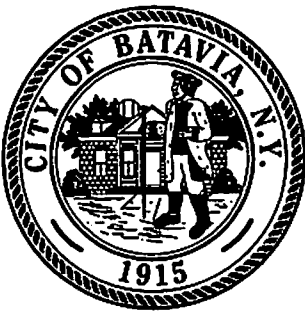


## **BATAVIA CITY COUNCIL SPECIAL CONFERENCE MEETING**

**City Hall - Council Board Room  
One Batavia City Centre  
Tuesday, October 11, 2016  
Prior to Business Meeting**


### **AGENDA**

- I. Call to Order
- II. Transportation Alternatives Program Grant
- III. Dent Neurological Institute Lease
- IV. Alum Sludge Project Change Order
- V. Resolution of support Transformational Ellicott Station Phase I Redevelopment  
Proposed in the City of Batavia Brownfield Opportunity Area
- VI. Demolition Reimbursement Agreement with Wells Fargo
- VII. Adjournment



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: October 6, 2016

Subject: Transportation Alternatives Program (TAP) grant

The New York State Department of Transportation has announced the availability of \$62.2 million in funding under the Transportation Alternatives Program (TAP). TAP supports bicycle, pedestrian, multi-use path and transportation-related projects and programs.

In 2014 the City applied and received over \$720,000 of TAP funding to complete approximately 12,000 linear feet of sidewalk. This project will be completed next year.

Communities can apply for a minimum funding of \$250,000 and up to \$5 million. Up to 80% of total project costs can be covered by the grant funding, while the community is responsible for a minimum 20% match which may include cash, in-kind and other federal/state grant funding.

It is recommended the City apply for TAP funding to replace and/or construct sidewalk networks surrounding and connecting United Memorial Medical Center, NYS School for the Blind, Batavia Downtown and Centennial, Austin and McArthur Parks.

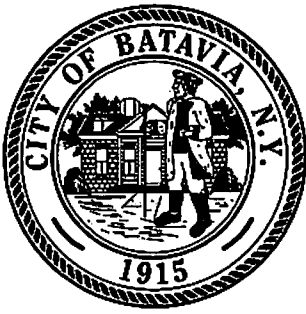
The total project would include engineering for the construction project, removal of existing sidewalks, installation of new sidewalks, select tree removal, installation of handicapped ramps with detectable surfaces and placement of high visibility crosswalks across all impacted intersections.

Currently the project area project estimates are being refined but the total project cost is estimated to be \$1 million, making the City's local match approximately \$200,000. The City can use CHIP's funding in addition to other City funding as part of the City's local match.

This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov)

**Office of the City Manager**  
**One Batavia City Centre**  
**Batavia, New York 14020**

**TDD 800-662-1220**  
**Phone: 585-345-6330**  
**Fax: 585-343-8182**  
**[www.batavianewyork.com](http://www.batavianewyork.com)**



# City of Batavia

## Recommendation

It is recommended the City take the necessary steps to apply for the TAP grant as it is a critical project to continuing the City's efforts in improving our sidewalk network.

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**#99-2016**

**A RESOLUTION TO SUBMIT A TRANSPORTATION ALTERNATIVES PROGRAM  
GRANT AND TO PROVIDE A COST SHARE**

**Motion of Councilperson**

**WHEREAS**, the New York State Department of Transportation is offering funding under the Transportation Alternatives Program (TAP) for alternative transportation projects; and

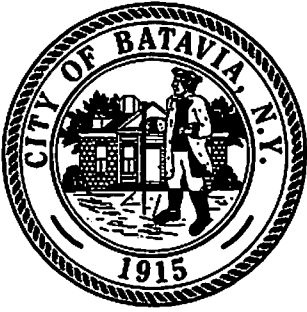
**WHEREAS**, the project to provide safe alternative transportation connections between United Memorial Medical Center, Batavia Downtown Corridor, Batavia school properties, NYS School for The Blind, and three public parks qualifies under the TAP funding program; and

**WHEREAS**, the City of Batavia's Pedestrian Way Improvements project is a high priority for the City;

**NOW THEREFORE, BE IT RESOLVED**, the City Council enthusiastically supports the submission of the TAP grant application by the City Manager;

**BE IT FURTHER RESOLVED**, the City hereby commits to providing 25 percent of the costs to design and construct the Pedestrian Way Improvements Project.

**Seconded by Councilperson  
and on roll call**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager 

Date: October 4, 2016

Subject: 35-39 City Centre

**Background:** This spring the City foreclosed on 35-39 City Centre due to delinquent property taxes. The property currently has one tenant, a medical office that occupies approximately 1,122 square feet of space. Generally the City moves foreclosed properties to auction for surplus and reuse. In this instance, after further evaluation, it is recommended that the City enter into a short term lease to further evaluate the best use of the property for longer term redevelopment. Considering the City has an adopted Brownfield redevelopment plan City Centre property, and the City in partnership with the Batavia Development Corporation are actively working toward redeveloping the 17-acre site, retaining control over the property in the short term will allow the City determine future uses for potential discussions for future developments.

The proposed lease is for \$16.50 per square foot for 1,122 square feet of space. The tenant, Dent Neurologic Institute is a medical practice group focused on neurologic specialties and state-of-the-art neuro-diagnostics. The Batavia Office is one of three located in Western New York and has been at the site for several years. Total lease payments will be \$22,215 annually which will cover all the City's costs related to taxes, insurances and maintenance for the property. Because a portion of the property will be utilized and generating rent payments, the City will be obligated to pay school taxes on the property for only the portion being rented. Regardless, the lease will compensate the City for expenses related to the property as a landlord, transferring all general maintenance responsibilities for the property to the tenant.

**Recommendation:** Attached is a lease for 35-39 City Centre that has been reviewed and approved by the City Attorney for City Council consideration. The lease provides for an initial 12-month term with two 6-month renewal options prior to having to renegotiate the lease terms. It is recommended that the City Council approve the proposed lease.

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**#98-2016**

**A RESOLUTION AUTHORIZING COUNCIL PRESIDENT TO SIGN  
LEASE AGREEMENT WITH DENT NEUROLOGIC INSTITUTE**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia and Dent Neurologic Institute are desirous of entering into a Lease Agreement regarding operation of business at 35 City Centre, Batavia, New York; and

**WHEREAS**, the City Manager has negotiated an acceptable lease with Dent Neurologic Institute; and

**WHEREAS**, the City attorney has reviewed and approved the lease agreement and agrees this may continue for approval; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the Council President is hereby authorized to execute a lease agreement with Dent Neurologic for space at 35 City Centre, which has been reviewed and is satisfactory to the City Attorney's office.

**Seconded by Councilperson  
and on roll call**

**COMMERCIAL LEASE  
AGREEMENT**

THIS COMMERCIAL LEASE AGREEMENT ("Lease"), made this \_\_\_\_th day of October, 2016 by and among \_\_\_\_\_ ("Landlord") and Dent Neurologic Institute, a New York limited liability company with a mailing address of 3980 Sheridan Drive, Suite 501, Amherst, NY 14226 ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord is the owner of that certain real property located at 35 Batavia City Centre, City of Batavia, Genesee County, New York and further identified as Tax Parcel Identification Number 84.049-1-55.1 (the "Building"); and

WHEREAS, Tenant desires to lease an approximately 1,122 square foot portion of the Building (the "Premises") from Landlord and Landlord desires to lease the Premises to Tenant on the terms and conditions set forth below.

