

**BATAVIA CITY COUNCIL
BUSINESS MEETING**

**City Hall - Council Board Room
One Batavia City Centre
Monday, January 11, 2016
7:00 PM**

AGENDA

- I. Call to Order
- II. Invocation – Councilperson Christian
- III. Pledge of Allegiance
- IV. Approval of December 2015 Minutes
- V. Assignment of Agenda Items
- VI. Communications
- VII. Council President Report
 - a. Announcement of the City Council Conference Meeting to be held on Monday, January 25, 2016 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre.
- VIII. City Attorney's Report
- IX. City Manager's Report
 - a. Proclamation – Batavia High School Varsity Football Team
 - b. Proclamation – Genesee Valley Educational Partnership
 - c. Proclamation – Paul Battaglia, Honorary Chairman, Centennial Committee
- X. Committee Reports
 - a. Centennial Address presented by the Centennial Committee
- XI. Public Comments
- XII. Council Responses to Public Comments
- XIII. Unfinished Business

XIV. New Business

- #5-2016 A Resolution of Youth Board Appointments**
- #6-2016 A Resolution to Declare City Fire Department Equipment Surplus for the Purpose of Sale**
- #7-2016 A Resolution to Authorize Budget Amendments**
- #8-2016 A Resolution to Authorize the Transfer of \$11,000 from the Ice Arena Capital Reserve Fund to Replace the Ice Arena Computer Management System**
- #9-2016 A Resolution Authorizing Agreement with New York State Department of Transportation for PE/Design, and R.O.W. Incidentals Associated with the Reconstruction of Summit Street from East Main Street to North Street**
- #10-2016 A Resolution to Schedule a Two Public Hearings to Sell Properties to the Batavia Development Corporation for Brownfield Redevelopment**
- #11-2016 A Resolution to Authorize the City Council President to Execute an Easement Agreement with Empire Telephone Corporation**
- #12-2016 A Resolution to Enter into an Agreement with M. W. Controls Service, Inc. for the Grit Pump Replacement Project**

XV. Executive Session...Litigation, Real Estate, Employment and Attorney-Client Privileged Communications

XVI. Adjournment

#5-2016
**A RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/
BOARDS**

Motion of Councilperson

WHEREAS, certain vacancies exist on various City Committees/Boards; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that
the following appointments be made:

Youth Board

Beverly Hoy
Connor Logsdon

December 31, 2018
August 31, 2016

**Seconded by Councilperson
and on roll call**

#6-2015
A RESOLUTION TO DECLARE CITY FIRE DEPARTMENT EQUIPMENT
SURPLUS FOR THE PURPOSE OF SALE

Motion of Councilperson

WHEREAS, the City Fire Department has declared three (3) Thermal Imaging Cameras as surplus due to the purchase of three (3) new state of the art Thermal Imaging Cameras; and

WHEREAS, the City of Batavia requires a surplus resolution of property valued at \$1,000.00 or greater and approved by City Council; and

WHEREAS, any revenue received from disposal is to be put into the respective department's equipment reserve fund; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Batavia that the City Manager is authorized to declare the following equipment as surplus for the purpose of sale:

Camera	Serial #	Estimated Value
Bullard Eclipse	51982	\$2000 - \$3000
Bullard Eclipse	51985	\$2000 - \$3000
Bullard T3 Max	43773	\$2000 - \$3000

Seconded by Councilperson
and on roll call

#7-2015
A RESOLUTION TO AUTHORIZE BUDGET AMENDMENTS

Motion of Councilperson

WHEREAS, throughout the fiscal year minor incidences occur that require budget amendments to be made:

WHEREAS, the City's Youth Bureau received a donation from Target to be used for National Night out; and

WHEREAS, the City of Batavia received insurance and other settlements for property damage at the police department and on Cedar Street; and

WHEREAS, the City's Youth Bureau received a small grant from Genesee County (\$1,400) to be used in conjunction with remaining unused reserves already approved for appropriations (\$1,400) in the 2015/2016 to replace basketball backboards at a cost of \$2,800; and

