

COMMUNITY DEVELOPMENT: COLVIN BLVD., 9330, CYAA, LEASE

Agenda Item #6

The Niagara Falls Community Development Department requests Niagara Falls City Council approval of a twenty year lease of 9330 Colvin Boulevard by Cayuga Youth Athletic Association (CYAA). If approved, this would establish a \$1 annual lease for recreational use term of 20 years.

Lot Size: 6.7 acres
 SBL #: 161.10-5-71.2
 Property Type: Vacant Land

The Niagara Falls Planning Board recommended disposition at its September 26, 2018 Planning Board meeting. In June 2018, the Niagara Falls Community Development Department (CD) advertised a Request for Proposals (RFP) for the acquisition 9330 Colvin Boulevard, with proposals due back to CD on June 29, 2018. The RFP was advertised in the Niagara Gazette legal section for three consecutive weeks, and on www.nf-cd.org.

CYAA was the only RFP respondent. CYAA has requested use of this parcel for several years. The parcel would be used for athletic purposes. CYAA, and its membership of over 500 local families have exceeded its current space on Colvin Boulevard, adjacent to 9330 Colvin Boulevard, and 91st Street Park. Niagara Falls Community Development asserts that recreational use of this parcel supports neighborhood quality of life. The lease allows the City of Niagara Falls to reevaluate the highest and best use of the property.

Will the Council vote to approve this lease and authorize the Mayor to execute any documents necessary to effectuate the same?

Council Member Tompkins moved that the communication be received and filed and the recommendation approved.

Yeas
 Nays

5
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APPROVED

CODE ENFORCEMENT: DEMOLITION FUNDING TRANSFER

Agenda Item #7.

The Department of Code Enforcement requests City Council approval of a \$100,000 transfer from the tribal revenue reserve fund to the emergency demolitions and board up fund (H-0910).

The Department of Code Enforcement will solicit individual demolition bids for these structures to expedite completion. This request follows recent conversations between the administration and the City Council.

In the coming weeks, the Department of Community Development will also solicit bids for the demolition of specific structures with United States Department of Housing and Urban Development Community Development Block Grant funding. Middle Pine neighborhood demolitions were prioritized in the 2018 Participatory Budgeting (PB 360) process. That contract will be brought to the City Council for a vote upon receipt of contract bids.

Does the City Council approve of this transfer?

Council Member Tompkins moved that the communication be received and filed and the recommendation approved.

Yeas
 Nays

5
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APPROVED

LEASE AGREEMENT

THIS LEASE AGREEMENT made the ____ day of November, 2019 and effective the 1st day of January, 2020 by and between the **CITY OF NIAGARA FALLS, NEW YORK**, a municipal corporation organized under the laws of the State of New York, with offices located at 745 Main Street, Niagara Falls, New York (the “City”) and **CAYUGA YOUTH ATHLETIC ASSOCIATION, INC.**, a Federal §501C(3) Domestic Not-For Profit Corporation located at P.O. Box 3001, Niagara Falls, New York (“CYAA”).

WHEREAS, through a variety of methods, the City acquired approximately 6.7 acres of property bearing SBL No. 161.10-5-71.2 which is commonly known as 9330 Colvin Boulevard, Niagara Falls, New York (the “Premises”); and

WHEREAS, the Premises has not been put to any use by the City since it was acquired nor has it been the subject of any previous development proposals or discussions; and

WHEREAS, the Premises has been maintained by the City since it was acquired; and

WHEREAS, in June of 2018, the City circulated a Request for Proposals (“RFP”) for utilization/development of the Premises, a copy of which RFP is attached hereto as “Exhibit A”; and

WHEREAS, CYAA submitted a response to the City’s RFP dated June 28, 2018, a copy of which is attached hereto as “Exhibit B”; and

WHEREAS, the City of Niagara Falls Planning Board reviewed the RFP and the proposal submitted by CYAA and approved the utilization of the Premises by CYAA, a copy of which approval is attached hereto as “Exhibit C”; and