NOW, THEREFORE, upon the terms and conditions herein set forth, the parties agree as follows:

**1. PREMISES, PARKING**

(a) Tenant hereby takes and leases from Landlord and Landlord hereby leases to Tenant the Premises, together with the right to use in common with others entitled thereto, all common areas and amenities available at or relating to the Building, including without limitation any lobbies, restrooms, stairways, elevators, walks, driveways, and parking areas serving the Building and the Premises.

(b) It is agreed and understood that Tenant shall take the Premises in its "as is" condition and Landlord makes no representations as to the condition of the Premises, the Building containing the Premises, and any equipment. By taking possession of the Premises, Tenant is deemed to have accepted the condition of the Premises on the Commencement Date.

(c) Tenant and its employees, invitees, and guests may use, in common with, and on a basis and in a manner consistent with the use by such other tenants and occupants of the Building the parking areas designated by Landlord from time to time for use by Tenant and other occupants of the Building on a non-designated, non-reserved basis. Tenant's employees must refrain from parking in front of the premises.

**2. TERM**

(a) The initial term of this Lease (the "Initial Term") shall be for a period of 12 months, commencing on October \_\_, 2016 (the "Commencement Date") and terminating on October \_\_, 2017 (the "Termination Date"), unless earlier terminated or extended as provided for in this Lease.

(b) Tenant and Landlord shall have the option, so long as Tenant is not in default

under the terms of this Lease, to extend the Initial Term for two, six-month renewal terms (each a "Renewal Term"). If Tenant wishes to exercise such renewal option, Tenant must provide Landlord with written notice at least 30 days prior to the end of the Initial Term or Renewal Term, as applicable. If no such notice is provided, this Lease shall automatically renew for an additional Renewal Term.

- (c) The Landlord shall have the right and option to terminate the Lease on ninety (90) days written notice to Tenant.

(d) If Tenant fails to vacate the Premises (or any portion thereof) within 30 days past the Termination Date, then Tenant shall be deemed to be a month-to-month Tenant and shall pay Landlord Base Rent in the amount of 110% of the monthly rent then in effect immediately prior to such holdover period as specified in Section 3 for the time Tenant remains in possession.

### 3. BASE RENT

(a) Beginning on the Commencement Date, and thereafter on the first day of each month for the remainder of the Initial Term or Renewal Term, as applicable, Tenant shall pay to Landlord at its address indicated above, or at such other place as Landlord may designate by written notice, the following base rent ("Base Rent"):

<u>Months</u>	<u>Per Square Foot</u>	<u>Monthly Rent</u>
	\$16.50/SF	\$1,851.30

(b) Base Rent shall be paid in advance, without deduction or offset, or demand. In the event any payment of Base Rent or Additional Rent (as defined herein) is not paid within ten (10) days after written notice, such amount shall be subject to a late charge equal to five percent (5%) of all outstanding balances.

(c) Any and all amounts due under this Lease in addition to Base Rent, shall be considered "Additional Rent" and Landlord shall have the same rights with respect to Additional Rent as it does with respect to Base Rent.

### 4. [INTENTIONALLY OMITTED]

### 5. USE OF PREMISES

(a) Tenant shall use the Premises for medical office purposes and ancillary uses reasonably related thereto and for no other purpose whatsoever without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. In no event shall any person bring onto the Premises flammables such as gasoline, kerosene, naphtha, benzene or explosives, or any other articles of an extrinsically dangerous or hazardous nature.

(b) Tenant shall not place any antenna or aerials or similar devices outside of the Building or on the roof, without the express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

(c) Tenant shall comply with all applicable federal, state, and municipal laws,



ordinances, and regulations and shall not directly or indirectly make any use of the Premises which may be prohibited by any such laws, ordinances, and regulations.

## **6. ASSIGNMENT AND SUBLET**

(a) Tenant covenants and agrees that it will not sublet, assign, pledge or otherwise encumber said Premises, or allow the Premises to be used by anyone other than Tenant without the express written consent of Landlord. Any assignment or subletting shall not relieve Tenant of any obligations and liabilities set forth in this Lease. Landlord's consent to any transfer, assignment or sublease shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future transfer, assignment, or subletting.

(b) In the event Landlord consents in accordance with Section 6(a) above, Tenant shall deliver to Landlord a written agreement in form and substance reasonably satisfactory to Landlord pursuant to which the transferee, assignee, or sublessee assumes all of the obligations and liabilities of Tenant under this Lease, and a copy of the assignment agreement or sublease.

## **7. ALTERATIONS**

(a) Except for de minimus, non-structural alterations totaling less than Two THOUSAND DOLLARS, which alterations shall not require Landlord's consent, Tenant shall not make any alterations to the Premises without prior written consent of Landlord. If Landlord grants its consent, the alterations shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and in accordance with the plans, blueprints or diagrams provided to Landlord by Tenant showing the proposed alterations and approved by Landlord in writing prior to the commencement of any work.

(b) Tenant shall not make any alterations, repairs or installations, or perform any other work to or on the Premises unless prior to the commencement of such work Tenant shall obtain and during the performance of such work keep in force general liability and workmen's compensation insurance to cover every contractor, materialman or any other person to be employed or having access to the Premises. The policy shall be non-cancellable without ten (10) days' advance written notice to Landlord. Landlord shall be named as additional insured with respect to the liability policy. The policy shall be for amounts and in form reasonably satisfactory to Landlord. Prior to the commencement of work, Tenant shall deliver certificates of all policies to Landlord, together with a copy of any permits required by any governmental authority with jurisdiction over the Premises.

(c) If any mechanic or materialman's lien is filed against the Premises as result of any additions, alterations and improvements by Tenant or any other work or act of Tenant, Tenant shall discharge the same by bonding or payment being made within ten (10) days after notice of the lien has been filed with the Genesee County Clerk. If Tenant shall fail to so bond or discharge the lien, Landlord may bond or pay the lien or claim for the account of Tenant after inquiring into the validity of the lien or the claim, and Tenant shall reimburse Landlord, as Additional Rent, upon demand for all costs, expenses and reasonable professional fees incurred

in connection therewith, including the amount paid to discharge such lien.

8. [INTENTIONALLY OMITTED]

9. INSURANCE REQUIREMENTS

(a) Tenant agrees to maintain in full force throughout the Base Term or any renewals or extensions, without exception of any kind, at its own cost and expense, one (1) or more policies of general liability and property damage insurance which up to the maximum liability amounts thereof insures Tenant and Landlord (and such other persons designated by the Landlord having an insurable interest) against liability for injury to persons and/or property (and death) of any person or persons in or about the Premises. The limits of liability of such insurance shall be not less than \$1,000,000.00 for injury (or death) caused to any one person, not less than \$2,000,000.00 for injury (or death) to more than one person arising from any accident, and not less than \$500,000.00 with respect to damage to property. The insurance must be issued by an "A" rated, or better, insurance company licensed to conduct business in the State of New York with the New York State Insurance Department/Department of Financial Services. All such policies or certificates thereof shall be deposited with Landlord by Tenant promptly upon the commencement of this Lease and upon each renewal period or within five (5) days upon written request of Landlord; such insurance policies shall name Landlord or its designee as additional insureds and shall contain a further provision by which the insurer agrees that such policy may not be canceled except upon thirty (30) days' advance written notice to Landlord or its designee.