WHEREAS, where funding exceeds expense in the incidences, the remaining funds will be placed in respective reserve funds; and

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Batavia does hereby authorize the following budget amendments:

Effective January 11, 2015, amend the 2015-16 budget by increasing expenditure accounts:

001.7310.0456	Youth service – Contract Programs	\$ 500.00
001.3120.0439	Police – Repair and Maintenance	\$ 3,195.00
001.0900.0200.2100	Police Reserve	\$ 6,805.00
001.5110.0427	Street Maintenance – Patch Material	\$ 7,175.00
001.0900.0200.2102	DPW Reserve	\$ 6,090.00
001.7310.0439	Youth service – Repair and Maintenance	\$ 1,400.00

and increasing revenue accounts:

001.0001.2770	Unclassified revenue	\$ 500.00
001.0001.2680	Insurance Recoveries	\$ 10,000.00
001.0001.2690	Other Compensation for Loss	\$ 13,265.00
001.0001.3820	Local Government Grant	\$ 1,400.00

Seconded by Councilperson
and on roll call

#8- 2015
A RESOLUTION TO AUTHORIZE THE TRANSFER OF \$11,000 FROM THE ICE
ARENA CAPITAL RESERVE FUND TO REPLACE THE ICE ARENA COMPUTER
MANAGEMENT SYSTEM

Motion of Councilperson

WHEREAS, the ice arena computer management system which controls the ice making process, heating system and heating/air conditioning system has had a complete failure and is not repairable; and

WHEREAS, it is the City's responsible to maintain and/or replace the ice arena computer management system under the current ice arena lease agreement; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby authorize the following budget amendment:

Effective January 11, 2016, amend the 2015-16 budget by increasing expenditure accounts:

Increase revenue:

001.0001.0511.2103	Appropriated reserve	\$ 11,000.00
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Increase expense:

001.1620.0439.2103	Facilities Repair and Maintenance	\$ 11,000.00
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Seconded by Councilperson
and on roll call

#9-2016

**A RESOLUTION AUTHORIZING AGREEMENT WITH NEW YORK STATE
DEPARTMENT OF TRANSPORTATION FOR PE/DESIGN, AND
R.O.W. INCIDENTALS ASSOCIATED WITH THE RECONSTRUCTION OF SUMMIT
STREET FROM EAST MAIN STREET TO NORTH STREET**

Motion of Councilperson

WHEREAS, a project for the Reconstruction of Summit Street from East Main Street to North Street, City of Batavia, Genesee County, P.I.N. 475436 (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-Federal funds; and

WHEREAS, the City of Batavia desires to advance the Project by making a commitment of 100% of the non-Federal share of the cost for PE/Design and R.O.W. Incidentals; and

NOW THEREFORE, the City Council, duly convened does hereby resolve that the above-referenced Project is approved; and

IT IS FURTHER RESOLVED, that the City Council hereby authorizes the payment in the first instance 100% of the Federal and non-Federal share for the cost of PE/Design and R.O.W. Incidentals for the Project or portions thereof; and

IT IS FURTHER RESOLVED, that the sum of \$299,001 is hereby appropriated and made available to cover the cost of participation in the above phase of the Project; and

IT IS FURTHER RESOLVED, that in the event the full Federal and non-Federal share of the Project costs exceeds the amount appropriated above, the City Council shall convene as soon as possible to appropriate said excess amount immediately upon notification by the New York State Department of Transportation thereof; and

IT IS FURTHER RESOLVED, that the Council President be and is hereby authorized to execute all necessary agreements, and the Director of Public Works is authorized to execute certifications or reimbursement requests for Federal aid and/or Marchiselli aid on behalf of the City Council with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality's first instance funding of Project costs and permanent funding of the local share of Federal aid and State aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and

IT IS FURTHER RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and


IT IS FURTHER RESOLVED, that this resolution shall take effect immediately.