WHEREAS, during its meeting on October 17, 2018, the City Council of the City of Niagara Falls approved the utilization of the Premises as proposed by CYAA a lease of the Premises to the CYAA as proposed which Council approved “allows the City of Niagara Falls to reevaluate the highest and best use of the property;” a copy of which approval is attached hereto as “Exhibit D”; and

WHEREAS, attached hereto as “Exhibit E” is a copy of an overhead map of the Premises together with a copy of a deed to the Premises reflecting its ownership by the City; and

WHEREAS, the Premises is directly adjacent to the CYAA’s current baseball facility located at 1043 – 93rd Street, Niagara Falls, New York; and

WHEREAS, as reflected in its response to the City’s RFP, CYAA wishes to develop the Premises into two (2) new baseball playing fields and also provide for additional off-street parking for persons attending CYAA games and practices; and

WHEREAS, CYAA, as part of its proposal, will take over complete maintenance and responsibility for the Premises.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the City and CYAA agree as follows:

1. AGREEMENT TO LEASE.

The City agrees to lease to CYAA and CYAA agrees to lease from the City the Premises for the purpose of CYAA developing the Premises into two (2) new baseball playing fields of a type to be determined by CYAA together with parking for vehicles utilized by spectators attending CYAA games and practices. Any such improvement and development will be undertaken at the sole cost and expense of CYAA.

2. DEVELOPMENT OF PREMISES.

The City hereby agrees to allow CYAA to develop, at its sole cost and expense, any and all improvements it deems reasonable and necessary in order to accomplish the development of two (2) new baseball playing fields including but not limited to backstops, spectator seating, landscaping and equipment as well as providing for additional off-street parking.

3. CITY RETENTION OF IMPROVEMENTS.

It is agreed by both parties that upon termination of this Agreement as provided herein, any improvements made by CYAA on the Premises, including but not limited to landscaping, parking facilities, foliage, tree plantings and shrubbery, fences, backstops, benches and spectator amenities shall become sole and exclusive property of the City.

4. TERM.

The term of this Agreement shall commence on the 1st day of January, 2020 and shall be for a conditional term of thirty (30) years, and shall terminate on the 31st day of December, 2049 or such earlier date as provided in this Agreement. Upon the termination of this Agreement on the 31st day of December, 2049 or such earlier date as provided in this Agreement, CYAA agrees to vacate the Premises and forfeit any improvements made on the Premises to the City or vacate upon such sooner date as may be set for CYAA to vacate in any written notice from the City. Annual lease amounts to be paid by CYAA to the City as provided herein must be mutually agreed upon every five (5) years during the term of this Agreement.

If, at any time commencing on January 1, 2035, the City, acting with approval of the City Council, determines that there is a higher and better use for the Premises that differs from

CYAA's use of the Premises, the City reserves the right to unilaterally terminate this Agreement. In order to terminate this Agreement as provided herein the City shall give CYAA twelve (12) months written notice of its determination and this Agreement shall terminate on the last day of the twelfth month stated in the written notice given by the City and CYAA must vacate the Premises at the conclusion of that twelve (12) month period of time. CYAA hereby agrees to vacate the Premises at the conclusion of that twelve (12) month period of time and forfeit any improvements made on the Premises to the City.

(a) Extension Terms. Provided CYAA is not in default pursuant to this Agreement and further provided this Agreement has not been terminated as provided herein, this Agreement may be extended by four (4) five (5) year extension terms. The annual amount to be paid to the City by CYAA shall be renegotiated and mutually agreed upon for each five (5) year extension period. In the event the parties fail to mutually agree upon an annual amount to be paid to the City by CYAA prior to commencement of any five (5) year extension period described herein, this Agreement shall automatically terminate and CYAA agrees to immediately vacate the Premises and forfeit any improvements made on the Premises to the City.