(b) Tenant agrees to pay all premiums and charges for such insurance as set forth in this paragraph and in the event of its failure to make any such payment when due or in the event

of its failure to provide any insurance or renewal thereof. Landlord may procure the same and/or pay the premiums thereon and Tenant agrees to pay such premiums to Landlord upon demand and the same shall be deemed to be Additional Rent for such Premises including a ten percent (10%) administrative fee.

(c) Landlord shall maintain, throughout the Initial Term and any Renewal Term, all risk property insurance covering the Building, including the Premises and leasehold improvements, in an amount equal to one hundred percent (100%) of the reasonably estimated replacement cost thereof.

#### 10. INDEMNIFICATION AND LIMITATION OF LANDLORD LIABILITY

(a) Tenant shall indemnify and hold Landlord harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Landlord arising out of or resulting from (i) Tenant's use and occupancy of the Premises or the business conducted by the Tenant therein, (ii) any negligent act or willful misconduct by Tenant or its employees or guests, or (iii) any breach or default by Tenant in the performance or observance of its covenants or obligations under this Lease. Landlord shall indemnify and hold Tenant harmless from and against all costs, damages, claims, liabilities and expenses (including reasonable attorney's fees) suffered by or claimed against Tenant on, arising out of or resulting from any breach by Landlord in the performance or observance of its covenants or obligations under this Lease.

(b) Except as may be otherwise herein provided, Landlord and its agents shall not be liable for damages by abatement in rent or otherwise for any damage either to the person or property of Tenant nor for the loss of or damage to any property of Tenant by theft or any other cause whatsoever whether similar or dissimilar to the foregoing. In addition, Landlord or its agents shall not be liable for any injury or damage to persons or property or loss of or interruption to the business of Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, rain, snow, heating system leaks, leaks from pipes and drums, appliances or the plumbing system from any part of the Building containing the Premises or from the roofs, street, storm and sanitary sewers, parking area or subsurface or from any other place or by the discontinuance of any service to be provided by Landlord to Tenant, unless caused by the negligence or willful misconduct of Landlord.

(c) The Owner of the Premises is a New York municipal corporation ("municipality") and all officials, representatives, staff, employees and agents of said municipality, shall have absolutely no personal liability with respect to any provision of this Lease, nor any obligations or liability arising therefrom or in connection herewith.

#### 11. SURRENDER OF PREMISES

(a) Upon termination of this Lease by expiration or otherwise, Tenant shall immediately vacate the Premises and surrender possession thereof, including all keys as herein required to Landlord; Tenant shall surrender the Premises in broom clean condition except for

reasonable wear and tear; Tenant grants to Landlord full authority and license to enter the Premises to take possession in the event of any termination of this Lease.

(b) Upon surrender of the Premises, Tenant may not remove any of the leasehold improvements, fixtures, or equipment permanently affixed to the Premises and shall leave the Premises intact and free and clear of all liens or encumbrances whatsoever. Tenant shall remove all trade fixtures and personal property from the Premises and restore the Premises to the condition the Premises were in on the Commencement Date, ordinary wear and tear and approved alterations excepted.

## **12. ESTOPPEL CERTIFICATE**

Landlord and Tenant agree that from time to time upon not less than fifteen (15) business days' prior request by the other party, it will deliver to Landlord a statement in writing certifying that the Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and identifying said modifications) as well as identifying the dates to which rent and other charges have been paid, as well as stating that as far as the person making the estoppel certificate knows the other party is not in default under any provision of this Lease if such is the case.

## **13. DAMAGE AND DESTRUCTION**

(a) In the event of destruction of twenty five percent (25%) or less of the Building by fire or any other casualty, Landlord shall use reasonable efforts to restore or repair said destruction with due diligence, and rent shall be equitably abated in accordance with the proportion of the Premises that shall be rendered untenable and those that may be used safely in accordance with applicable laws. Landlord shall expend such sums as may be required to repair or restore improvements to the conditions they were immediately prior to the date of destruction. Notwithstanding the foregoing, Landlord will notify Tenant within thirty (30) days of the date of such casualty whether Landlord can complete the restoration. If Landlord cannot so complete or fails to complete the same within a reasonable period, Tenant may, at its option, terminate this Lease upon thirty (30) days advance written notice to Landlord.

(b) If in excess of twenty five percent (25%) of the Building containing the Premises shall be destroyed by fire or other casualty, the Landlord shall have the option to terminate this Lease by giving Tenant written notice within thirty (30) days after such destruction, and Base Rent and Additional Rent shall be apportioned as of the date of destruction and prepaid rent and Additional Rent returned to Tenant. If Landlord does not terminate the Lease within thirty (30) days of the date of the casualty, Landlord shall notify Tenant whether or not the restoration can be completed within one hundred twenty (120) days after the insurance proceeds are received. Thereafter, the Building shall be restored to the condition existing immediately prior to the date of destruction within twelve (12) months after Landlord receives insurance proceeds on such damage. Base Rent and Additional Rent shall abate for the period the Premises are untenable. If such restoration has not been completed or cannot be completed within twelve (12) months

from the date of the casualty, Tenant shall be entitled to terminate this Lease (i) within thirty (30) days of Landlord's notice that restoration cannot be completed or (ii) after the expiration of the twelve (12) months period. If Tenant being so entitled does not elect to terminate this Lease, then the same shall remain in full force and effect and rent shall recommence when the restored Premises are returned to Tenant and shall thereafter continue in full force and effect for the remainder of the term of the Lease.

#### 14. CONDEMNATION

(a) If a non-substantial portion of the Building, parking spaces on the Premises or access to the Premises shall be taken, as herein provided, for public improvements or otherwise, under the exercise of the right of eminent domain and the Premises continue to be reasonably suitable and accessible for the use which is herein authorized, then this Lease shall continue in full force and effect and the Base Rent and Additional Rent herein provided for shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Premises.

(b) If the Building, or access to the Premises as provided in (a) above, shall be taken, condemned or acquired by grant or otherwise for the widening of streets or for other public improvements, or shall otherwise be taken in the exercise of the right of eminent domain in each such case, so as to render the Premises unfit for the use herein authorized, in Tenant's reasonable discretion, Tenant shall have the right to terminate and cancel this Lease on thirty (30) days written notice to Landlord, and Base Rent and Additional Rent and other charges set forth under this Lease shall abate as of the date of the taking.

#### 15. DEFAULTS OF TENANT

Upon the happening of any of the following:

(a) If Tenant fails either (i) to pay any installments of Base Rent or of Additional Rent, or any part hereof when due, and such failure shall continue for ten (10) after written notice, or; (ii) to perform or observe any other agreement or covenant or provision of this Lease and any such failure shall continue for thirty (30) after written notice; or

(b) If any voluntary petition or similar pleading under any bankruptcy act or under any federal or state law seeking reorganization or arrangement with creditors or adjustment of debts, is filed by or against Tenant, or if any such petition or pleading is involuntary, and it is not adjudicated favorably to Tenant within thirty (30) days after its filing; or

(c) If Tenant admits its inability to pay its debts, or if a receiver, trustee or other court appointee is appointed for all or a substantial part of Tenant's property; or

(d) If the leasehold interest of Tenant is levied upon or attached by process of law; or

(e) If Tenant makes an assignment for the benefit of creditors or if any proceedings are filed by or against Tenant to declare Tenant insolvent or unable to meet its debts; or

(f) If a receiver or similar type of appointment or court appointee or nominee of any name or of character is made for Tenant or its property; or

(g) If Tenant dissolves, voluntarily or otherwise, or is subject to a judicial receivership of any kind.

