

Item #1

TO: City Council
FROM: Mayor Paul A. Dyster
SUBJECT: **RECONSTRUCTION OF LEWISTON ROAD NYS 104 FROM BATH AVENUE TO NIAGARA FALLS NORTH CITY LINE PIN 5045.24**

The following was the result of bids received on June 19, 2009, for the above referenced project:

| CONTRACTOR | BASE BID |
|--|-----------------|
| Man O'Trees, Inc. 1500 Union Road West Seneca NY 14224 | \$ 7,713,000.00 |
| Yarussi Construction, Inc. | \$ 9,043,527.01 |
| CATCO, Inc. | \$ 9,303,231.50 |

It is the recommendation of the undersigned that this project be awarded to Man O'Trees, Inc. at its Base Bid of \$7,713,000.00. Funding is available under Capital Code H0421.2001.0421.0449.599.

This award is also subject to approval by the New York State Department of Transportation.

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

Respectfully submitted,

Mayor Paul A. Dyster

Donna D. Owens, City Administrator

Item #2

*RE: 3123 Highland Avenue Niagara Falls, NY
3001 Highland Avenue Niagara Falls, NY*

Council Members:

The United States Environmental Protection Agency ("EPA") is requesting that the City allow it to access the above-referenced City owned properties in order to investigate and remediate surface or subsurface contamination, establish field operation and use of property for staging of trailers, equipment, and supplies during the removal action at the properties, fence the site perimeter and/or secure site buildings as needed, sample, stabilize, and off-site disposal of drums, laboratory chemicals, electrical transformers, vats, asbestos containing materials, and/or other waste materials containing hazardous substances and take other response actions necessary to remediate contamination found on the properties. This action by the EPA will be at no cost to the City and will be undertaken pursuant to the EPA's response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

Consent for access to each property must be signed by the Mayor. Copies are attached hereto.

Will the Council authorize the Mayor to sign these?

Item #3

RE: Niagara Falls Police Department Overtime

Council Members:

The Niagara Falls Police Department has incurred an unanticipated additional overtime as a result of its move into the new public safety building. This unanticipated expense totals \$47,366 inclusive of fringe benefits. It is requested that this amount be transferred to the Niagara Falls Police Department overtime budget line in order to replenish this overtime budget line. Funding is available through Casino interest.

Will the Council so approve?

Item #4

RE: Americans with Disabilities Act

Council Members:

Attached please find a copy of the proposed settlement agreement between the United States of America and the City of Niagara Falls relative to the City's compliance with the Americans with Disabilities Act of 1990. In 2001 and again in 2004, the Department of Justice Disability Rights section conducted a review of City services, policies, practices, facilities and polling places with regard to compliance with the ADA. Based on its findings, the Department of Justice has proposed this settlement to guide the City in its efforts to comply with the ADA.

The settlement agreement requires the City to undertake a number of remedial actions including, but not limited to, evaluating and modifying services, programs or activities, providing improved information and notification for persons with disabilities and, if necessary, physical changes to buildings and facilities to comply with ADA standards for accessible design.

The City will be provided with three years to complete its remedial measures; this will allow the City to integrate the ADA compliance initiative into its ongoing capital planning.

The City Administrator will coordinate the City's compliance efforts and has notified all effected City departments. Pending approval of this settlement agreement, the City Administrator will initiate our remedial efforts.

Will the Council so approve and authorize the Mayor to execute the settlement agreement between the City and the United States of America?

Item #5

RE: Tables and Chairs and Barstools at Mulligan's FKA Green's Restaurant

Council Members:

It is in the best interest of the public to purchase new tables and chairs for the above-referenced City owned facility at Hyde Park Golf Course.

The cost for these new tables and chairs is \$8,100. In addition, new barstools were purchased for the sum of \$1,235 and it is necessary to appropriate additional money so as to replenish the Parks Department account from which this sum of money was taken. The funding for this total amount of \$9,335 may be found in 2007 Casino funds.

Will the Council so approve?

Item #6

RE: Tenth Street Fire Hall Roof

Council Members:

As the Council is aware, it is necessary to make emergency repairs to the Tenth Street Fire Hall Roof.

The cost of these repairs is \$5,800 and since this is not a budgeted amount, it is requested that the Council appropriate this sum from Fund Balance.

Will the Council so approve?

Item #7

RE: African American Festival

Council Members:

The City has been asked for a \$1,000 contribution for the African American Festival scheduled for July 24, 2009 and July 25, 2009. Funding is available from the Tourism Fund balance.

Will the Council so approve?