**Seconded by Councilperson
and on roll call**



City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: January 7, 2016

Subject: Transfer of 40-52 & 56-70 Ellicott Street

Background

In May 2014 City Council adopted a resolution (see attached) authorizing the Batavia Development Corporation to move forward with issuing a Request for Proposal (RFP) for 40-52 Ellicott Street (the "Della Penna" property) for redevelopment consistent with the City's adopted Brownfield Opportunity Area (BOA) Plan. In addition, the resolution outlined the City's intent to commence the in rem tax foreclosure process with respect to the property with the intent to transfer the property to the Batavia Development Corporation for redevelopment. In addition, this resolution provided the Batavia Development Corporation with the ability to commence an application to the Brownfield Cleanup Program (BCP) to proactively prepare the property for redevelopment, as well as make the property more attractive to interested developers.

The goal of the BCP is to enhance private-sector cleanup of brownfields, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminants, such as hazardous waste and/or petroleum. Acceptance in the BCP provides interested developers with liability protection and potential tax credits for the remediation and redevelopment of the property.

In April 2015 the Della Penna property was accepted into the BCP pursuant to the Batavia Development Corporation's application. The issuance of the RFP has resulted in development interest for both the Della Penna and Santy's (56-70 Ellicott Street) properties. Santy's was included in the RFP as the site is contiguous to the Della Penna property, has confirmed contaminants and is part of the BOA redevelopment strategy and plans for that location. Together both locations (which comprise of five individual parcels) total approximately 3 acres of brownfields and are delinquent in property taxes.

Currently the City is awaiting foreclosure judgement for both locations, upon which the Batavia Development Corporation is ready to take title for redevelopment. Title transfer from the City to the Batavia Development Corporation would be made promptly following the foreclosure judgement being issued,

in order to minimize the City's potential liability in taking title to environmentally impacted property.

Prior to transferring the property to the Batavia Development Corporation a public hearing for each property is required pursuant to the New York Not-for-Profit Corporation Law in order for the Batavia Development Corporation, a local development corporation, to take clean title. After which the City Council can then transfer each property to the Batavia Development Corporation by executing two separate sale contracts.

Once transferred, the Batavia Development Corporation will have site control over the properties and can execute agreements with a preferred developer for redevelopment of the site. Because both properties have confirmed contamination that qualifies for acceptance into the BCP, cleanup costs far exceed the value of the properties and both will be transferred to the Batavia Development Corporation for \$1 for redevelopment.

Recommendation

It is recommended that the City Council set the public hearings for January 25th, after which it is recommended the City Council adopt resolutions authorizing the execution of sale contracts at a Special Meeting so as to authorize the transfer to the Batavia Development Corporation following the foreclosure judgement.

Transferring both Della Penna and Santy's properties to the Batavia Development Corporation for redevelopment will start the City's first brownfield redevelopment in the City's history.

#10-2016
A RESOLUTION TO SCHEDULE A TWO PUBLIC HEARINGS TO SELL
PROPERITES TO THE BATAVIA DEVELOPMENT CORPORTION FOR
BROWNFIELD REDEVELOPMENT

Motion of Councilperson

WHEREAS, the Brownfield Opportunity Area (the "BOA") Step 2 Nomination Plan targets a 366 acre central business area impacted by 75 underutilized, vacant and abandoned properties in the City of Batavia and where a rigorous inventory and analysis of conditions, opportunities and development constraints in the BOA were identified; and

WHEREAS, on June 9, 2014 the City Council of the City of Batavia accepted the BOA plan to advance and support the redevelopment of strategic sites in the BOA believing a catalytic area-wide reinvestment is necessary; and

WHEREAS, certain real property located at 40-52 Ellicott Street (SBL 84.015-1-2), Batavia New York (the "Della Penna Property") and real property located at 56-70 Ellicott Street (SBL 84.015-1-5, 84.015-1-4, 84.015-1-37.311, 84.015-1-37.312), Batavia New York (the "Santy's Property") has been identified by the City of Batavia as a strategic site as part of the City's Brownfield Opportunity Area; and

WHEREAS, the Batavia Development Corporation (the "BDC") was established as a Not-for-Profit local development corporation pursuant to Section 1411(a) of the New York Not-for-Profit Corporation Law (the "Act") to, among other items, relieve and reduce unemployment, promote additional employment, bettering and maintaining job opportunities, lessen the burdens of government, and improve the quality of life within the City by encouraging and facilitating the development of underutilized real estate in the City; and

