

November 14, 2016

**PRESENTATIONS:**

1. Niagara Tourism Convention Corporation (NTCC) 2015 Annual Report  
John Percy, President and CEO
2. "Zombie Fighter" Grant from Local Initiatives Support Corporation (LISC)  
Seth Piccirillo, Director - Community Development

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**ADMINISTRATIVE UPDATE:**

None

Agenda Item #1

The following claims have been filed in the Office of the City Clerk during the month of October 2016. The claims were subsequently referred to the Office of the Corporation Counsel.

**NOTICE OF CLAIM**

Richardson, Seritta (owner)  
Maye, Kadesha ( driver)  
2218 Whitney Ave  
c/o Travelers Insurance  
Eric W. Reistetter,Rep.

In reference to vehicle damage caused by an accident with a City vehicle.

Cavanaugh, Christine L.  
3730 Kimo Way  
Auburn, CA 95602

In reference to personal injury/personal property . damage.

Geico A/S/O Sanchez  
c/o Bryan M. Kulak Attorneys

In reference to File No. 16-1278

Proctor Jr., Ronald E.  
1302 Maple Avenue

In reference to personal property

Payne Sr., Charles  
1634 Linwood Avenue

In reference to vehicle damage caused by a City tree.

Ziff Law Firm. LLP  
Adam H. Gee, Esq.  
303 William Street  
P.O. Box 1338  
Elmira,NY 14902

In reference to personal injury and wrongful death, and all economic loss suffered by the Claimants.

Shelton, Cindy  
6512 O'Neil Street  
Niagara Falls, ON L2J1M7

In reference to vehicle damage caused by a pot hole.

Garris, John  
176 Greenfield Drive  
Tonawanda, NY 14150

In reference to vehicle damage caused by a pot hole.

Agenda Item #2

The following is a report of the licenses issued and collections made in the Office of the City Clerk during the month of October, 2016						
				<b>CONTROLLER</b>	<b>TOTAL</b>	
A1255-001 A012		Vital Statistics		\$ 4,274.00	\$ 4,274.00	
A1255-004 A013		Copies of Records		\$ 405.50	\$ 405.50	
A1255-004 A013		Certificates of Marriage		\$ 650.00	\$ 650.00	
A2501-016 A047		Stationary Engineers		\$ 2,240.00	\$ 2,240.00	
A2501-016 A047		Stationary Engineers Test Fee		\$ 160.00	\$ 160.00	
A2501-021 A048		Amusement Games		\$ 3,300.00	\$ 3,300.00	
A2542-000 A053		Dogs/NYS Agr.& Mkts	\$ 240.00	\$ -	\$ 240.00	
A2542-000 A053		Additional Dogs		\$ 2,525.00	\$ 2,525.00	
A2545-001 A054		Marriage License/NYSHD	\$ 1,462.50	\$ 487.50	\$ 1,950.00	
A1255-002 A123		Commissioners of Deeds		\$ 20.00	\$ 20.00	
A2501-599 A130		Pawn Broker		\$ 450.00	\$ 450.00	
A2545-021 A316		Vending		\$ 11,320.00	\$ 11,320.00	
A2545-023 A318		Hunters/NYS DEC RAU	\$ 39.88	\$ -	\$ 39.88	
A2545-023 A318		Hunters Fees		\$ 683.12	\$ 683.12	
A1255-003 A499		Notary Fee		\$ 10.00	\$ 10.00	
A1255-005 A528		Dog Release		\$ 100.00	\$ 100.00	
TA63008 A597		Marriage Performance		\$ 275.00	\$ 275.00	
<b>TOTAL:</b>			<u>\$ 1,742.38</u>	<u>\$ 26,900.12</u>	<u>\$ 28,642.50</u>	
Check #	<u>21836</u>	NYS Dept.of Arg. & Mkts		\$ 240.00		
Check #	<u>21794</u>	NYS Health Department		\$1,462.50		
Check #	<u>ET</u>	NYS DEC RAU		\$ 39.88		

Agenda Item #3

RE: Approval of the sale of 1634 Ontario Avenue to Edward L. Fultz for the sum of \$500.00

Council Members:

The City has received a request from the adjoining property owner to purchase the above referenced City-owned property for the sum of \$500.00. This property was approved for sale by the Planning Board. Attached hereto is a copy the Planning Board's approval.

Will the Council approve the sale of this premises for this price in an "as is" condition and with the requirement to combine the properties, with the closing to be performed within 30 days, and with the standard pre-condition that the purchaser is not delinquent with any tax or water bill.

Will the Council further authorize the Mayor to execute any deeds or other documents necessary to effectuate this transaction?



# City of Niagara Falls, New York

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

September 14, 2016

## NIAGARA FALLS PLANNING BOARD

**APPROVAL OF RECOMMENDATION TO CITY COUNCIL**  
**Disposition of Property – Real Property Sale**

Pursuant to action taken by the Niagara Falls Planning Board on the 14<sup>th</sup> day of September, 2016 your request is hereby granted.

