary to effectuate the same?

Respectfully submitted,



Paul A. Dyster, Mayor

Nicholas Melson, City Administrator



Seth A. Piccirillo
Director of Community Development

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OCT 02 2017

Grandinetti_____ Scott_____ Tompkins_____ Touma_____ Chairman Walker_____

9

CITY OF NIAGARA FALLS

OFFICE OF THE CITY CLERK

TO: City Council Members

FROM: Lisa A. Vitello
City Clerk

DATE: September 20, 2017

RE: Resolution 2017-89

Please be advised that, Mayor Paul A. Dyster, on September 19, 2017, duly approved the following:

Resolution 2017-89 relative to Amending Chapter 171 of the Codified Ordinances entitled "Benefits of Employees not covered by Collective Bargaining Agreements."



Lisa A. Vitello
City Clerk

OCT 02 2017

RHF