WHEREAS, the parcels are currently subject to in rem tax foreclosure and have not been redeemed. To the extent that the City of Batavia concludes foreclosure against the parcels and obtains title to said parcels, the City intends to sell the parcels to BDC; and

WHEREAS, prior to the City conveying the Della Penna and Santy's Property to the BDC, pursuant to Section 1411(d) of the Act, a public hearing on ten days' notice is required to be conducted by the City Council prior to the adoption of a resolution authorizing any such sale or lease;

NOW, THEREFORE, BE IT RESOLVED, Public Hearings are required for compliance with the Act and the public hearings will be held on January 25, 2016 at 7:00 PM in the Council Board Room of City Hall.

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least ten (10) days prior thereto.

Seconded by Councilperson
and on roll call

#11-2016
A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO
EXECUTE AN EASEMENT AGREEMENT WITH EMPIRE TELEPHONE
CORPORATION

Motion of Councilperson

WHEREAS, Empire Telephone Corporation is desirous to make upgrades to their existing equipment and fiber optic capabilities for providing internet and telephone services; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia to hereby authorize the City Council President to execute the easement with Empire Telephone Corporation as stated in "Attachment A" below.

Seconded by Councilperson
and on roll call

EASEMENT AGREEMENT

THIS INSTRUMENT, made this ____ day of _____, 2016,

BETWEEN

CITY OF BATAVIA, a municipal corporation with a mailing address at One Batavia City Centre, Batavia, New York 14020, hereinafter referred to as "Grantor", and

EMPIRE TELEPHONE CORPORATION, a New York corporation, having an address of 34 Main Street, Prattsburgh, New York 14873, hereinafter referred to as the "Grantee".

WITNESSETH

WHEREAS, the Grantor has title to all that tract or parcel of land situated in the City of Batavia, County of Genesee and State of New York; and

WHEREAS, the Grantee seeks the permission of the Grantor for an easement for the benefit Grantee and its lessees, licensees, successors, subsidiaries, affiliates and assigns, whether now existing or hereafter created, the perpetual right and easement as described in Section 1 below (the "Easement"), in, under, through, over, across, and upon the Grantor's land, as described in Section 2 below (the "Grantor's Land").

NOW, THEREFORE, the Grantor, in consideration of the sum of One Dollar (\$1.00), lawful money of the United States, and other good and valuation consideration paid by the Grantee, its successors and assigns, a permanent and perpetual easement and right of way over property of the Owner as follows:

Section 1 – Description of Easement. The Easement is granted by the Grantor to the Grantee consists of a perpetual easement and right-of-way, with the right, privilege, and authority to:

a. Construct, reconstruct, relocate, upgrade, extend, repair, maintain, operate, inspect, patrol, and, at its pleasure, abandon or remove aboveground or underground lines, any and all equipment, structures and/or facilities, which may be reasonably necessary for Grantee to deliver telecommunications, internet or cable television services or other related medial either on or in the vicinity of Grantor's Land (collectively, the "Network Facilities"), which the Grantee shall require now and from time to time or may require in the future, for the provisioning of communication services, by any means, whether now existing or hereafter devised, for public or private use, in, upon, over, under, and across that portion of Grantor's Land described in Section 3 below (the "Easement Area"), and the highways abutting or running through the Grantor's Land, and to renew, replace, add to, and otherwise change the Network Facilities and each and every part thereof and the location thereof within the Easement Area, and utilize the Network Facilities and each and every part thereof within the