Item #8

RE: Gospel Festival

Council Members:

The City has been asked for a contribution in the amount of \$1,000 for the Gospel Festival in conjunction with the NFMMC scheduled to be held on July 18, 2009. Funding is available from the Tourism Fund balance.

Will the Council so approve?

Item #9

RE: Creation of temporary MW-3 position in Streets Division

Council Members:

It is requested that a temporary MW-3 position be created to assist with the City's in-house paving program.

The position would be filled from June 29th to October 30, 2009 at the estimated cost of \$720 which is available in Expense Code A.5110.0200.0110.000.

Will the Council so approve?

Item #10

*RE: Rainbow Boulevard Arterial
Pin 5460.30.201
Proc. 12959
Maps 49 & 51/Parcels 48 &50*

Council Members:

As part of the State Department of Transportation's reconstruction of Rainbow Boulevard, the State acquired two small strips of City property in 2005.

Through our oversight the agreements to accept payment in the respective sums of \$27,000 and \$7,825 were never submitted to Council for approval and execution by the City.

Will the Council so approve and authorize the Mayor to execute any agreements or other documents in a form acceptable to the Corporation Counsel necessary to effectuate this?

Item #11

RE: Equipment for Municipal Building

Council Members:

Attached is a memo from David Kinney outlining the equipment requested to be used at the new Municipal Building

Will the Council appropriate \$100,000 of 2007 casino funds for this equipment?

Item #12

RE: Overtime for Department of Public Works

Council Members:

Attached hereto is a spreadsheet showing use of overtime in various divisions of the Department of Public Works.

Based on the usage through the first half of the year, it is requested that the various divisions be replenished in the total amount of \$102,000.

It is recommended that this funding be appropriated from Mayor's Contingency.

Will the Council so approve?

Item #13

RE: Capital Equipment Plan

Council Members:

Recall that Phase I of the 2009 Capital Equipment Plan was previously approved totaling \$1,525,000. There is approximately \$78,306.77 remaining. In an effort to enhance the leaf removal for City residents this year I am requesting your approval to use \$45,000 of the remaining funds to purchase a second leaf collector that otherwise would have been included in Phase II of the 2009 Capital Equipment Plan.

Funding has previously been designated.

Will the Council so approve?

Item #14

RE: Arts in the Park

Council Members:

The City has been asked to contribute the sum of \$1,000 for the Arts in the Park program to be held at the NACC. This event will be held on July 19, 2009. Funding is available from the Tourism Fund balance.

Will the Council so approve?

Item #15

NEW YORK

June 24, 2009

TO: City Council
FROM: Mayor Paul A. Dyster
SUBJECT: **CHANGE ORDER #4 – CONSULTANT SERVICES FOR THE RECONSTRUCTION OF LEWISTON ROAD/NY ROUTE 104 – PIN 5045.24**

A contract for the above referenced project was awarded to Wendel-Duchscherer Architects & Engineers, P.C., 95 John Muir Drive, Suite 100, Amherst, NY on October 9, 2001 in the amount of \$1,395,000.00. Change Order #1, #2 and #3 were approved by City Council on May 10, 2004, March 5, 2007 and June 15, 2009, respectively, in the amount of \$0.00 each, thereby not increasing the total cost of the contract to date.

Change Order No. 4 is composed of two separate portions. The first portion is associated with the out-of-scope tasks associated with the Consultant finishing the final design and creating final construction documents – Construction Plans and Specifications. The tasks listed below were not originally included within the Consultant's provided services, but were subsequently added by the City as conditions warranted. These tasks and the associated fee for them in total are as follows:

- Storm Water Management/Roadway Drainage Design & Specifications
- Final Bridge Design & Specifications
- Radioactivity Detection/Analysis/Quantification and Remedial Action Plan
- Alteration of Final PS&E Submission Package to facilitate NYSDOT Processing/Approval

Total for Additional Final Design Tasks \$ 367,120.00

The second portion of this change order is for the City to add the funding for the tasks associated with Construction Contract Administration and Construction Inspection and related Direct Non-Salary Costs (DNCS) to the Consultant's current contract.

Total for Additional Contract Administration/Construction Inspection \$1,460,910.00

Therefore, it is the recommendation of the undersigned that **Change Order #4 in the amount of \$1,828,030.00** be approved, bringing the **new contract total to \$3,223,030.00**. Please note that the City is receiving, and will continue to receive, an 80% reimbursement of all project costs from the Federal Highway Administration's National Highway System (NHS) and Standard Transportation Project (STP) funding centers, with an additional 15% reimbursement via the New York State's Marchiselli Aid fund for this project. Considering all of the aforesaid reimbursements, this total Change Order amount translates to approximately **\$91,401.50 City Of Niagara Falls dollars**. Funding is available in Capital Project Code H0421.2001.0449.599. This amount is also subject to approval by the New York State Department of Transportation.