Then, Landlord, thereupon or at any time thereafter, at its election and with notice, may terminate this Lease, or without prejudice to its right to terminate may take any lawful action available to it, all without such termination or action affecting Landlord's right for recovery of past due or future rents or other obligations of Tenant hereunder. If Tenant abandons the Premises, Landlord may enter for any purposes whatsoever without affecting Tenant's obligations hereunder.

## 16. REMEDIES OF LANDLORD

In case of any such default, reentry, expiration and/or dispossession by summary proceedings or otherwise:

(a) The Base Rent, any Additional Rent, and any and/all fees due under this Lease, shall become due thereupon and be paid by Tenant up to the time of such reentry, dispossession and/or expiration, together with such expenses as Landlord may incur for legal expenses and reasonable attorneys' fees.

(b) Landlord may relet the Premises or any part or parts thereof, for a term, or terms which may at Landlord's option be less than or exceed the period which would have otherwise constituted the balance of the term of this Lease and may grant concessions. Tenant shall receive a credit against any and all Lease obligations hereunder for the amount received by Landlord in connection with such reletting. Any amounts in excess of Tenant's obligations shall be retained by Landlord. Tenant or the legal representatives of Tenant shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the rent amount, if any, of the rents collected on account of the Lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure or refusal of Landlord to relet the Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages, there shall be added to the deficiency such expenses as Landlord may incur in connection with reletting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. Landlord, at Landlord's option, may make such alterations, repairs, replacements and/or decorations in the Premises as the Landlord in Landlord's reasonable judgment considers advisable and necessary for the purpose of reletting the Premises and the making of such alterations and/or decorations shall not operate or be considered to release Tenant from liability hereunder. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet for failure to collect the rent thereof under such reletting. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right to invoke any remedy

allowed at law or in equity as if reentry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(c) Landlord may declare the entire rent for the balance of the Lease term, including any Additional Rent, immediately due and payable by Tenant.

#### **17. QUIET ENJOYMENT**

Landlord covenants and agrees with Tenant, and upon paying the Base Rent and any Additional Rent and performing all of the terms and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the Premises, subject, nonetheless, to the terms and conditions of this Lease.

#### **18. NOTICES**

Any notices or demands to be given pursuant to this Lease shall be in writing and shall be effectively served by either (i) personal delivery to a party or (ii) upon sending the written notice to the Landlord or Tenant as the case may be at the office or residential addresses set forth above (or below with regard to any Guarantor) by certified mail, return receipt requested, or at such other address as either party shall designate by written notice to the other party. Any notice shall be deemed to be given on the date on which the same was delivered personally or on the second day after the notice was deposited in a regularly maintained receptacle for the deposit of United States mail addressed and sent as aforesaid.

#### **19. CAPTIONS**

Captions used herein are for identification purposes only and in no way define, limit or describe the scope of this Lease, nor the intent of any provisions thereof.

#### **20. ENTIRE AGREEMENT**

This Lease cannot be changed, modified or discharged in whole or in part except by written instrument signed by the party against whom enforcement is sought, except Landlord may, in its sole discretion and without prior authorization and/or notice to Tenant, assign this Lease to any purchaser/transferee/grantee/mortgagee/lien holder of the real property containing the Leased Premises.

#### **21. LAWS GOVERNING AND VENUE**

This Lease is written under and shall be construed in accordance with the laws of the State of New York, with regard to any principles of conflicts of law. Any suit which may be brought to interpret or enforce any of the terms or obligations of the parties in this Lease hereunder shall be brought in any local, state and/or federal court of competent jurisdiction in the County of Genesee, State of New York.

## **22. SUCCESSORS IN INTEREST**

It is understood and agreed that all of the covenants, agreements, terms, conditions, provisions, and undertakings in this Lease or any renewals thereof shall extend to and be binding upon the heirs, executors, administrators and successors of the respective parties hereto, the same as if they were in every case named and expressed.

## **23. WAIVER OF REDEMPTION**

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

## **24. INSPECTION/EXAMINATION OF PREMISES**

Landlord and its authorized representatives shall have the right upon twenty-four (24) hours' prior notice (or sooner if circumstances warrant a more immediate entry), to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Tenant is complying with all of its obligations under this Lease;

(b) To do any necessary maintenance and to make any required restoration to the Premises; or

(c) To show the Premises to prospective purchasers, or mortgagees, within six (6) months of the Termination Date, as such date may be extended from time to time, tenants. Landlord shall conduct its activities on the Premises as allowed in this paragraph in a manner that will cause the least possible interference to Tenant's business operations at the Premises.

Notwithstanding the above, in the event of an emergency, Landlord may enter the Premises at any time, without notice, to make any repairs required under the circumstances.

## **25. REPAIRS AND MAINTENANCE**

(a) Landlord shall make or cause to be made at its expense: (i) structural repairs to exterior walls, structural columns, and structural floors which collectively enclose the Premises;

(ii) repairs and replacements of the roof, gutters and downspouts of the Building enclosing the Premises; and (iii) repair, maintenance and upkeep of all heating, furnaces and/or boiler and/or air conditioning units, from time to time as such repairs and maintenance are necessary.

Notwithstanding anything contained in this Lease, Landlord, its agents or servants, will be permitted unlimited access, without notice, through the Leased Premises to any part of the Premises or Building containing the Premises for the purpose of servicing heat, plumbing, electrical, and/or any other Building-related repairs and maintenance matters. If



Tenant installs an alarm system, Landlord is to be supplied an access code and if Tenant changes any locks, Landlord is to be supplied new keys. Tenant may not change locks or install any alarm systems without prior notification in writing to Landlord and without providing keys and codes to the same immediately upon such installation.

**26. INVALIDITY OF PARTICULAR PROVISION**

If any term or provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of each term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**27. WAIVER OF COVENANT OR CONDITION**

The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

**28. SECURITY DEPOSIT**

Landlord agrees to waive the security deposit.

**29. BROKERS**

Tenant warrants that it has not had any dealings with any realtor, broker, or agent in connection with the negotiation of this Lease and agrees to save and hold Landlord harmless from any cost, expense, or liability from any compensation, commission, or charges claimed by any realtor, broker, or agent.

**30. ENVIRONMENTAL COMPLIANCE**

(a) Tenant represents, warrants, and covenants that Tenant will not use hazardous materials at or affecting the Premises in any manner which violates federal, state, or local laws,

ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of hazardous materials or substances.

(b) Tenant covenants that it shall keep or cause the Premises to be kept free of hazardous materials or substances and not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, produce or process hazardous materials or substances, except in compliance with all applicable federal, state and local laws or regulations.

(c) Tenant covenants to ensure compliance by all of its agents, employees, licensees, invitees, customers, operators, and occupants of the Premises with all applicable federal, state, and local laws, ordinances, rules and regulations and will ensure that all such agents, employees, licensees, invitees, customers, operators, and occupants obtain and comply with any and all required approvals, registrations, or permits.