Easement Area, and utilize the Network Facilities within the Easement Area for the purpose of providing service to the Grantor and others in the vicinity of Grantor;

b. From time to time, without further payment therefore, clear and keep cleared, by physical or other means, the Easement Area of any and all tress, vegetation, roots, aboveground or belowground structures, improvements, or other obstructions and trim and/or remove other trees, roots and vegetation adjacent to the Easement Area that, in the opinion of the Grantee, may interfere with the construction, operation, and maintenance of the Network Facilities; and

c. Concomitant and co-extensive with this easement is the further right of the Grantee of ingress and egress upon the property of Grantor for the continued operation, maintenance and repair of said Network Facilities, the right, privilege and authority to construct, reconstruct, erect, operate, repair, renew, locate, relocate, perpetually maintain said Network Facilities, and other fixtures and appurtenances used or adapted for said Network Facilities for any other purpose, on, over, above and through the Easement Area.

d. That the grant of said Easement is subject to the Grantee's obligation to obtain a street opening permit from the Grantor prior to performing any work. Further, that the Grantee shall be required to safeguard and maintain traffic during the performance of any work in the Easement Area.

e. The Grantee shall repair any damages caused by it to Grantor's property and lands and shall indemnify against any loss, damage, expense, including reasonable attorneys' fees that may be caused by the construction, maintenance and/or operation of the Network Facilities or by any wrongful or neglectful act or omission of the Grantee or its agents or employee with respect thereto.

Section 2 – Description of Grantor's Land. The "Grantor's Land" consists of land described as being part of Tax Parcel No. 84.011-1-38.11 of the City of Batavia, County of Genesee, New York.

Section 3 – Location of Easement Area. The "Easement Area" shall consist of a portion of the Grantor's Land THREE (3) feet in width throughout its extent, the centerline of the Easement Area being the centerline of the Network Facilities. The general location of the Easement Area is shown on the sketch attached hereto as Schedule "A" and recorded herewith, copies of which are in the possession of the Grantor and the Grantee. The final and definitive location(s) of the Easement Area shall become established by and upon the final installation and erection of the Network Facilities by the Grantee in substantial compliance with said sketch. Grantee shall, when warranted, and with ample notification, relocate its facilities to accommodate any necessary reconstruction of easement area undertaken by Grantor.

Section 4 – Network Facilities Ownership. It is agreed that Network Facilities shall remain the property of the Grantee, its successors, subsidiaries, affiliates and assigns, whether now existing or hereafter created.

The Grantee, its successors and assigns, are hereby expressly given and granted the right to assign this Easement, or any part thereof, or interest therein, and the same shall be divisible between or among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full right, privilege, and authority herein granted, to be owned and enjoyed either in common or severally. This Grant of Easement shall at all times be deemed to be and shall be a continuing covenant running with the Grantor's Land and shall inure to and be binding upon the successors, heirs, legal representatives, and assigns of the parties named in this Grant of Easement.

[No further text on this page. Signature page to follow.]

IN WITNESS WHEREOF, the parties have executed this instrument on this ____ day of _____, 2016.

GRANTOR:
CITY OF BATAVIA

By: _____
Name:
Title:

GRANTEE:
EMPIRE TELEPHONE CORPORATION

By: _____
Name:
Title:

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On the ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