Provided the parties mutually agree upon the annual amount to be paid to the City by CYAA, the annual amount to be paid each year shall be due and payable on the 1st day of January each year.

It is understood and agreed that a ten per centum per annum (10%) interest penalty is due and payable to the City on any payment due and not paid within ten (10) days of the date it is due and payable.

5. LEASE AMOUNTS TO BE PAID.

During the first five (5) years of the term of this Agreement (January 1, 2020 – December 31, 2024) CYAA agrees to pay to the City the sum of one thousand dollars (\$1,000.00) per year. Payments are due and payable on the 1st day of January, 2020 and on the 1st day of January each year thereafter for four (4) consecutive years, i.e. January 1, 2021, January 1, 2022, January 1, 2023 and January 1, 2024.

Thereafter, provided CYAA is not in default pursuant to this Agreement and further provided this Agreement has not been terminated as provided herein, the annual amount to be paid to the City by CYAA shall be renegotiated and mutually agreed upon for each five (5) year period remaining in the term of this Agreement; i.e. January 1, 2025 - December 31, 2029, January 1, 2030 – December 31, 2034, January 1, 2035 – December 31, 2039, January 1, 2040 – December 31, 2044 and January 1, 2045 – December 31, 2049.

In the event the parties fail to mutually agree upon an annual amount to be paid to the City by CYAA prior to commencement of any five (5) year period of time in this Agreement, this Agreement shall automatically terminate and CYAA agrees to immediately vacate the Premises and forfeit any improvements made on the Premises to the City.

Provided the parties mutually agree upon the annual amount to be paid to the City by CYAA, the annual amount to be paid each year shall be due and payable on 1st day of January each year.

It is understood and agreed that a ten per centum per annum (10%) interest penalty is due and payable to the City on any payment due and not paid within ten (10) days of the date it is due and payable.

6. INDEMNIFICATION, HOLD HARMLESS AND INSURANCE.

- a. Except to the extent caused by the City or its officers, agents, and employees, the CYAA agrees that it shall defend, indemnify and hold harmless the City, its officers, agents and employees to the maximum extent allowed under New York State law from all liability, causes of action, damages, suits, claims, demands, judgments, losses, costs, expenses and fees, including attorney's fees brought against or imposed upon the City for injury or death to persons or damage to property, including any environmental damage or hazards during the term of this Agreement, as a result of any act or omission occurring in connection with the obligations and responsibilities of the CYAA pursuant to this Agreement.
- b. CYAA will maintain comprehensive general liability insurance as required by the City as specified in the attached Exhibit F. CYAA agrees to look solely to such insurance for recovery of any damages and waives any claim against the City, unless caused by the gross negligence or willful conduct of the City.
- c. CYAA agrees to pay all premiums necessary for said insurance as they become due and provide the City with proof of such payment. The failure to maintain such insurance in place at all times during the term of this Agreement shall constitute a default in the terms of this Agreement.

d. All policies and documentation required herein shall be in form acceptable to the City's Corporation Counsel. To the extent any policies and/or documentation are not acceptable to the City's Corporation Counsel, CYAA shall take all reasonable steps to remedy any deficiencies.

7. ASSIGNMENT OR SUBLETTING.

CYAA may not assign this Agreement or sublet any part of the Premises without the express written approval of the City. In the event that any such assignment or subletting is permitted, CYAA shall remain liable for compliance with this Agreement unless specifically excused in writing from performance by the City. Upon any termination of this Agreement for default, all rights of CYAA in the leases or assignments will inure to the benefit of the City at the City's option, including the right to collect rents. Notwithstanding the foregoing, CYAA may make agreements with service providers to occupy space at the Premises including but not limited to refreshment vendors, so long as the services offered by those providers are related to and incidental to the operation of the baseball fields thereupon.

