

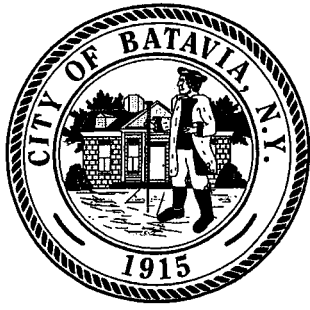
BATAVIA CITY COUNCIL CONFERENCE MEETING

City Hall - Council Board Room
One Batavia City Centre
September 25th 2023 at 7:00 p.m.

AGENDA

- I. Call to Order
- II. Invocation – Councilmember Jankowski
- III. Pledge of Allegiance
- IV. Public Comments
- V. Council Response to Public Comments
- VI. Communications
 - a. Notre Dame 5-K – 9/30/2023
 - b. BID Wine Walk – 10/7/2023
 - c. BDC Indoor Farmers Market – Saturdays – 10/28/2023 – 3/30/2023
- VII. Council President Report
 - a. Announcement of the next City Council Meeting to be held on **Tuesday**, October 10th, 2023 at 7:00 p.m. at the City Hall Council Board Room, 2nd Floor, City Centre
- VIII. Proclamation
 - a. Thad Mart – Retirement
- IX. Presentations
 - a. Audit Presentation
 - b. Batavia Home Fund Presentation
- X. Appointments
 - a. Pamela Meyer – Historic Preservation
- XI. Assignment of Unassigned Fund Balance to Reserves
- XII. Appropriate Unassigned Fund Balance to Zoning Code Update Committed Fund Balance

- XIII. Appropriate Sewer Unassigned Fund Balance to Sludge Reserve
- XIV. Ice Rink Chiller Replacement SEQR
- XV. Creek Park Committed Fund Balance and Environmental
- XVI. Dwyer Stadium Lease Agreement
- XVII. Mixed Place Re-zone
- XVIII. Traffic Safety Grant
- XIX. Adjournment



City of Batavia

MEMORANDUM

To: Rachael Tabelski, City Manager
From: Heidi J. Parker, Clerk-Treasurer
Date: 9/15/23
Subject: **Event Summary**

Below please find the summary for the events to be reviewed by City Council on September 25, 2023:

Notre Dame High School 5K Run/Walk – 9/30/23

The estimated cost from the police department is \$362.00. There were no costs from the other departments.

BID Wine Walk – 10/7/23

Estimated cost from the police department is \$181.00. There were no costs from the other departments.

(City Centre Event)

BDC Indoor Farmer's and Vendor Market – 10/28/23, 11/4/23, 11/18/23, 12/16/23, 1/6/24, 1/20/24, 2/3/24, 2/17/24, 3/2/24, 3/16/24, 3/30/24

There were no costs from the departments.

****NOTE** – Event sponsors are responsible for costs that may be incurred because of their event and have been made aware of estimated costs, if any. For final approval, all applicants must submit a certificate of liability insurance to the Clerk's Office prior to the event date.

pd w/ 3/11 application that was rescheduled



City of Batavia
Batavia, New York 14020
(518) 345-6300

Official Use Only:

2023-51
Event Application #:

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor Notre Dame High School 1

Type of Event 5K Run/Walk

Day and Date of Event 9/30/23

Time of Event (don't include set up time here - just actual event time) 9am - 12pm

Location of Event Notre Dame High School and streets surrounding

Details of Event (be as specific as possible!) A 5K race to begin and end at ND High School (73 Union St). Race route is attached.

Contact Information:

Primary contact:
Name Gail Tenney
Phone # (219) 938-1471
Mailing address 67 Redfield Plwy Batavia
E-mail address getenney@comcast.net

Secondary contact:
Carrie Monachino
(585) 356-8307
camonac2316@yahoo.com

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: ndhsbatavia.com

Will there be alcohol at your event? Yes No If yes, complete the following:

Type of alcoholic beverage to be served: Liquor Wine Beer

Will you be providing alcohol to your group? Yes No

Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with Liquor Legal.

Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? N/A

Is the Sponsor requesting waiver of the Open Container law per §34-7 of the City Code? Yes No

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: 9/30/23 Set up time: 8 7 am

Tear down date: 9/30/23 Tear down time: 12 pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 9/30/23 Start time: 9 am End time: 12 pm

Estimated crowd size: 100-150 # of Vendors/Displays 2

WILL THE EVENT INCLUDE:

- Block Party: Yes No (MAP OF STREET CLOSURE MUST BE ATTACHED)
- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
- Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
- Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)

Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? To the finish line. Power will come out of building

Will generators be used? Yes No *see Special Events Inspection list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event? Yes No
 Will a bounce house or other air supported structures be erected at event? Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected* Blow up finish line
12' h x 13' w x 3' d

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: Runners can complete the course

List Street(s) and Cross Street(s) that will be affected:

| | | |
|---|---|--------------------------|
| <u>Redfield Pkwy</u> <small>Street to be closed</small> | <u>Richmond Ave &</u> <small>Cross Streets</small> | <u>Redfield</u> |
| <u>Union St</u> <small>Street to be closed</small> | <u>Richmond Ave</u> <small>Cross Streets</small> | <u>Union</u> |
| <u>Veterans Memorial Dr</u> <small>Street to be closed</small> | <u>Richmond Ave</u> <small>Cross Streets</small> | <u>Veterans Memorial</u> |
| <u>Park Rd</u> <small>Street to be closed</small> | <u>Richmond</u> <small>Cross Streets</small> | <u>Redfield.</u> |

Will street barricades be requested from the City? Yes No How Many? 3

Will traffic cones be requested from the City? Yes No How Many? _____
 (Drop off locations of requested items must be identified on the site drawing)

BANNERS, SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: (there may be additional costs)

Block parties must allow local traffic and driveways cannot be blocked. Initial here: _____ (if hosting block party)

POLICE

Will City Police Officers be requested for the event? Yes No

If yes, what type of request? Traffic control Security Community Policing
 Other : Specify _____

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. For block parties, sponsors must notify all affected neighbors and local traffic/driveway access must be maintained.
13. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

Notre Dame High School, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the Notre Dame High School (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

8/31/23
Date:

Notre Dame High School
Name of Event Sponsor:
Melissa Lindner
Authorized Signature, Title
Melissa Lindner
Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