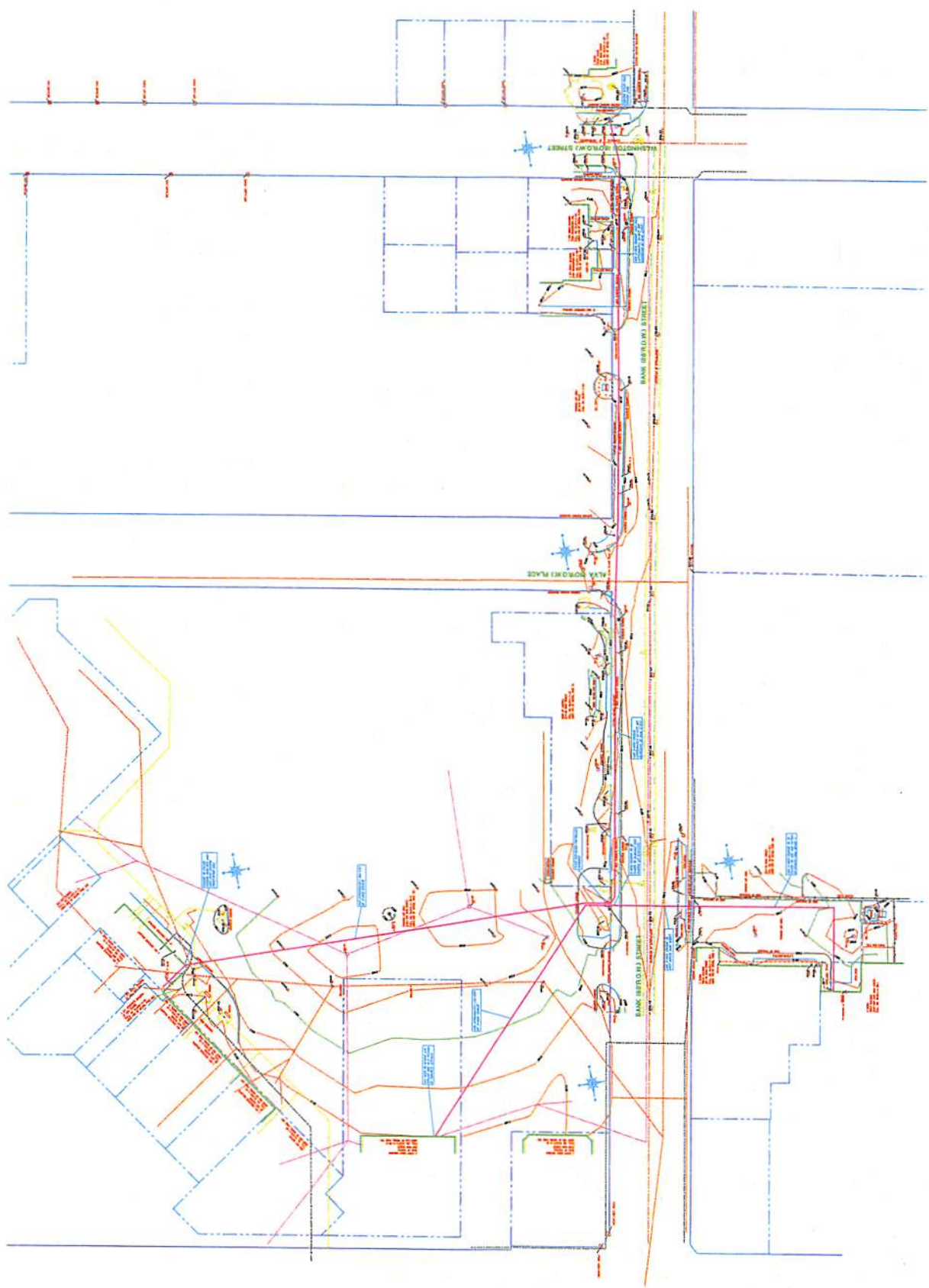
Notary Public

STATE OF NEW YORK)
COUNTY OF GENESEE) SS:

On the ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Schedule A



#12-2016

A RESOLUTION TO ENTER INTO AN AGREEMENT WITH M. W. CONTROLS SERVICE, INC. FOR THE GRIT PUMP REPLACEMENT PROJECT

Motion of Councilperson

WHEREAS, the City of Batavia has solicited bids for Grit Pump Replacement Project at the Wastewater Treatment Plant; and

WHEREAS, seven (7) bids were received on January 7, 2016, and M. W. Controls Service, Inc. was the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that a contract is hereby awarded to M. W. Controls Service, Inc. in the amount of Fifty Three Thousand Eight Hundred Twenty Three dollars (\$53,823.00) for the replacement of the grit pump at the Wastewater Treatment Plant.

**Seconded by Councilperson
and on roll call**

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson

WHEREAS, Article 7, Section 105(1)(d), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...proposed, pending or current litigation...".

WHEREAS, Article 7, Section 105(1)(h), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the proposed acquisition, sale, or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof...".

WHEREAS, Article 7, Section 105(1)(f), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation...".

WHEREAS, legal counsel for the City will have an attorney-client privileged communication that is exempt from the Open Meetings Law; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia, that upon approval of this Motion, the City Council does hereby enter into Executive Session.

**Seconded by Councilperson
and on roll call**