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

Respectfully submitted,

Mayor Paul A. Dyster

Funding Approval:

Donna D. Owens, City Administrator

Item #16

**RE: City Council Agenda Item:
Purchase of 446-Third Street
\$54,900.00**

Council Members:

446 Third Street is the former Lotus Acupuncture facility. The property is SBL #159.29-1-55. It is assessed for \$102,200. It is currently owned by the federal government through forfeiture proceedings. The property has been listed on the open market for sale.

As you recall, the City purchased the contiguous 448 Third Street property for construction of an arcade to connect Third Street and Second Street. It is desirable to control this parcel so that the arcade concept is not compromised. We are recommending that Council approve the purchase of this property for \$54,900. It is also recommended that up to \$25,000 be allocated for the demolition of the building located on the site. 2007 Casino funds are available for this purchase and demolition, which constitutes both economic development and neighborhood revitalization.

Normally, acquisition of property first requires Planning Board recommendation. However, pursuant to §504 of the City Charter, referral to the Planning Board may be dispensed with if the Council unanimously determines that immediate acquisition of a specified parcel of land would be in the public interest. Here, referral to the Planning Board would delay our ability to finalize our offer, and may result in the property being purchased for speculation.

Will the Council unanimously vote to approve the acquisition as set forth herein pursuant to contract in form and substance satisfactory to the Corporation Counsel and authorize the Mayor to execute any documents necessary to effectuate the same and also fund up to \$25,000 in order to accomplish the demolition of the building?

Item #17

RE: Detention Aides

Council Members:

The City has occupied a new Municipal Complex which houses the Police Department and prisoner detention area. The City has determined that the persons guarding prisoners in the new detention facility will have to use tasers. The bargaining unit employees are not legally permitted to possess or operate tasers under the Penal Law and therefore the City has decided to discontinue the employment of the bargaining unit employees and terminate the Collective Bargaining Agreement between the City and the Union. The Union and its bargaining unit employees have been notified of this decision and its consequence. Negotiations have taken place regarding the impact of this decision and settlement agreements have been prepared. Those settlement agreements in place at this time are attached hereto and are briefly described as follows:

1. The first document is a Settlement Agreement between the City and the teamsters Local 264. In this Agreement, the Union agrees that it will not challenge the City's ability to eliminate the detention aide jobs in exchange for offers of severance and cleaner jobs.
2. The next document is a Separation Agreement and General Release from Donna Donohue in exchange for a severance payment of \$23,362.70, minus applicable taxes and withholdings.
3. The next document is a Separation Agreement and General Release from Kathy Terrana. Ms. Terrana is being paid a severance of \$18,693.25, minus applicable taxes and withholdings.
4. The next document is a Separation Agreement and General Release from Susan Winchell. Ms. Winchell is being paid a severance of \$12,531, minus applicable taxes and withholdings.
5. The next document is a Separation Agreement and General Release from Emily Belkota in exchange for a job as a cleaner. No money is being paid to Ms. Belkota.
6. The next document is a Separation Agreement and General Release from Pearl Murphy in exchange for a job as a cleaner. No money is being paid to Ms. Murphy.

There are no Settlement Agreements in place at this time with Mary Richardson, Daniel Coates and Crystal Klein.

The funding for the payment of these severance amounts will come from the detention aide line item in the Police Department budget

Will the Council authorize the Mayor to enter into these Settlement Agreements on behalf of the City?

Item #18

RE: Improvements to City Entry Ways

Council Members:

Attached is a memo from the Department of Public Works requesting funding to make improvements to various City entry ways.

It is recommended that the funding come from 2007 Casino funds.

Will the Council so approve?

Item #19

SUBJ: *AGENDA ITEM: Locally-Adjusted Homestead & Non-Homestead Proportions*

In accordance with Resolution 1998-140 relative to the two-tier property tax system that was adopted November 24, 1998 and Section 1903-4© of the Real Property Tax Law, I have calculated the locally adjusted proportions for the Niagara Falls School District 2009-10 tax levy.

School District

Homestead 69.51511

Non-Homestead 30.48489

As a reference, the 2008 Locally Adjusted Proportions for the school district were as follows:

Homestead 69.94248

Non-Homestead 30.05752

Will the Council so approve?

Item #20

SUBJ: INFORMATIONAL ITEM: *2009 General Assessment Roll*

Listed below are the taxable totals of the General Assessment Roll for the City of Niagara Falls, New York, as now constituted and completed by the Board of Assessment Review for the year 2009 and will be filed with the City Clerk on July 1, 2009.