**NAME OF OWNER:** City of Niagara Falls  
**ADDRESS OF ACTION:** 1634 Ontario Avenue (SBL# 144.40-2-46)  
**PURPOSE:** Sell property adjacent to Edward Fultz to use for parking

A real property disposition recommendation is made with the following condition(s):

- Parcels shall be amalgamated.

DATE: September 14, 2016

  
Tony M. Palmer, Chairman  
Niagara Falls Planning Board

16 SEP 15 AM 11:09  
NIAGARA FALLS  
CITY CLERK



Printed on Recycled Paper



Agenda Item #4

*RE: New Fire Hose Purchases*

Council Members:

The Fire Chief advises that the Department is running extremely low on replacement hose of all different sizes. It is therefore requested that the sum of \$5,000.00 be made available to the Department for this purpose.

Funding is available from casino revenue earmarked for Fire Department capital purchases.

Will the Council so approve?

Agenda Item #5

*RE: Purchase of ID Maker for Fire Department*

Council Members:

The Fire Chief has identified a need to have equipment available in the Department in order to make IDs for NFFD personnel and also for non-NFFD personnel who assist the NFFD in large incidents so that their identity may be ascertained by those persons securing the area. The sum of \$3,000.00 is requested for this purpose.

Funding is available from casino revenue earmarked for Fire Department capital purchases.

Will the Council so approve?

Agenda Item #6

*RE: Accept conveyance of 1746 James Avenue, Niagara Falls NY  
from the County of Niagara*

Council Members:

The City is in the process of completing the paperwork to secure a grant for the construction of a fire training tower at 1746 James Avenue, Niagara Falls, NY (the "Premises"). The Premises is currently owned by the County of Niagara. The Niagara County legislature unanimously approved the transfer of the Premises to the City for no consideration for the purpose of the construction of a new fire training tower on the Premises by the City. The acceptance of the conveyance of the Premises is contingent upon the City receiving the grant to construct the fire training tower on the Premises as well as the Corporation Counsel's office doing its due diligence as concerns title issues and related inquiries as concerns the condition of the Premises.

Will the Council so approve and authorize the Mayor to execute any documents required to transfer the Premises to the City provided the same are satisfactory to the Corporation Counsel?



# City of Niagara Falls, New York

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

October 26, 2016

## NIAGARA FALLS PLANNING BOARD

**APPROVAL OF SITE PLAN**

Pursuant to action taken by the Niagara Falls Planning Office on the 26th day of October 2016 your request is hereby granted.

**NAME OF OWNER:** Proposal by Craig Johnson, Law Department for the city of Niagara Falls, to accept conveyance of property from Niagara County

**ADDRESS OF ACTION:** 1746 James Avenue SBL# 130.15-1-1

**PURPOSE:** Accept Conveyance of property from Niagara County for the purpose of erecting a fire training tower by City firefighters as well as various companies located within Niagara County

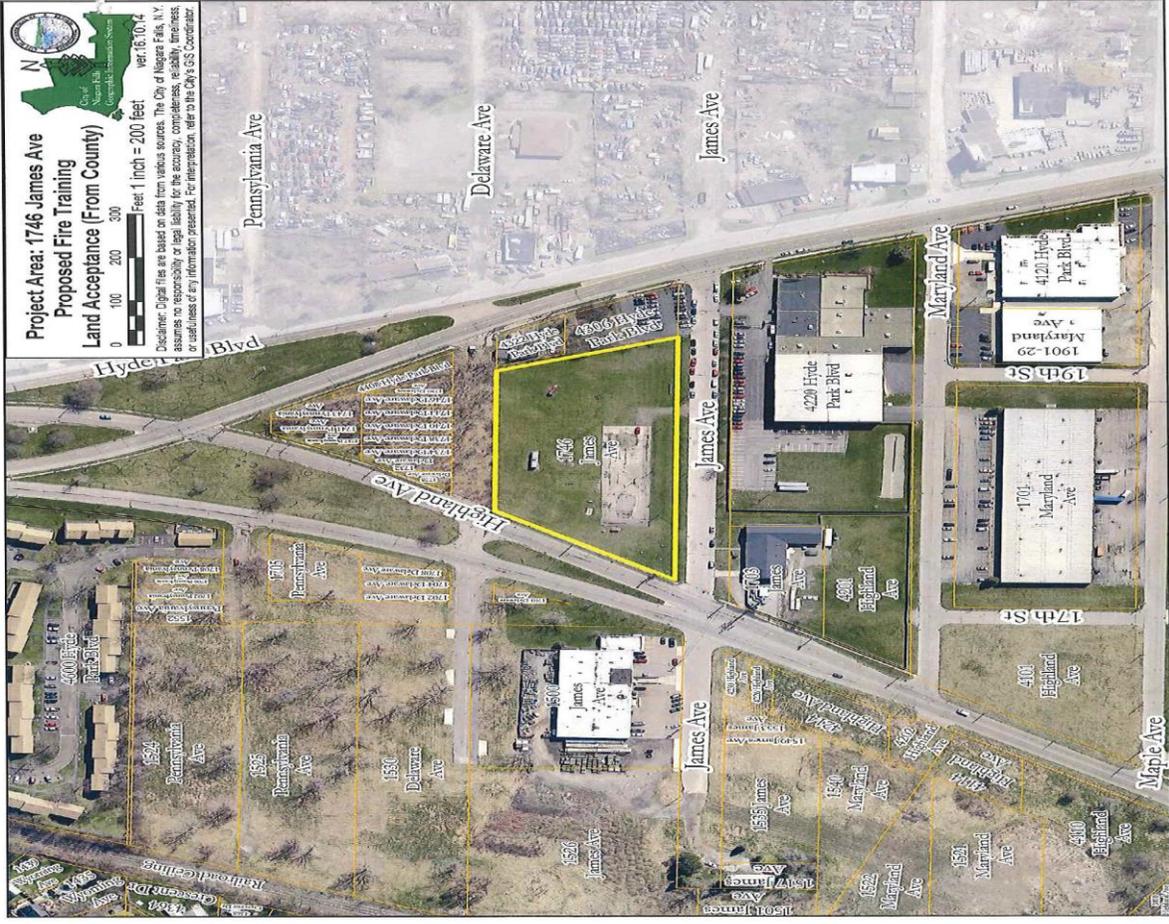
This application is hereby granted subject to the attached conditions. Failure to comply with these conditions will result in immediate revocation of any approval associated herein.