8. EVENTS OF DEFAULT

The following events are referred to, collectively, as "Events of Default" or, individually, as an "Event of Default":

- a. CYAA fails to make any payment pursuant to this Agreement when same is due;
- b. CYAA fails to provide and maintain insurance coverage in place at all times during the term of this Agreement as required herein.
- c. CYAA fails to cure any deficiency in performance contained in any notification issued by the City.

- d. CYAA vacates or abandons the Premises.
- e. The Agreement for the Premises or any part of the Premises are taken upon execution or by other process of law directed against CYAA, or are taken upon or subject to any attachment by any creditor of CYAA or claimant against CYAA, and said attachment is not discharged or disposed of within fifteen (15) days after its levy;
- f. CYAA files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state or admits material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;
- g. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of CYAA are instituted against CYAA, or a receiver or trustee is appointed for all or substantially all of the property of CYAA, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment;
- h. CYAA fails to take possession of the Premises on the commencement date of this Agreement; or
- i. CYAA breaches any of the other terms, covenants or conditions that this Agreement requires CYAA to perform and such breach continues for a period of fifteen (15) days after written notice from City to CYAA or, if such breach cannot be cured reasonably within such a fifteen (15) days period, if CYAA fails to diligently commence to cure such breach within fifteen (15) days after written notice from the City and to complete such cure within a reasonable time thereafter.

9. CITY'S REMEDIES.

If any one or more events of defaults set forth in Section 8 occurs, then the City has the right, at its election;

- a. To give CYAA ten (10) days written notice of the termination of this Agreement and upon the giving of such notice and the expiration of such ten (10) day period, CYAA's right to possession of the Premises will cease and this Agreement will be terminated, except as to CYAA's liability, as if the expiration of the term fixed in such notice for the end of the Term;
- b. Without further demand or notice, to reenter and take possession of the Premises or any part of the Premises, repossess the same, expel CYAA and those claiming through or under CYAA, and remove effects of both or either, using such lawful force for such purposes as may be necessary without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of license fees or utility contributions or other amounts payable under this Agreement or as a result of any preceding breach or conveyance or conditions; or
- c. Without further demand or notice to cure any Event of Default and to charge CYAA for the cost of affecting such cure, including without limitation reasonable attorneys' fees and interest on the amounts so advanced at the rate of 9% percent per annum provided that the City will have no obligation to cure any such event of default of CYAA.

Should the City elect to reenter as provided in subsection (b), or should the City take possession pursuant to legal proceeding or pursuant to any notice provided by law, the City may, from time to time, without terminating this Agreement, relet the Premises or any part of the Premises in the City's or CYAA's name, but for the account of CYAA, for such term

or terms (which may be greater or less than the period which would otherwise have constituted the balance or the Term) and on such conditions and upon such other terms (which may include concessions of lease payments and alteration and repair of the Premises) as the City, in its reasonable discretion, may determine, and the City may collect and receive the lease payments. The City will in no way be responsible or liable of any failure to relet the Premises or any part of the Premises or for any failure to collect any lease payments due upon such reletting. No such reentry or taking possession of the Premises by the City will be construed as an election on the City's part to terminate this Agreement unless a written notice of such intention is given to CYAA. No written notice from the City under this section or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by the City to terminate this Agreement unless such notice specifically so states. The City reserves the right following any such reentry or reletting to exercise its right to terminate this Agreement by giving CYAA such written notice, in which event this Agreement will terminate as specified in such notice.

10. CERTAIN DAMAGES.

In the event that the City does not elect to terminate this Agreement as permitted in this section, but on the contrary elects to take possession as provided in this section, CYAA will pay to the City lease payments and other sums as provided in this Agreement that will be payable under this Agreement if such repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of the City's reasonable expense in connection with such reletting, including without limitation all repossession costs, brokerage commissions, attorneys' fees, expenses of employees, alteration and repair costs, and expenses of preparation for such reletting. If, in connection with any reletting, the new

Agreement term extends beyond the scheduled expiration of the existing term or the Premises covered by such Agreement include other premises not part of the Premises, a fair apportionment of the lease payments received from such reletting and the expenses incurred in connection with such reletting as provided in this section will be made in determining the net proceeds from such reletting and the expense incurred in connection with such reletting as provided in this section will be made in determining the net proceeds from such reletting and lease payment concessions will be equally apportioned over the term of the new lease agreement. CYAA will pay such lease payments and other sums to the City on the days on which the lease payments would have been payable under this Agreement if possession had not been retaken and the City would be entitled to receive such lease payments and other sums from CYAA on each such day.