Also, attached, please find the exemption summary for the 2009 roll.

| | |
|-------------------------------------|------------------------|
| Total Taxable Assessed Value | \$1,277,600,382 |
| Homestead | \$869,473,315 |
| Non-Homestead | <u>408,127,067</u> |
| Total | \$1,277,600,382 |

Item #21

SUBJ: AGENDA ITEM: CERTIFICATION OF HOMESTEAD & NON-
HOMESTEAD ADJUSTED BASE
PROPORTIONS

In accordance with Section 1903 of the Real Property Tax Law, the City Council must certify, to the New York State Office of Real Property Services, the attached referenced proportions.

The proportions certified will determine the class tax shares for the 2009-2010 school district tax levy and the 2010 city tax levy.

The certification is now due and the attached represents the necessary certifications.

Will Council certify the attached adjusted base proportions?

Item #22

For the New City of Niagara Falls Comprehensive Plan and Accompanying Amendments to the City of Niagara Falls Zoning Ordinance

Location: City of Niagara Falls, Niagara County, New York

Lead Agency: City of Niagara Falls City Council
City Hall
745 Main Street
PO Box 69
Niagara Falls, NY 14302-0069

Contact Person: Thomas J. DeSantis, AICP
Senior Planner, Offices of Planning / Environmental
Services
(716) 286-4477.

Prepared by: Behan Planning Associates, LLC; City of Niagara Falls
Offices of Planning / Environmental Services; City of
Niagara Falls Planning Board; and City of Niagara Falls
City Council

**Date of
Acceptance
by Lead Agency :** June 29, 2009

Item #23

RESOLUTION 2009- ____
RESOLUTION CONCERNING NOTICE OF COMPLETION OF FGEIS
CONCERNING PROPOSED AMENDMENTS TO COMPREHENSIVE PLAN
AND ZONING ORDINANCE

By: Council Member Christopher Robins

WHEREAS, by resolution dated May 4, 2009, the City Council determined that a Draft Generic Environmental Impact Statement (DGEIS) concerning the proposed adoption of amendments to the City of Niagara Falls Comprehensive Plan and Zoning Ordinance (the "Proposed Amendments") was complete for purposes of conducting an appropriate review under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the City Council caused to be duly filed and published a Notice of Completion of the DGEIS and Notice of Joint Public Hearing on June 1, 2009 for purposes of receiving further public comments with respect to the Proposed Amendments and to fulfill the requirements of SEQRA, General City Law § 28-a(7) and City of Niagara Falls Zoning Code § 1308.06; and

WHEREAS, The Planning Board and City Council have considered all public comments concerning the Proposed Amendments received during the joint public hearing on June 1, 2009 and through the public comment period ending June 15, 2009; and

WHEREAS, by resolution dated June 24, 2009, the City of Niagara Falls Planning Board recommended, among other things, that the City Council prepare and publish a Final GEIS (FGEIS) in accordance with the requirements of SEQRA; render its independent findings under SEQRA with respect to the Proposed Amendments; and act affirmatively to adopt the Proposed Amendments; and

WHEREAS, the City Council subsequently caused to be prepared an FGEIS in accordance with the requirements of SEQRA.

NOW, THEREFORE, BE IT RESOLVED, that the City Council has determined that the FGEIS is complete for purposes of SEQRA review, and therefore directs that the attached Notice of Completion of FGEIS be duly published and distributed as specified therein for purposes of fulfilling the requirements of SEQRA.

BE IT FURTHER RESOLVED, that the City Council will undertake to prepare its independent findings as required under SEQRA in light of the conclusions in the FGEIS and all other relevant information prior to rendering any final determination on the Proposed Amendments.

Item #24

RESOLUTION No. 2009–

**RESOLUTION SUPPORTING THE NIAGARA FALLS FIRE DEPARTMENT'S
REQUEST TO SEEK THE ASSISTANCE TO FIREFIGHTERS
FIRE STATION CONSTRUCTION GRANTS (SCG)**

BY:

Council Chair Chris Robins
Council Member Robert A. Anderson, Jr.
Council Member Steve Fournier
Council Member Sam Fruscione
Council Member Charles Walker

WHEREAS, the Niagara Falls City Council is dedicated to the public safety and protection of its residents, visitors and taxpayers, and

WHEREAS, over the last two years, the Niagara Falls Fire Department has experienced a record increase in emergency responses, and

WHEREAS, the Niagara Falls Fire Station on Tenth Street has responded to over 3,000 emergency calls during 2008 alone, and