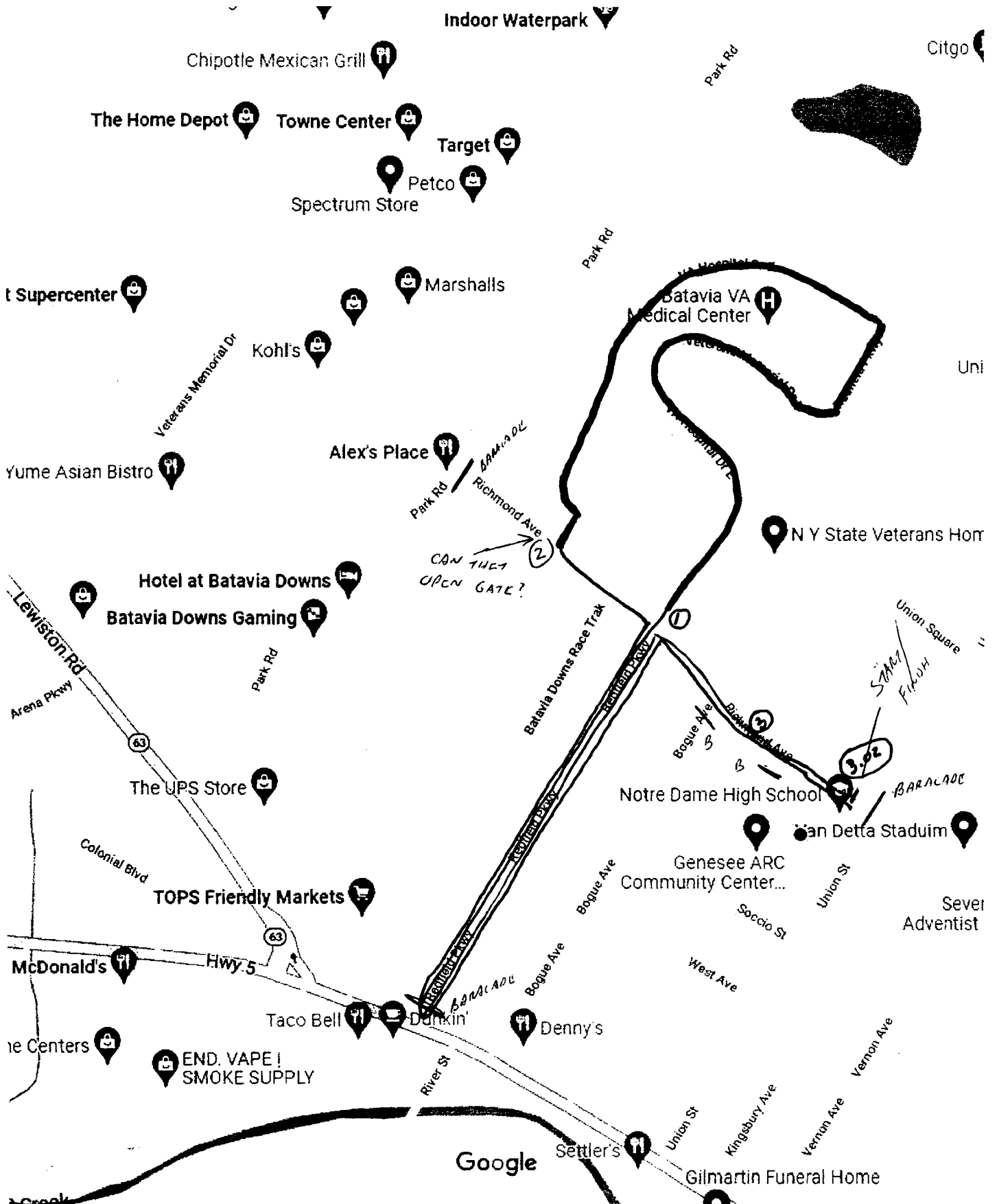
8/31/23
Date:

[Signature]
Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

Google Maps





City of Batavia
Batavia, New York 14020
(585) 345-6300

PAID
AUG 21 2023
CITY OF BATAVIA
CLERK-TREASURER

Official Use Only:

2023-48

Event Application #:

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor Batavia Business Improvement Dist.
Type of Event Wine walk
Day and Date of Event Oct. 7th 2023 (Saturday)
Time of Event (don't include set up time here - just actual event time) 4pm - 8pm
Location of Event Downtown Batavia
Details of Event (be as specific as possible!) 23 Businesses pouring wine for 700 people

Contact Information:

Primary contact:

Name Shannon Maule
Phone # 585-409-5531
Mailing address 200 E. Main St.
E-mail address Director@downtownbataviany.com

Secondary contact:

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: _____

Will there be alcohol at your event? Yes No If yes, complete the following:

Type of alcoholic beverage to be served: Liquor Wine Beer

Will you be providing alcohol to your group? Yes No

Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.

Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? I will for All businesses

Is the Sponsor requesting waiver of the Open Container law per §34-7 of the City Code? Yes No Participating

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

**** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. ****

EVENT INFORMATION (required):

Set up date: Oct, 7, 2023 Set up time: 3:30pm
Tear down date: Oct 7, 2023 Tear down time: 8pm

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: Oct 7 Start time: 4pm End time: 8pm
Estimated crowd size: 700 # of Vendors/Displays 0

WILL THE EVENT INCLUDE:

- Block Party: Yes No (MAP OF STREET CLOSURE MUST BE ATTACHED)
- Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
- Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
- Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)

Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 *The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.*

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? _____

Will generators be used? Yes No *see Special Events Inspection ✓ list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event? Yes No
Will a bounce house or other air supported structures be erected at event? Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected* _____

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: _____

List Street(s) and Cross Street(s) that will be affected:

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Street to be closed & Cross Streets