11. CONTINUED LIABILITY AFTER TERMINATION.

If this Agreement is terminated on account of the occurrence of an Event of Default, CYAA will remain liable to the City for damages in an amount equal to the lease payments and other amounts that would have been owing by CYAA for the balance of the term had this Agreement not been terminated, less the net proceeds, if any, of any reletting of the Premises by the City subsequent to such termination, after deducting all of the City's expenses in connection with such reletting including, without limitation, the expenses enumerated above. The City will be entitled to collect such damages from CYAA on the days on which lease payments and other amounts would have been payable under this Agreement if this Agreement had not been terminated, and the City will be entitled to receive such lease payments and other amounts from CYAA each such day.

12. CUMULATIVE REMEDIES.

Any action or actions for recovery of any amounts of damages set forth herein may be brought by the City, from time to time, at City's election, and nothing in this Agreement will be deemed to require the City to wait until the Term would have expired had there occurred no Event of Default. Each right and remedy provided for in this Agreement is cumulative and is in addition to every other right or remedy provided for in this Agreement or now or after the Agreement date existing at law and in equity or by statute or otherwise, in the exercise or beginning of the exercise or beginning of the exercise by the City of any one or more of the rights or remedies provided for in this Agreement or now or after the Agreement date existing at law or equity or by statute or otherwise will not preclude the simultaneous or later exercise by the City of any or all other rights or remedy provided for in this Agreement or now or after the Agreement date existing at law or in equity or by statute or otherwise. All costs incurred by the City in collecting any amounts and damages owing by CYAA pursuant to the provisions of this Agreement or to enforce any provisions of this Agreement, including reasonable attorneys' fees, from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by the City, will also be recoverable by the City from CYAA.

13. WAIVER OF REDEMPTION.

CYAA waives any right of redemption arising as a result of the City's exercise of any of its remedies under this section.

14. SEVERABILITY.

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

15. NOTICE.

Any notice required herein shall be considered sufficient if such notice is transmitted in writing by hand delivery or certified mail, return receipt requested or overnight delivery to the parties at the addresses set forth above, or such other address that either party may notify the other by notice delivered pursuant to this paragraph. In addition to the foregoing; notice to the City shall also be sent by one of the methods above to:

Niagara Falls City Hall
Office of City Administrator
P.O. Box 69
Niagara Falls, NY 14302-0069

CYAA
P.O. Box 3001
Niagara Falls, NY 14304

Niagara Falls City Hall
Office of Corporation Counsel
P.O. Box 69
Niagara Falls, NY 14302-0069

16. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple originals(s) in order to form a single or multiple original(s) of this Agreement.

17. AUTHORITY.

Each person executing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the Party for which he or she is signing, and that his or her signature binds such Party to the terms and provisions of this Agreement.

18. ENTIRE AGREEMENT.

This Agreement supersedes any prior agreements among the Parties concerning the Premises and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this Agreement, shall have any force or effect. This Agreement shall not be amended or added to in any way except by written instructions executed by the Parties.

19. GOVERNING LAW.

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York.

20. JURISDICTION.

New York State Supreme Court, Niagara County, New York shall be the venue to determine any dispute between the parties that cannot be otherwise resolved.

21. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

CITY OF NIAGARA FALLS NEW YORK

By: _____

Paul A. Dyster, Mayor

Attest:

CAYUGA YOUTH ATHLETIC ASSOCIATION

By: _____