DATE: October 26, 2016

  
\_\_\_\_\_  
Tony M. Palmer, Chairman  
Niagara Falls Planning Board

2016 OCT 27 AM 10:31  
RECEIVED  
CITY OF  
NIAGARA FALLS  
CITY CLERK'S OFFICE





Map showing the project area at 1746 James Ave, outlined in yellow, and surrounding streets including Pennsylvania Ave, Delaware Ave, James Ave, Maryland Ave, and Highland Ave. The map includes a scale bar (1 inch = 200 feet) and a north arrow.

Agenda Item #7

*RE: Lease with Amtrak*

Council Members:

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

It is for an initial term of twenty (20) years and is subject to Amtrak's option for two additional twenty (20) year terms.

Amtrak is responsible for a pro rata share of certain expenses related to the building on the ratio of its use (including the use of the Department of Homeland Security) in the amount of 29,360 square feet of the total 46,430 square feet of the building (63%).

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

**LEASE AGREEMENT**  
**(Niagara Falls, New York - Station)**

This Lease Agreement ("Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF NIAGARA FALLS, NEW YORK, a municipal corporation ("LESSOR"), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the former Rail Passenger Service Act and the laws of the District of Columbia, with offices at 30<sup>th</sup> Street Station, 5<sup>th</sup> Floor South Tower, Philadelphia, PA 19104 ("AMTRAK").

**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; and

AMTRAK desires to lease a portion of the two story building and adjoining space, covering forty six thousand four hundred thirty (46,430) square feet (the "Station") located on the Property, consisting of the following areas described in **Exhibit "B"**, attached hereto and made a part hereof: museum, future retail, lobby/atrium/common space, DHS and Amtrak (the DHS area consists of building, platform and site space, collectively, the "DHS Space"), and (the portion of the Station to be leased by Amtrak consists of building and platform space, collectively, the "Amtrak Space"); and

AMTRAK and LESSOR have agreed that AMTRAK shall be responsible for certain costs related to the DHS Space which will be reflected in AMTRAK's pro rata share of the expenses set forth in Section 3.

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

1. **PREMISES**

a. LESSOR hereby leases to AMTRAK and AMTRAK leases from LESSOR, for the "Term" (as defined below), and pursuant to the terms and conditions set forth herein the Amtrak Space consisting of fourteen thousand nine hundred fifty square feet (14,950) also described herein as the "Premises". LESSOR and AMTRAK agree that for purposes of calculating AMTRAK's pro rata share of the expenses set forth in Section 3 only, the DHS Space consisting of fourteen thousand four hundred ten square feet (14,410) will be deemed included in the Amtrak Space.

b. LESSOR also hereby grants to AMTRAK, its employees, agents, licensees, contractors, passengers 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"). Common areas include sidewalks, plazas,

parking areas, driveways, hallways, stairways, elevators, escalators, public bathrooms, loading docks (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.