Will street barricades be requested from the City? Yes No How Many? _____

Will traffic cones be requested from the City? Yes No How Many? _____
(Drop off locations of requested items must be identified on the site drawing)

BANNERS / SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: (there may be additional costs)

Block parties must allow local traffic and driveways cannot be blocked. Initial here: _____ (if hosting block party)

POLICE

Will City Police Officers be requested for the event? Yes No 2 hrs only (by go art)

If yes, what type of request? Traffic control Security Community Policing
Other : Specify To help make sure people cross the street safely during registration 3:45 - 5:45

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. For block parties, sponsors must notify all affected neighbors and local traffic/driveway access must be maintained.
13. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

BID
Executive Director

The organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the BID (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

8/21/23
Date:

Shannon Maute BID
Name of Event Sponsor:

Shannon Maute Executive Director
Authorized Signature, Title

Shannon Maute
Name -- Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

8/21/23
Date:

Shannon Maute
Signature of Applicant

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

| <u>OFFICIAL USE ONLY</u> | | | | |
|--|--------------------------|--------------------------|------------------|---------------------|
| Department Recommendations: | Approved | Denied | Additional Costs | Department Initials |
| DPW (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| Fire Dept. (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| Police Dept. (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <i>If recommendation is denied, please attach a brief explanation</i> | | | | |

| <u>OFFICIAL USE ONLY</u> | |
|---------------------------------|---|
| _____ | _____ |
| <i>Date Received</i> | <i>Council Action: (Approved / Disapproved)</i> |
| _____ | _____ |
| <i>Date of Council Action:</i> | <i>Insurance Received (if applicable)</i> |

Event Application #: _____

Department: _____
List Department Name Here

| Department Approval | YES | NO |
|---------------------|--------------------------|--------------------------|
| DPW | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire | <input type="checkbox"/> | <input type="checkbox"/> |
| Police | <input type="checkbox"/> | <input type="checkbox"/> |

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

Submitted By: _____
Name / Title *Date Submitted*

Appendices

| SPECIAL EVENTS INSPECTION | | | |
|---------------------------|---|----|---|
| YES | Item to verify | NO | Corrective action |
| | Extension cords plugged into approved electrical boxes? | | Do not use unless cords plugged direct |
| | Generator in use 20 feet from any structure? | | Do not use generator unless moved to safe area |
| | Generator has appropriate extinguisher available | | Do not use unless extinguisher present |
| | Generator grounded? | | Do not use unless grounded |
| | Inflatable secured to ground? | | Do not use unless secured |
| | Inflatable rods covered? | | Do not use unless rods are covered for safety |
| | Propane tanks secured? | | Do not use unless secured |
| | Outside cooking has appropriate extinguisher? | | Do not use unless extinguisher present |
| | Fireworks display 75 feet from any structure? | | Do not light unless in approved location |
| | Fireworks display has proper extinguishers? | | Do not light unless extinguisher is present |
| | Does cooking under tent meet the safety standard? | | Do not cook unless tent is rated for fire resistance or cooking outside tent |
| | Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse? | | Do not occupy until proper securing is approved by inspector |
| | Does Easy up tent have permanent label ID of size and fabric? | | Tent not to be used without proper label |
| | Outdoor cooking that produces sparks or grease laden vapors? | | Shall be outside of tents unless tent is fire rated and extinguishers or hood present |
| | Does the venue have a crowd of 250 people or more? | | Must have crowd managers trained as approved by inspector |

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)