WHEREAS, the apparatus operating at the Fire Station on Tenth Street are the busiest within the City and offer protection to the entire downtown area, and

WHEREAS, the Fire Station on Tenth Street is over 105 years old and is in need of substantial repairs and updates, and

WHEREAS, the Department of Homeland Security is offering grants to build new Fire Stations at no expense to local taxpayers, and

WHEREAS, a new Fire Station can be built in a strategic location to best protect the residents, visitors and taxpayers of the City, and

WHEREAS, a newly constructed Fire Station can be built with “green” technology that will reduce the future maintenance and operating costs to the City, and

WHEREAS, a newly built Fire Station, through the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG), can be obtained with absolutely no cost to the taxpayers of Niagara Falls, and

WHEREAS, in order for the City to obtain this SCG grant, it is imperative that the grant is submitted timely, and

WHEREAS, the deadline to submit an application for this grant is July 10, 2009, and therefore be it

RESOLVED, that the City Council authorizes the appropriate Departments and personnel to apply for the Department of Homeland Security's Assistance to Firefighters Fire Station Construction Grants (SCG), and be it further

RESOLVED, that the City Council wholeheartedly supports the construction of a replacement "Tenth Street" Fire Station, through the Fire Station Construction Grants, with no cost to City taxpayers, and be it further

RESOLVED, that the City Council strongly suggests that all available resources are devoted to this grant request and to complete the grant request in a timely fashion.

Item #25

RELATIVE TO NAME THE NIAGARA FALLS
VETERANS MEMORIAL COMMISSION CORPORATION
AS SOLE REPRESENTATIVE

BY:

Council Member Robert A. Anderson, Jr.
Council Member Sam Fruscione

WHEREAS, the Niagara Falls Veterans Memorial Commission Corporation was established to create a Memorial in the City of Niagara Falls to honor the memory of all those brave men and women from Niagara Falls, New York, who have given their lives for their country; and

WHEREAS, in keeping with the Niagara Falls City Council Resolution previously adopted and the responsibility associated with the development of the Memorial, the Commission has asked to be appointed as being the entity responsible for all veterans events, parades and special services in the City of Niagara Falls, New York to include, but not limited to all other matters which involve the Memorial; and

WHEREAS, this was requested by the Niagara Falls Veterans Memorial Commission Corporation, a non-for-profit 501c 3 organization.

NOW, BE IT RESOLVED, that the Niagara Falls City Council hereby designates the Niagara Falls Veterans Memorial Commission Corporation as the entity responsible for all veterans events, parades and special services in the City of Niagara Falls, New York to include, but not limited to all other matters which involve the memorial; and

BE IT FURTHER RESOLVED, that this resolution will remain in effect until modified or revoked by the City Council of the City of Niagara Falls, New York.

Item #26

BY: Council Member Robert Anderson, Jr.

WHEREAS, Niagara Falls has an international reputation as The Honeymoon Capitol; and

WHEREAS, couples arrive at the City Clerk's Office from all over the world to obtain a marriage license; and

WHEREAS, it is advantageous for the City and convenient to the couple to have these marriages solemnized within the confines of the City of Niagara Falls.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Niagara Falls, New York that in accordance with Section 11-c of the New York Domestic Relations Law, the following employee in the City Clerk's Office, Nadine A. Wasson, be appointed as Marriage Officer for the City of Niagara Falls for a term of four years; and be it further

RESOLVED, that the fee for such marriage service shall be \$100.00; and be it further

RESOLVED, that the fees for all marriages performed by said Marriage Officers during normal business hours be deposited to the credit of the City of Niagara Falls.

Item #27

RESOLUTION 2009- ____
CHANGING THE NAME OF FACTORY OUTLET BOULEVARD TO FASHION
OUTLETS BOULEVARD

By: Council Member Christopher Robins

WHEREAS, presently there is a street named Factory Outlet Boulevard; and

WHEREAS, the operators of the Fashions Outlets Mall has requested that the name of the Factory Outlet Boulevard be changed to that of Fashion Outlets Boulevard; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Niagara Falls, NY that pursuant to section 901.02 of the Codified Ordinances, the City Council does hereby express its intent to change the name of the Factory Outlet Boulevard to Fashion Outlets Boulevard and will hold a public hearing on said change at 7:00P.M. Eastern Daylight Time on July 13, 2009 in the Council Chambers; the City Clerk is hereby directed to publish in the Niagara Gazette at least once prior to July 13, 2009 a notice of said intention to change the name of Factory Outlet Boulevard to Fashion Outlets Boulevard at this Council's regular meeting scheduled for July 13, 2009.