2. TERM

a. The initial term of this Lease shall be for twenty (20) years ("Term") commencing ten (10) business days after the issuance (and delivery to AMTRAK) of a final occupancy permit (a temporary occupancy permit is not acceptable unless consented to in writing by AMTRAK's senior real estate development officer, which decision to accept a temporary occupancy permit is in the sole and absolute discretion of AMTRAK) for the Premises and providing that the Premises complies with Amtrak's requirements ("Commencement Date"). If the Commencement Date has not occurred prior to the six month anniversary of the date of this Lease, AMTRAK may cancel this Lease. The Term will end twenty (20) years thereafter, unless (a) sooner terminated (i) by AMTRAK giving thirty (30) days' prior written notice to LESSOR that AMTRAK's rail passenger service to the City of Niagara Falls, New York, will relocate or cease or (ii) in the event LESSOR elects not to rebuild the Station as provided in paragraphs 13 and 14 in this Lease or (b) extended by AMTRAK as provided below.

b. On or about the Commencement Date, LESSOR shall execute and deliver to AMTRAK a Declaration of Commencement ("Declaration") in the form attached hereto as Exhibit C. AMTRAK shall promptly execute such Declaration confirming the Commencement Date and return such to LESSOR.

c. AMTRAK shall have the option to extend the Term of this Lease for two (2) additional twenty (20) 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. Any extended term shall be upon all the same terms and conditions as set forth in this Lease.

d. AMTRAK acknowledges that it has entered into, and intends to comply with, the terms of that certain Agreement for the Provision of Rail Passenger Service, between AMTRAK and the State of New York, for the purpose of providing passenger rail service to the City of Niagara Falls now and expects to continue such service into the future.

3. FEEs and REIMBURSEMENTS

a. AMTRAK 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, AMTRAK shall reimburse LESSOR on a quarterly basis for a pro rata share of LESSOR'S actual costs and expenses associated with the ongoing operation and maintenance, non-structural repairs and services set forth in Section 10. Maintenance, Repair and Services of the Property ("Reimbursement"). 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. AMTRAK's pro rata share shall be calculated as the ratio of twenty nine thousand three hundred sixty (29,360) to forty six thousand four hundred thirty (46,430). LESSOR shall provide AMTRAK with detailed quarterly invoices, including copies of LESSOR's statements identifying LESSOR's actual costs and expenses in order to obtain Reimbursement from AMTRAK, which AMTRAK shall pay on a quarterly basis and

without setoff.

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 shall be the responsibility of, and paid by, the LESSOR. The cost of any renovations or alterations necessary for any passenger railroad operations in the seven thousand two hundred (7,200) square feet of space described in Exhibit B as the "Amtrak" building shall be the sole responsibility of, and paid by, the AMTRAK.

d. AMTRAK shall deposit with the LESSOR, within thirty (30) days of the signing of this Lease, a lump sum Advance Payment of fifty-thousand, dollars (\$50,000.00).

e. The LESSOR shall apply the Advance Payment to the first quarter expenses and the balance, if any, shall be applied toward subsequent payments.

4. USE

AMTRAK may occupy and use the Premises for any lawful purpose reasonably related to Amtrak's business, including but not limited to the operation of a rail passenger station and all of AMTRAK's current and future business operations (the "Use"). Operations characteristic to AMTRAK's business shall include (but not be limited to) ticketing, waiting area for passengers, AMTRAK passenger restrooms, AMTRAK employee restrooms, immigration and customs operations, related package, baggage, and express services and office, bus service contracted for by AMTRAK to provide connecting service and related operations incidental to AMTRAK's business. Operations incidental to AMTRAK's business shall include (but not be limited to) retail use for the convenience of AMTRAK's passengers, such as newsstands, Automatic Teller Machines, Automatic Ticket Machines, Wi-Fi, beverage and snack vending machines, charging stations for mobile devices, and courtesy telephones for car rental agencies. AMTRAK 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). Use shall exclude food service of any kind without the express permission of the LESSOR.

5. PARKING

AMTRAK shall have the non-exclusive right to use, Fifty Two (52) parking spaces, which shall be marked for short and long term passengers and include two dedicated AMTRAK employee spaces and the appropriate number of accessible parking spaces; in the parking area located at the Property as shown on **Exhibit "A"**, attached hereto and made a part hereof. Notwithstanding the foregoing, the City represents and warrants that the capacity of the Station Lot is sufficient to provide adequate unreserved parking spaces for AMTRAK up to 52 spaces.

6. HOURS OF OPERATION

AMTRAK shall have the right to keep the Premises open at all such times as it desires. Notwithstanding the foregoing, the Lessor shall allow AMTRAK access to common areas and LESSOR shall ensure Station is open at least one hour before the first train departure and until thirty minutes past the last train arrival each day. AMTRAK shall

provide thirty (30) days notice of change in service hours. AMTRAK will appropriately manage their space and their operations. LESSOR shall ensure opening and closing times will not impair AMTRAK use of the Premises.