(d) Tenant shall defend, indemnify and hold harmless Landlord, its members, employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature known, including reasonable attorneys' fees contingent or otherwise, arising out of or in any way related to hazardous materials or substances brought onto the Premise by Tenant, its employees, agents, contractors, invitees, or licensee or the soil, water, vapor, vegetation, buildings, personal property, persons, animals, or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to such hazardous materials or substances.

(e) Termination of this Lease as a result of Tenant's default shall not operate as a discharge of Tenant's engagement as to hazardous materials or substances and Tenant shall deliver the Premises to Landlord free of any and all hazardous materials, except to the extent such hazardous materials or substances were present at the Premises prior to the Commencement Date

(f) In the event Tenant does not timely perform any of the above obligations, Landlord may perform said obligations at the expense of Tenant and such expense shall be considered Additional Rent plus a ten percent (10%) administration fee.

The provisions of this paragraph including Tenant representations and warranties contained herein shall survive default, reentry, expiration, and/or dispossession by summary proceedings or Lease termination.

### **31. RIGHTS RESERVED BY LANDLORD**

Landlord reserves without affecting Tenant's obligations hereunder the following rights, provided that Landlord shall give Tenant twenty-four (24) hours' notice before exercising same:

(a) To show the Premises to prospective tenants during the last six (6) months of the Initial Term or any Renewal Term, as applicable, during regular business hours in the event the Tenant fails to exercise its right to renew.

(b) To show the Premises to prospective purchasers during the Term or any renewal term of this Lease during regular business hours.

(c) To make repairs required of the Landlord pursuant to this Lease in and about the Premises and for such purposes enter the Premises and during the continuance of said repairs to temporarily close doors, entryways, public spaces, and corridors in the Building and to interrupt or temporarily suspend Building services and facilities, all without abatement of rent or affecting any Tenant's obligations hereunder if the Premises are accessible and provided that the Landlord proceeds in a reasonably expeditious manner. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility, or liability whatsoever for the care or supervision of the Premises or the Building or any part thereof, other than as in this Lease provided.

### **32. FORCE MAJEURE**

Except for the payment of Base Rent or Additional Rent, in the event either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of an act of God, strikes, lockouts, labor troubles, inability to procure materials (including energy), power, casualty, inclement weather, restrictive governmental laws, orders or regulations, riots, insurrection, war, or any other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of any such act shall be extended for a period equivalent to the period of such delay.

### **33. SIGNAGE/AWNINGS**

Tenant shall have the right at its sole cost and expense to erect on the exterior of the Premises its standard sign and/or awning previously approved, in writing, by the Landlord as to location, size, style, and content, which shall also be structurally sound and in conformity with all municipal and other applicable regulations. Tenant shall remove any such signs at the termination of this Lease and repair any damage caused by such installation/removal. Any changes to the standard sign of the Tenant, as originally approved by Landlord, shall again be only with the express written consent of the Landlord.

Notwithstanding, any exterior signage and/or awnings that the Tenant desires to be placed on or about the Premises shall be subject to the prior written consent or the Landlord, the Landlord's insurance company, and the municipality having jurisdiction over the Premises as to location, size, style, and content. The cost of the signage, installation, and any required governmental permits and insurance shall be the sole responsibility of the Tenant.

34. MISCELLANEOUS

Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party whom such use of gender relates. The use of the singular shall be deemed to include the plural and conversely the plural shall be deemed to include the singular.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written.

**LANDLORD:**

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By:

Name:

Title:

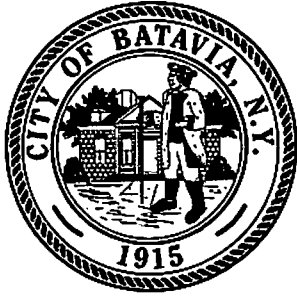
**Dent Neurologic Institute:**

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By:

Name:

Title:



# City of Batavia

## *Memorandum*

To: Jason Molino, City Manager

From: Matt Worth, Director of Public Works

Date: October 5, 2016

Subject: Alum Sludge Project Change Order

In May of this year, City Council awarded Environmental Solutions (US) Ltd. the contract to remove alum sludge from one of the secondary ponds at the WWTP in the amount of \$1,290,700. This work began in September and the contractor has been extremely successful in executing this work to date. By design, it was not intended to remove 100% of the sludge as it was not likely cost effective and there was some uncertainty as to the methods and costs with this project.

Ultimately, the contract award was \$800,000 under budget as the pricing received to do this work was much better than had been expected. As the project has moved forward, the contractor is very confident that additional sludge can be effectively removed which will push out the need to remove sludge from this pond in the future many years. The contractor has agreed to do this work based upon the existing contract conditions and pricing.

As it is unlikely that a future contract will be as cost effective as this one is, it is my recommendation that the City execute a change order for an additional \$400,000 of sludge removal to be authorized. This will result in a significant improvement in sludge removal while remaining well within budget parameters.

**#100-2016**

**A RESOLUTION FOR APPROVAL OF CHANGE ORDER NO. 1 TO THE CONTRACT  
FOR SLUDGE REMOVAL PROJECT**

**Motion of Councilperson:**

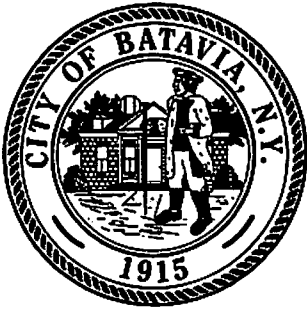
**WHEREAS**, on May 24, 2016 the City of Batavia City Council awarded the contract to Environmental Solutions (US) Ltd. to remove alum sludge from one of the secondary ponds S-1 at the Wastewater Treatment Plant; and,

**WHEREAS**, the original contract price was \$1,290,700; and,

**WHEREAS**, it was determined that the contract award was \$800,000 under budget and a change order in the amount of \$400,000 would allow for additional removal of the alum sludge in the secondary ponds S-1; and

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Batavia that Change Order No. 1 to the contract with Environmental Solutions (US) Ltd. for alum sludge removal at the Wastewater Treatment Plant, in the amount of \$400,000, is hereby approved.


**Seconded by Councilperson  
and on roll call**



# City of Batavia

## Memorandum

To: Honorable City Council

From: Jason Molino, City Manager 

Date: October 6, 2016

Subject: Resolution of Support for Ellicott Station Redevelopment

As you know, the City and Batavia Development Corporation (BDC) have been working tirelessly to redevelop brownfield properties throughout the City's downtown. This year, with the announcement of a preferred developer for the Ellicott Station Project, the City and BDC have applied for several grants to further support the project due to its extensive clean up and redevelopment costs. In addition, the City and BDC collectively, with the support of the County of Genesee, the Batavia City School District and the Genesee County Economic Development Center (GCEDC), approved a first-of-its-kind PILOT Increment Financing (PIF) district, otherwise known as *Batavia Pathway to Prosperity*, providing yet greater incentives to redevelop brownfields in the City of Batavia.

Currently the project is listed as a Five-Year Pipeline Initiative by the Finger Lakes Regional Economic Development Council (FLREDC) in the latest Consolidated Funding Application round, which was submitted by the BDC. The project was submitted as the City's application to the RESTORE NY program early last week. Both programs expect to announce award recipients before the end of the year.