7. UTILITIES

Except as provided for in this Section, LESSOR shall make all arrangements and installations for the provision of and pay for all utilities necessary for AMTRAK's occupancy and use of the Premises. If LESSOR causes the Premises to be sub-metered for the actual utility consumption by AMTRAK, AMTRAK shall pay for the costs of such utility consumption directly to the providing utility, providing LESSOR has made arrangements for, installed and paid for such utility lines. If AMTRAK pays for the costs of such utility consumption directly to the providing utility; utility costs shall not be made a part of the Reimbursement defined in Section 3.b.

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, ordinances and codes, including without limitation, the Americans with Disabilities Act of 1990, as amended (42 USC 12101 et seq.) ("ADA"), the Rehabilitation Act of 1973, as amended (29 USC 794 et seq.) ("Rehabilitation Act") and the implementing regulations including but not limited to those set forth at 49 CFR parts 27, 37 and 38 ("Regulations"), and in accordance with the previously approved Station construction documents.

LESSOR shall be responsible for the costs of any structural or other changes required by federal, state or local regulatory changes applicable to public buildings.

9. SIGNAGE AND COMMUNICATION SYSTEMS

AMTRAK's business signs and signs needed for security, passenger information display system, including audio components, ("PIDS") or ADA compliance or other signs required for AMTRAK to be in compliance with any laws, statutes, regulations or government requirements are deemed approved by LESSOR ("Business Signs"). AMTRAK may (a) erect, keep and maintain Business Signs (including audio components) on the Property throughout the Term of this Lease. All other signs shall not be erected without the prior approval of LESSOR, which approval shall not be unreasonably denied, delayed or conditioned. AMTRAK shall not erect or install any sign in the Station that violates any applicable law, ordinance, rule or regulation of any Federal agency.

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 and AMTRAK's use and occupancy of its Premises, including, but 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 provide these services.

b. LESSOR shall pay all costs, expenses, fees, taxes 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 by reason of 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 AMTRAK's use of the Premises.

(ii) Janitorial services and general maintenance, cleaning and upkeep to the Property (including the Premises); except for the AMTRAK ticket office (janitorial services to the AMTRAK ticket office shall be performed by AMTRAK employees only);

(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 AMTRAK'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;

(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 passenger train operations are scheduled;

(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 including in the Amtrak waiting area HVAC, illumination, repairs, replacements, snow and ice removal, lawn care and landscaping;

(viii) A building manager or engineer capable of responding to AMTRAK's requests for service (including but not limited to elevator) within two (2) hours during all times when AMTRAK's passenger train operations are scheduled;

(ix) Police and/or Security services in a manner reasonably acceptable to AMTRAK;

(x) In addition to the services set forth above, LESSOR shall provide public access to the Station one hour before the arrival of the first Amtrak scheduled train in the morning, and until 30 minutes after the arrival of the last scheduled Amtrak train of the day, and as train scheduling requires when Amtrak staff is not otherwise present. During the first six years of this Lease, the cost of this service to Amtrak shall not exceed \$40,000.00 per annum (the "Cap"). Commencing on the seventh year anniversary of the commencement of the of this Agreement, and every year anniversary thereafter (each, a "Rent Adjustment Date") the Cap shall be increased by the percentage increase in the Consumer Price Index -

All Urban Consumers (CPI-U) published for the Northeast Region; Not Seasonally Adjusted; All Items (CPI-U) (the "CPI-U"), by comparing the CPI-U from the November immediately preceding the applicable Rent Adjustment Date to the CPI-U to the immediately prior November.

(xi) 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 AMTRAK's use and occupancy of the Premises.

e. AMTRAK shall be responsible for the maintenance and repair of any trade fixtures, equipment or other personal property of AMTRAK located on or within the Premises and charges for any services for AMTRAK's sole use and benefit arranged for by AMTRAK 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 days after notice from AMTRAK of such failure, AMTRAK may provide any such maintenance, repairs and services or arrange for the provision of such. In the event AMTRAK provides any such maintenance, repairs or service, LESSOR shall reimburse AMTRAK for its pro rata share of the cost and expense of such maintenance, repairs and services within forty-five (45) days of notice from AMTRAK for such payment. Upon request of LESSOR, AMTRAK shall supply LESSOR with verification of all costs.

11. ALTERATIONS AND IMPROVEMENTS

AMTRAK 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 AMTRAK shall in any way impair the structural stability of the Property.

b. AMTRAK shall request LESSOR's approval prior to making any alterations or improvements and all alterations or improvements must be approved in writing by LESSOR. LESSOR's approval shall not be unreasonably withheld, conditioned or delayed.

c. AMTRAK shall cause the Premises to be kept free and clear of any mechanic's lien or materialmen's liens which may arise out of the construction of any such alterations or improvements by AMTRAK.

d. Except for AMTRAK'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. AMTRAK's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of AMTRAK and may be removed by AMTRAK at any time during the Term or upon the expiration or sooner termination of this Lease (including any extension term). AMTRAK shall repair any damage to the Premises or Property caused by AMTRAK's removal of its personal property, trade

fixtures, or equipment, but AMTRAK shall have no obligation to remove such items from the Station at any time.

f. AMTRAK, in its sole discretion and at its cost, and without limiting the obligations of LESSOR herein, may make improvements to the Property required for the installation of PIDS (including visual and audio components) or to comply with the ADA, the Rehabilitation Act or implementing any Regulations or other statutes, laws regulations or judicial or legislative mandates. If AMTRAK chooses to make such improvements, AMTRAK may enter in, on, over, through and upon the Property to obtain access to make such improvements. LESSOR's approval shall not be required for such improvements. However, thirty (30) days written notice of Amtrak's intent and copies of signed and sealed engineering or architecture drawings will be provided to the LESSOR for any material alterations to the Premises. AMTRAK will not make alterations to the building or the building infrastructure that may require material changes to or materially impact to the main equipment servicing the Station.

g. Upon the consent of LESSOR which shall not be unreasonably withheld, AMTRAK, may make improvements to the Property or adjacent areas for security purposes, to include the right to install security cameras and intrusion detection systems. AMTRAK may enter in, on, over, through and upon any property of LESSOR to obtain access to make such improvements. LESSOR has or will have security cameras and intrusion detection systems installed throughout the Property that may be used by AMTRAK. LESSOR agrees, without further compensation, that AMTRAK shall have the right to access information, recordings, feeds and video from such security systems and that AMTRAK may share such information with federal, state or local law enforcement agencies for security purposes. AMTRAK's access to the LESSOR's security system shall be established through a mutually acceptable protocol and AMTRAK will not make any improvements that would otherwise impact the existing systems functionality and purpose within or without the building and site.

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

## 12. INSURANCE AND INDEMNIFICATION

a. AMTRAK 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 in connection with AMTRAK's, its officers, officials, directors, employees or agents, sole and direct willful misconduct in the use of the Property.

b. AMTRAK shall cover its indemnity obligations hereto under its corporate-wide self-insurance program.

c. AMTRAK shall cause all its subcontractors who perform work at the

Station to add LESSOR and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

d. LESSOR shall indemnify, defend and hold harmless AMTRAK, its officers, officials, employees and agents 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 the sole and direct willful misconduct of LESSOR its officers, officials, directors, employees or agents in connection with this Lease.

e. LESSOR shall cause all its subcontractors who perform work at the Station to add LESSOR and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

f. LESSOR shall procure and maintain throughout the Term of this Lease insurance as specified on Exhibit D, attached hereto and made a part hereof, and property insurance on the Station for its full replacement value, including the value of all alterations and improvements that are permanently affixed to the Station, with AMTRAK designated as a loss payee as respects its interests in the covered property.

13. DAMAGE OR DESTRUCTION

In the event of destruction, or substantial damage, to the Premises during the Term of this Lease, which renders the Premises unusable to AMTRAK, in AMTRAK's sole discretion, LESSOR shall have the option of:

a. Within one hundred eighty (180) days after such damage or destruction, replacing or rebuilding the Station, including the Premises, and in such manner and according to such plans and specifications which would restore the Station, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage, in which event LESSOR shall provide temporary facilities while such replacement or rebuilding is ongoing; or

b. Declining to replace or rebuild, in which event AMTRAK shall have the option of terminating this Lease Agreement by written notice.

c. If LESSOR does not build the Station, AMTRAK may require LESSOR to provide AMTRAK with suitable alternative space to use as a passenger station the proximity of the Station and adjacent to the passenger platforms.

d. LESSOR shall notify AMTRAK within thirty (30) days after such damages or destruction of LESSOR's decision to rebuild the Station including the Premises or declining to rebuild. During the 180 day repair or replacement period identified in Subsection (a) above, AMTRAK shall have no obligation to: (1) Pay any costs or expenses associated with the Station, including the Premises, required under this Lease; or (2) Provide any services to the Premises required under this Lease.

14. EMINENT DOMAIN

Eminent domain proceedings resulting in the condemnation of part of the Premises herein that leave the remaining portion usable by AMTRAK for purposes of the business for which the Premises are leased in AMTRAK's sole opinion, will not terminate this Lease Agreement. If AMTRAK, in its sole opinion, determines that the remaining portion is not usable by AMTRAK, AMTRAK may terminate this Lease by giving written notice of

termination to LESSOR no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should AMTRAK not terminate this Lease, will be to terminate this Lease Agreement as to the portion of the Premises condemned and leave it in effect as to the remainder of the Premises, and the Fee and all other expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of LESSOR, except to the extent that part of the award is allocated as damages to fixtures on the Station which were furnished by AMTRAK, damages for the value of AMTRAK's leasehold estate or relocation expenses for AMTRAK, which compensation shall be the property of AMTRAK.

If LESSOR does not rebuild the Station, AMTRAK may require LESSOR to provide AMTRAK with suitable alternative space to use as a passenger station in the proximity of the Station and adjacent to the passenger platforms.