The attached resolution of support demonstrates the City's extended and continued commitment to making brownfield redevelopment a reality for Batavia. In addition, the Genesee County Legislature and Batavia City Board of Education have been asked to adopt a similar resolution, emulating the communities support for the project.

This institution is an equal opportunity provider and employer. If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov)

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## BATAVIA DEVELOPMENT CORPORATION

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One City Centre  
Batavia, NY 14020

Office: 585-345-6380  
Fax: 585-343-8182  
[www.BataviaDevelopmentCorp.org](http://www.BataviaDevelopmentCorp.org)

TO: Jason Molino, City Manager

FROM: Julie Pacatte, Economic Developer

DATE: October 6, 2016

RE: City BOA Ellicott Station Resolution of Support

The Batavia Development Corporation (BDC) and Savarino Companies respectfully request City Council's consideration to adopt a Resolution emphasizing the transformational nature of the Ellicott Station project and appreciation of the seven years of planning which led to the Ellicott Station grant requests. Please find a comprehensive draft Resolution attached.

As you are aware, the BDC has worked tirelessly since the Brownfield Opportunity Area (BOA) study commenced in 2011 to solicit, discuss and secure interest in each of the strategic BOA sites. We are pleased to have identified Savarino Companies as the preferred developer that will transform the Della Penna and Santy's corner downtown, collectively known as Ellicott Station. We have great confidence Savarino will be able to deliver a high quality project. In fact, they have recently been recognized for their investments and efforts in Buffalo, NY.

The unprecedented *Batavia Pathway to Prosperity* program in which City Council, Genesee County Legislature and Batavia School District have collaborated further demonstrates the tremendous local support and priority district for reinvestment. However, Batavia's depressed real estate market combine with the extraordinary redevelopment costs limiting the amount of conventional financing such a project can afford. As such, gap funding grants are necessary to advance the project much like all complex developments across the region.

This summer, the BDC submitted a minimum \$1.9MM capital grant request to Empire State Development through the Consolidated Funding Application (CFA) process to advance phase I of the project. As such, the project has been identified as a "Five-year Pipeline Project" and listed in the 2016 Regional Economic Development Council Progress Report & Recommended Priority Projects. This month, the City applied to the Restore NY program requesting another \$500K to underwrite costs that will revitalize downtown, improve housing stock and induce private investment at Ellicott Station.

Based on industry metrics, Ellicott Station is poised to create upwards of 145 temporary construction jobs in which Savarino Companies' has committed to filling some of those positions with local unemployed workers. When fully realized, Ellicott Station should house 160 permanent jobs jointly earning \$6MM annually, cause \$500K downtown consumer retail demand and generate \$335K sales tax annually. Total assessed value should increase 30X, also improving nearby property values another 10-15% within half a mile.

We believe the Resolution will reiterate the importance of this \$17MM investment into a highly distressed area of the City experiencing 32% poverty and nearly 7% unemployment. We also urge New York State to enable us to implement the plan in which they sponsored.



**#101-2016**

**A RESOLUTION TO SUPPORT THE TRANSFORMATIONAL  
ELLICOTT STATION PHASE I REDEVELOPMENT PROPOSED IN THE  
CITY OF BATAVIA BROWNFIELD OPPORTUNITY AREA**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia, in 2009, applied for and competed for a New York State Brownfield Opportunity Area (BOA) central business corridor planning grant from the New York State Department of State (DOS); and

**WHEREAS**, the City of Batavia, in 2012, was selected by DOS to receive a \$265,000 BOA planning grant for the City of Batavia central business corridor; and

**WHEREAS**, as part of the BOA planning process, the BOA Step 2: Nomination Plan provided an in-depth and thorough description of the central business corridor, including an economic and market trends analysis of existing conditions, opportunities, and reuse potential for properties located in the BOA with an emphasis on the identification and reuse potential of five strategic sites in Batavia that are considered catalysts for City-wide revitalization; and

**WHEREAS**, the City Council of the City of Batavia adopted the proposed BOA central business corridor plan in June 2014 and thereafter, the City of Batavia received designated BOA status for the central business corridor by the DOS in April 2015; and

**WHEREAS**, the City of Batavia has, by resolution, tasked the Batavia Development Corporation to implement the BOA plan; and

**WHEREAS**, both the City of Batavia and the Batavia Development Corporation have vigorously pursued implementation of the BOA plan and taken several actions to acquire BOA strategic sites to implement the BOA plan, eliminate blight, and encourage private investment and job creation; and

**WHEREAS**, related thereto, the City of Batavia obtained an in rem default foreclosure judgement on one of the BOA strategic sites located at 40-52 Ellicott Street (the "BOA Property") and conveyed the BOA Property to the Batavia Development Corporation for purposes of implementing the BOA plan; and

**WHEREAS**, the Batavia Development Corporation, confirmed the presence of contamination potentially adversely affecting the public health at the BOA Property; and

**WHEREAS**, the New York State Department of Environmental Conservation (DEC) Brownfield Cleanup Program (BCP) provides owners of contaminated real property, who enroll such a property into the BCP, with certain liability protections and tax credits in return for remediating such a site under the supervision of the DEC; and

**WHEREAS**, to better position the BOA Property for re-use and new investment, to fast-track remediation and redevelopment of the BOA Property, and to eliminate the environmental unknowns associated with the BOA Property while securing liability relief and tax credits for future environmental remediation, the Batavia Development Corporation proactively applied for the BOA Property to be accepted into the BCP; and

**WHEREAS**, the DEC accepted the BOA Property into the BCP in June of 2015; and

**WHEREAS**, immediately upon acceptance of the BOA Property into the BCP, the Batavia Development Corporation broadly advertised for its redevelopment through a formal Request for Proposal (RFP) process and hosted tours of the site; and

**WHEREAS**, Savarino Companies submitted a \$17MM redevelopment plan and proforma for the BOA Property in alignment with the BOA central business corridor plan and RFP requirements for the BOA Property consisting of a mixed-use commercial and residential project that will remediate legacy environmental contamination and protect public health and that is anticipated to create upwards of 145 temporary jobs and approximately 160 permanent jobs, introduce quality downtown housing, employ people from the high poverty neighborhoods, and secure high quality tenants (the "Ellicott Station Project"); and

**WHEREAS**, the Batavia Development Corporation selected Savarino Companies as the preferred developer for the BOA Property based on its demonstrated brownfield clean-up experience, recognition for quality adaptive re-use projects, and new construction success, in addition to, proven unique workforce development initiatives recruiting and training unemployed workers from highly distressed neighborhoods; and

**WHEREAS**, the data obtained from and planning associated with the BOA central business corridor plan and planning effort as paid for by the DOS BOA grant were required and essential elements to the City of Batavia and the Batavia Development Corporation efforts to initiate brownfield remediation and redevelopment efforts within the City of Batavia; and

**WHEREAS**, the City of Batavia is on the cusp of successfully implementing the Ellicott Station Project, being the City of Batavia's first BOA project, on one of the strategic sites located within the BOA central business corridor plan – the BOA Property, as described above; and

**WHEREAS**, to ensure successful implementation of the BOA central business corridor plan and, as equally important, to ensure the successful remediation and redevelopment of the BOA Property and the Ellicott Station Project, the City Manager of the City of Batavia, the Executive Director of the Batavia Development Corporation, and principals from Savarino Companies met with Empire State Development (ESD) leadership in October 2015 to identify financial assistance that could be available for the BOA Property; and