15. ACCEPTANCE

AMTRAK hereby acknowledges that when it occupies the Premises it shall be deemed to have received the Premises in good order and condition unless AMTRAK notifies LESSOR of defects or problems with the Premises within one (1) year after AMTRAK takes occupancy. If AMTRAK notifies LESSOR as aforesaid, LESSOR shall take action to correct and repair any defects or problems identified by AMTRAK within thirty (30) days after the date of the notice.

16. SUBLEASE AND ASSIGNMENT

a. AMTRAK 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 AMTRAK 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 AMTRAK 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.

b. Notwithstanding the proceeding paragraph, AMTRAK 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. AMTRAK shall endeavor to encourage the expansion of passenger rail service at the Station.

17. DEFAULT BY AMTRAK

The failure of AMTRAK 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 AMTRAK 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 AMTRAK has commenced such correction, shall constitute an "Event of Default" by AMTRAK.

18. RIGHTS OF LESSOR AFTER DEFAULT BY AMTRAK

If an Event of Default by AMTRAK occurs, as provided in Section 17, 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 AMTRAK, to terminate this Lease.

19. 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 AMTRAK identifying such failure, such failure shall constitute an "Event of Default" by LESSOR. If an Event of Default by LESSOR occurs, AMTRAK, at its sole option and discretion, may: (1) perform such covenant or obligation on behalf of LESSOR in which event the LESSOR shall reimburse AMTRAK the pro rata costs and expenses associated with AMTRAK's performance (including attorney's fees and applicable overhead additives) within twenty (20) days after AMTRAK presents an invoice to LESSOR for such performance; (2) terminate this Lease; or (3) pursue any and all rights and remedies available at law or in equity.

20. QUIET ENJOYMENT

If and so long as AMTRAK 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 AMTRAK.

21. RIGHT OF ENTRY UPON PREMISES

LESSOR and its agents and employees shall have the right to enter upon the Premises, with prior written notice or, if accompanied by an AMTRAK employee, to inspect the same to determine if AMTRAK 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 to perform service and maintenance pursuant to its obligations under this Lease.

22. TAXES

Pursuant to 49 U.S.C. §24301(1), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

23. COMPLIANCE WITH LAWS, ORDINANCES, AND RULES

a. AMTRAK agrees to comply with all applicable laws, ordinances, rules, regulations, and requirements of Federal authorities now existing or hereinafter created in its use of the Premises, which AMTRAK deems are applicable and which are not the responsibility of LESSOR.

b. LESSOR agrees to comply with all applicable laws, ordinances, rules, regulations and requirements of Federal, state, county or other governmental authorities (including, without limitation, the ADA, the Rehabilitation Act and Regulations) now existing or hereinafter created in connection with LESSOR's ownership, maintenance and use of the

Station and the Property.

c. LESSOR represents and warrants that the Station, Property and improvements thereon, including but not limited to parking areas and paths of travel, comply with the ADA, the Rehabilitation Act and Regulations. If any noncompliance therewith is found to exist, LESSOR will at its own cost and expense make all repairs, replacements, or alterations necessary to comply with such applicable requirements. Nothing under this Lease shall be interpreted as making AMTRAK a "responsible person" under the ADA.

LESSOR represents that it has received approval from the FRA under 49 CFR 37.42(d) and any other applicable regulation or the requirements of any grants from the Federal government to AMTRAK, and that LESSOR provided FRA with all necessary information, including a boarding plan for the Station before any platform improvements began.

24. CONDITION OF PREMISES UPON SURRENDER

When AMTRAK vacates the Premises at the expiration of the Term or earlier termination of this Lease, whichever occurs first, AMTRAK shall leave the Premises in the same condition as when AMTRAK 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.

25. 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 a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

26. 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 AMTRAK as an agent or representative of LESSOR for any purpose or in any manner whatsoever.

27. PARTIES BOUND

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

28. 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:

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

AMTRAK:  
AMTRAK  
30th Street Station, 5th Floor  
South Philadelphia, PA 19104  
Attn: Senior Director,  
Real Estate Development

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

29. ADJUDICATION

All adjudication relating to this Lease shall be in the United States District Court for the Western District of New York.

30. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.

Time is of the essence of each and all the terms and provisions of this Lease, and the terms and provisions of this Lease shall extend to and be binding upon and inure to the benefit of the, administrators, successors and assigns of the respective parties hereto.

31. 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.

32. 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.

33. 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 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.

34. HOLDING OVER

IF AMTRAK 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 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 AMTRAK any rights to so hold over and to continue in possession of the Premises without the consent of LESSOR.

35. 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.

36. SALE OF THE STATION/NON-DISTURBANCE

LESSOR, and all succeeding landlords agree that it shall not sell, transfer, assign or in any manner dispose of or change ownership or control of the Station without prior written consent of AMTRAK, which consent shall not be unreasonably withheld. Such consent shall be subject to, inter alia, the new landlord, controlling party or owner agreeing in writing to be bound by all of the provisions of this Lease. LESSOR shall record this Lease in the recorder of deeds for the City of Niagara Falls or County of Niagara, as appropriate. This Lease shall not be subordinate to any other liens, mortgages or encumbrances unless such owner or holder of the lien, mortgage or other encumbrance signs a non-disturbance agreement approved by AMTRAK, in its sole discretion, prior to any disposition of the Station.

37. AUDIT RIGHTS

AMTRAK, its Office of Inspector General or the Federal Railroad Administration, their respective agents, designees and accountants shall have the right at any time or from time to time for up to five (5) years after this Lease is terminated and final payments of all sums due hereunder are made, and after advance notice to LESSOR, to make any examination, inspection or audit of LESSOR's books and records which relate in any way to the Station, the Premises, this Lease, or to any payments of any sums of money due or paid pursuant to this Lease or the Premises or the Station. If it is determined that any charges paid by AMTRAK have, in error, been underpaid or overpaid, then: (i) the Party that has been underpaid shall be reimbursed the amount of such underpayment by the other Party; or (ii) the Party that has been overpaid shall refund the amount of such overpayment to the other Party.

Nothing in this Lease shall be construed to limit the rights, obligations, authority, or responsibilities of AMTRAK's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

38. STATUTORY AND DEED RIGHTS

Nothing herein shall waive any rights benefiting AMTRAK whether statutorily granted or in the land records for the Property or granted pursuant to other means. The termination of this Lease shall not be interpreted as being a termination of the rights granted to AMTRAK pursuant to the land records for the Property or any statute or by any other means.

39. This Agreement shall be governed by the Laws of the State of New York.

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

"LESSOR"

**CITY OF NIAGARA FALLS,  
NEW YORK**

By \_\_\_\_\_  
Paul A. Dyster, Mayor

"AMTRAK"

**NATIONAL RAILROAD PASSENGER  
CORPORATION**

By \_\_\_\_\_  
William Bush, Vice President

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael F. Collins  
Associate General Counsel  
Amtrak Law Department

## Agenda Item #8

### **Grant Acceptance: Local Initiatives Support Corporation – Zombie Fight Project**

The Niagara Falls Community Development Department (CD) was awarded a competitive Local Initiatives Support Corporation (LISC) grant of \$250,000 on October 12, 2016. This grant is not funded by tax payer dollars at any level of government. It also does not require the city to expend funds prior to disbursement. The grant is the result of the February 11, 2016 settlement agreement between Morgan Stanley and the New York Attorney General. These grant funds are being made available as part of the activities of the New York State Housing Stabilization Fund.

The City of Niagara Falls' proposed Zombie Fight Project (ZFP), managed by CD, will target vacant residential properties through enhanced inspections, the use of new technology and a data driven model designed to identify, target and renovate vacant properties. Initial deliverables include:

- (1) Form/lead the Abandoned Property Task Force, including public outreach;
- (2) Create and monitor the "25 Most Wanted Zombies List," providing quarterly updates;
- (3) Create and manage a zombie/vacant properties database, including online mapping;
- (4) Execute exterior inspections of targeted properties;
- (5) Create a Zombie/Blighted Property Inspection Checklist with the city's inspections department;
- (6) Conduct title searches and assist expedited foreclosures; and
- (7) Along with Niagara Falls Community Development Staff, conduct outreach to current/displaced home owners regarding mortgage modifications, or renovation programs. Existing CD funds will be dedicated to physical housing improvements.

Will the Council allow the Mayor to officially accept this grant and authorize necessary agreements?

Agenda Item #9

*RE: Northpointe Council, Inc.*

Council Members:

As the Council is aware, Northpointe Council, Inc. (“Northpointe”) has run a drug treatment clinic in the Trott Center for a number of years. Due to space constraints at the Trott Center, it has been looking for a new site within the City of Niagara Falls.

Recently it has been determined that due to other vacancies in the Trott facility, that Northpointe will be able to relocate and expand within the Trott facility to continue its operations in the City.

As there will be some build-out costs associated with changes to the Trott facility to accommodate Northpointe, it is requested that the Council appropriate up to \$50,000.00 of casino funds to provide a grant to Northpointe for this work. The County of Niagara is in favor of Northpointe remaining at Trott and is also looking at granting a similar sum to Northpointe to facilitate this.

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

Agenda Item #10

SUBJECT: Second Hand Dealers

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Chapter 338 of the Codified Ordinances states: “338.03...City Council may grant a license to carry on the business of secondhand dealer within the City...”

The following have submitted applications for secondhand dealer licenses. These applications have been approved by the Niagara Falls Police Department.

Uzed Dealz  
1715 Pine Ave  
Niagara Falls, NY 14301

Will the Council so approve?