**WHEREAS**, ESD's recommended approach was to phase the Ellicott Station Project in order to better compete for, and apply for, a "Consolidated Funding Application (CFA)" to New York State to access an Empire State Development Capital Grant for purposes of providing financial assistance to the Ellicott Station Project that will ensure the City of Batavia is able to implement the first remediation and redevelopment of a strategic site located within the City of Batavia BOA central business corridor plan; and

**WHEREAS**, prior to CFA submission, in a local effort to generate funds to support public infrastructure improvements and extraordinary redevelopment costs required for successful implementation of strategic site redevelopment within the City of Batavia BOA central business corridor plan, the City of Batavia, the City of Batavia Central School District, and the County of Genesee (collectively, the "Taxing Jurisdictions") agreed to pool resources creating the "*Batavia Pathway to Prosperity*", which is a local PILOT increment financing (PIF) program created through an inter-municipal agreement between the Taxing Jurisdictions, the Batavia Development Corporation and the Genesee County Economic Development Center (GCEDC) established to invest PIF funds into the City's BOA central business corridor plan district, the County's most distressed area, representing the first program of its kind in New York State where all local taxing jurisdictions are participating in such an effort to implement a BOA plan; and

**WHEREAS**, in June of 2016, the City of Batavia and its *Pathway to Prosperity* partners applied for Governor Cuomo's \$10MM Downtown Revitalization Initiative featuring the Ellicott Station Project and the redevelopment of the BOA Property and although becoming a regional finalist for this award, the City of Batavia as the second largest City in the Region was not awarded the \$10MM funds; and

**WHEREAS**, in July 2016, the Batavia Development Corporation submitted CFA Application #67491 Ellicott Station Project 2016 and an Anti-Poverty Statement to the Finger Lakes Regional Economic Development Council (the "REDC") identifying, in accordance with ESD's recommended phasing approach, the Ellicott Station Project Phase I as a downtown \$7.8MM BOA community development project that involves remediation, adaptive reuse and new construction at the BOA Property requesting a minimum ESD Capital grant of \$1.9MM; and

**WHEREAS**, the REDC has recognized Ellicott Station as having a regional impact and listed it as a "Five-year Pipeline Initiative" within its 2016 Progress Report & Recommended Priority Projects; and

**WHEREAS**, the City of Batavia, in October 2016 also applied to ESD on behalf of the Ellicott Station Project, to the Restore NY program for a \$500K grant designed to revitalize urban centers, induce commercial investment and improve the municipal housing stock; and

**WHEREAS**, the DOS BOA planning commitment and funding related thereto was the catalyst behind all of the aforementioned activities that, as of today, have resulted in the imminent remediation of a public health hazard and associated approximately \$17MM redevelopment and adaptive reuse of a blighted BOA strategic site in the City of Batavia; and

**WHEREAS**, beyond the use of BOA planning grant money, and to obtain the return on the DOS BOA planning grant money investment, redevelopment of BOA strategic sites within the City of Batavia requires creative commitments of additional funding to be obtained by use of PIF, CFA, and Restore NY, all as described herein; and

**WHEREAS**, the CFA capital grant as well as the Restore NY grant, totaling approximately \$2.4MM are necessary to advance the Phase I component of the Ellicott Station Project and will be matched by substantial private equity investment and significant local resources through the *Batavia Pathway to Prosperity* program; and

**WHEREAS**, the City of Batavia, the Batavia Development Corporation, the *Batavia Pathway to Prosperity* partners, and more importantly, the residents of the City of Batavia, have spent seven years, since 2009, implementing the BOA planning process, establishing a community based BOA plan through significant public input, believing that the BOA planning effort would be more than just a plan, and have backed up their "more than just a plan" expectations by committing over seven years of City of Batavia and Batavia Development Corporation staff time and funding to finally make redevelopment and investment happen in the City of Batavia; and

**WHEREAS**, the City of Batavia City Council commends the residents of the City of Batavia for their on-going seven year commitment to the successful implementation of the DOS BOA plan and to recognize the tireless efforts of the Batavia Development Corporation and its *Batavia Pathway to Prosperity* partners and their seven year commitment and effort to comply with the DOS BOA planning initiative and to bring the DOS BOA plan to life by bringing about private investment and BOA strategic site remediation and redevelopment; and

**WHEREAS**, the City of Batavia City Council desires to encourage Empire State Development to award the CFA Grant and Restore NY Grant for the Phase I component of the Ellicott Station Project, said funds being critical to implementing, and to be combined with Savarino Company funds and *Batavia*

*Pathway to Prosperity* funds, to implement and undertake, the DOS BOA plan and the Phase I component of the Ellicott Station Project; and

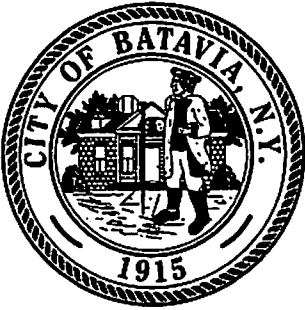
**NOW THEREFORE, LET IT BE RESOLVED**, that the City of Batavia City Council applauds the DOS BOA effort to date and recognizes that implementation of the DOS BOA plan is threatened and will not otherwise occur unless certain CFA-Empire State Development and Restore NY grants can be obtained to be used as match money to implement the Ellicott Station Project; and

**BE IT FURTHER RESOLVED**, that the City of Batavia City Council encourages New York State agencies, collectively, to partner with the City of Batavia and its Taxing Jurisdictions to consider the Ellicott Station Phase I Project as a transformational initiative in the Finger Lakes Region that will:

- Decisively and finally assist in implementing the DOS sponsored City of Batavia BOA initiatives, thereby leveraging significant local and private investment, and over seven years of planning and strategizing efforts, to protect the public health and create new jobs and new investment
- Facilitate an extraordinary multi-million dollar investment into a City of Batavia census tract having more than 30% of its residents living in poverty and nearly 7% unemployed
- Create critical mass and propel revitalization of the City's historic mixed-use downtown, a commercial district with three State Routes intersecting experiencing more than 35,000 vehicles per day as a regional hub for commerce and services
- Complement significant public and private downtown investments nearby at Tompkins/Bank of Castile headquarters, Masonic Lodge rehabilitation, Carr's Warehouse adaptive reuse and soon underway, renovations to the former Newberry building; and

**BE IT FURTHER RESOLVED**, that the City of Batavia City Council respectfully requests ESD and REDC to award the CFA Grant and Restore NY Grant for the Phase I component of the Ellicott Station Project to ensure the already expended DOS BOA planning grant money can be fully leveraged to bring about the vision, the environmental remediation, the private sector investment, and the new job creation as proposed and expected to be created by, the DOS BOA plan.

**Second by Councilperson  
And on roll call**



# City of Batavia

To: Honorable City Council

From: Jason Molino, City Manager

Date: October 7, 2016

Subject: 23 Columbia Avenue

**Background:** Over the past year the City has been working cooperatively with Wells Fargo to condemn and demolish a single family residence at 23 Columbia Avenue. The property has long been vacant and has substantial code enforcement citations. In April 2015 the City issued a Notice of Unsafe Building and Condemnation Order. Since then, the City has been working with Wells Fargo to demolish the property.

After a tireless effort to seek approval from Wells Fargo, they have agreed to reimburse the City for demolishing the property due to its unsafe condition. Generally the City would not take such extenuating actions however Wells Fargo, as the mortgagee and as a party of interest for the property has authorized a demolition reimbursement agreement with the City.

The demolition reimbursement agreement provides for the City to engage a contractor to conduct an asbestos survey on the property, demolish the property and fill and level the vacant land once complete. The agreement also provides that Wells Fargo will reimburse the City for all costs associated with razing the structure on the property. The demolition is estimated to cost approximately \$25,000, however this may change after the completion of the asbestos survey.

**Recommendation:** It is recommended that the City Council approve the demolition reimbursement agreement with Wells Fargo to allow the property to be demolished. The City Attorney has reviewed and approved the agreement.

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**#102-2016**

**A RESOLUTION AUTHORIZING COUNCIL PRESIDENT TO SIGN  
A DEMOLITION REIMBURSEMENT AGREEMENT WITH WELLS FARGO**

**Motion of Councilperson**

**WHEREAS**, the City of Batavia and Wells Fargo are desirous of entering into a Code Enforcement and Building Demolition Agreement for 23 Columbia Avenue, (SBL# 84.043-1-35) in the City in Batavia, New York; and

**WHEREAS**, the residential structure on the property consists of a single family dwelling and the structure is an unsafe structure under Batavia Municipal Code ("BMC") Section 55-2 and New York State Property Maintenance Code ("PMC") Sections 107.1.2 and 107.1.3; and

**WHEREAS**, The City, through duly authorized New York State Code Enforcement Official ("CEO"), has inspected the structure and on April 23, 2015 issued a Notice of Unsafe Building and condemnation Order under BMC Section 55-5(C) and PMC Section 107.1.2 and 107.1.3, and the Notice requires the structure to be demolished within thirty (30) days; and

**WHEREAS**, Section 55-5(C)(3) of the BMC provides that a mortgagee or other party with interest in the property may perform the demolition upon receipt of the Notice within thirty (30) days; and

**WHEREAS**, the City Manager has negotiated an acceptable reimbursement agreement with Wells Fargo; and

**WHEREAS**, the City Attorney has reviewed and approved the reimbursement agreement; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Batavia that the Council President is hereby authorized to execute a reimbursement agreement with Wells Fargo.

**Seconded by Councilperson  
and on roll call**

## **Code Enforcement and Building Demolition Reimbursement Agreement**

This agreement is made as of October \_\_\_, 2016 by and between the City of Batavia, New York ("City") and Wells Fargo \_\_\_ ("Wells Fargo") related to a residential parcel at 23 Columbia Avenue in the City, SBL# 84.043-1-35 with improvements consisting of an approximately \_\_\_\_\_ square foot residential structure ("the Property").

### **Recitals:**

1. The Property is currently owned by Gordon Betties. Gordon Betties obtained a mortgage and loan on the Property from Wells Fargo which mortgage was filed with Genesee County Clerk's Office on or about \_\_\_\_\_, Liber \_\_\_ and Page \_\_\_\_.
2. Gordon Betties is in default of the mortgage obligations and has vacated the residential structure on the Property.
3. The residential structure on the Property consists of a single family dwelling. The structure is an unsafe structure under Batavia Municipal Code ("BMC") Section 55-2 and New York State Property Maintenance Code ("PMC") Sections 107.1.2 and 107.1.3.
4. Despite inspection by the City and the issuance of numerous code enforcement citations against the Property, the title owner has not addressed the violations on the Property and brought the structure into compliance with the BMC and the New York State PMC.
5. The City, through duly authorized New York State Code Enforcement Official ("CEO"), has inspected the structure and on April 23, 2015 issued a Notice of Unsafe Building and Condemnation Order under BMC Section 55-5(C) and PMC Section 107.1.2 and 107.1.3, copies of which are attached as Exhibits A and B, respectively. The Notice requires the structure to be demolished within thirty (30) days.
6. The City filed the Notice with the Genesee County Clerk's Office on May 1, 2015 and the Notice has the effect of a Notice of Pendency under Article 65 of New York's Civil Practice Law and Rules. A date-stamped copy is attached as Exhibit C.
7. The City has also duly served the Notice upon the owner's last known address and others with an interest in the parcel, namely Wells Fargo, as mortgagee on April 23, 2015. Wells Fargo acknowledges receipt of said Notice.
8. Section 55-5(C)(3) of the BMC provides that a mortgagee or other party with interest in the Property may perform the demolition upon receipt of the Notice within thirty (30) days.

9. Section 55-7 of the BMC further provides that if the owner, occupant or mortgagee fails to comply with the order of the CEO within thirty (30) days, or appeal said order, that the CEO shall cause the building to be repaired, vacated or demolished as the facts warrant and that the expenses shall be paid by the interested person. In addition, that the City may institute an action for recovery of such expenses or may cause the expenses together with a charge of fifty (50) percent to cover the supervision and administration to be filed against the property as a lien. Thereafter, the City following service of a notice of lien on the interested person and filing in the Clerk-Treasurer's Office and Bureau of Assessment, the filing of costs and expenses will be a lien against the real property, included in the City's tax roll and enforced in the same manner as City taxes.
10. The City has communicated with Wells Fargo and requested the mortgagee's assistance in demolition of the structure on the Property.

**Agreement:**

1. Wells Fargo agrees to pay for the necessary costs of demolition of the structure following the City's receipt of three (3) proposals.
2. The City will use its best efforts to obtain three (3) proposals from qualified demolition contractors regarding the necessary abatement, demolition, backfill services that need to be performed at the Property to remove the structure.
3. The City will provide copies of the three (3) proposals to Wells Fargo. The City in its sole and complete discretion shall select the lowest responsible bidder that proposes to provide necessary demolition services at the Property.
4. Thereafter, the City will advise Wells Fargo of its contractor selection and enter an appropriate contract for the demolition services at the Property.
5. Following selection and notice to Wells Fargo, the City shall issue notice to proceed to the contractor.
6. Wells Fargo hereby grants the City and its contractor, subcontractor and agents the right to enter on the Property for purposes of performing the demolition services and code enforcement oversight related to the removal of the residential structure.
7. Upon completion of the demolition services and issuance of the billings to the City, the City shall promptly transmit a copy of the payment request to Wells Fargo.



8. Wells Fargo shall promptly review and pay for the demolition, but in no instance later than 30 days after receipt of the contractor's billing.
9. Upon the City's receipt of full payment regarding the Property, the City will file a cancellation of the Notice with the Genesee County Clerk's Office and provide Wells Fargo with a date-stamped copy of the Notice.
10. In the event that Wells Fargo fails to timely pay for all demolition costs and expenses the City shall have the right to file a lien against the Property pursuant to BMC Section 55-7, enforce such lien and seek any and all other relief provided for under the BMC, PMC or common law.
11. Finally, in the event that Wells Fargo or any future title owner of the Property seeks to redevelop the Property, said owner shall comply with all applicable City zoning code requirements and obtain all necessary permits and approvals related thereto.

In Witness Whereof, the parties hereto have duly executed this agreement as of the date first set forth above.

**CITY OF BATAVIA**

**WELLS FARGO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Council President

Its: \_\_\_\_\_