| .YES | Item to Verify | NO | Corrective Action |
|------|--|----|--|
| | Is structure at least 20 feet from any property lines? | | Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines. |
| | Is structure within 20 feet of any building? | | Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building. |
| | Is structure within 20 feet of another structure? | | Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements. |
| | Is structure within 20 feet of parking? | | Restrict parking or relocate structure at least 20 feet from parking. |
| | Is structure within 20 feet of any internal combustion engines? | | Do not use internal combustion engine until relocated at least 20 feet from structure. |
| | Are "No Smoking" signs posted inside and outside? | | Do not occupy or use structure unless no smoking signs are posted and enforced. |
| | Are fireworks and unapproved open flames prohibited inside and outside the structure? | | Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure. |
| | Are all points in the structure within 100 feet of an exit? | | Do not occupy or use structure unless sufficient nearby exits are provided. |
| | Ensure "Exit" signs are posted and clearly visible. | | Do not occupy or use structure unless required "Exit" signs are provided. |
| | Ensure "Exit" signs are illuminated. | | Do not use or occupy structure unless illuminated exits are provided. |
| | Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load. | | Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup. |
| | Are exits open and uncovered? | | Do not occupy or use structure unless all required exits are functional. |
| | Are all aisles at least 44 inches wide? Do aisles increase in width where required? | | Do not occupy or use structure unless proper aisle widths are maintained. |
| | Is the Occupant Load posted appropriately? | | Do not occupy or use structure unless the correct occupant load is posted appropriately. |
| | Ensure emergency lighting is provided. | | Do not use or occupy structure unless emergency lighting is provided. |
| | Is a label permanently affixed to the structure bearing the identification of size and material type? | | Do not use or occupy structure unless label is present. |
| | 2A:10BC Fire extinguishers are provided (see information packet for minimum number required). | | Do not use or occupy structure until sufficient, properly sized, fire extinguishers are provided. |
| | At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed. | | Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes. |
| | Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area. | | Do not use or occupy the structure unless combustible vegetation has been removed from the specified area. |
| | The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste. | | Do not use or occupy the structure unless combustible waste is removed or stored in proper containers. |
| | Such waste shall be stored in approved containers until removed from the premises. | | Do not use or occupy the structure unless trash containers have been emptied from the previous day. |
| | Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent. | | Do not use cooking source under tent |
| | Is tent secure | | 20 lbs per leg or tent stakes |

Inspection performed by: _____

Date: _____



City of Batavia
Batavia, New York 14020
(585) 345-6300

Official Use Only:

2023 - 2024

Event Application Fee - \$25.00 (non-refundable)
(A separate permit must be issued for each item requested)

Event Sponsor Batavia Development Corp.
 Type of Event Indoor Farmers & Vendor Market
 Day and Date of Event 10/28 - 11/4 - 11/18 - 12/16 - 1/6 - 1/20 - 2/3 - 2/17 - 3/2 - 3/16 - 3/30
 Time of Event (don't include set up time here - just actual event time) 10:30am - 1:00pm.
 Location of Event City Centre Concourse (from City Hall to JCP)
 Details of Event (be as specific as possible!) Indoor vendors selling goods from veg & meats to home business Creations.
Not limited to products & may include service providers.

Contact Information:

Primary contact:
 Name Tammy Hathaway
 Phone # 585-813-8054
 Mailing address One Batavia City Centre
 E-mail address director@bataviadevel

Secondary contact:
Adam Garner
585-507-2083
garnerfarm806@outlook.com

* Events will be posted on the City's website calendar. If there is a website you would like to include that people can visit for more information or registration, if applicable, note website here: _____

Will there be alcohol at your event? Yes No If yes, complete the following:
 Type of alcoholic beverage to be served: Liquor Wine Beer
 Will you be providing alcohol to your group? Yes No
 Will you be selling alcohol to your group? Yes No Insurance certificate **WILL BE** required with **Liquor Legal**.
 Will people be allowed to bring alcohol to the event? Yes No

Who will be applying to the NYS Liquor Authority for the permit to sell? this is sold for purchase only
 Is the Sponsor requesting waiver of the Open Container law per §34-7 of the City Code? Yes No NOT
consumption on site

It is the Applicant's responsibility to police the area during the gathering to make sure all Alcohol Beverage Control rules are followed. Also, after the event Applicant is responsible to dispose of all empty bottles and debris.

** If you are contracting with a group to sell alcohol during your event on city property, separate insurance is required from them with Liquor Legal in addition to your insurance. **

EVENT INFORMATION (required):

Set up date: 10/28 → 3/30 Set up time: 10am
Tear down date: 10/28 → 3/30 Tear down time: 1:00

PLEASE LIST ALL DATES / TIMES AND CROWD INFORMATION BELOW:

Date: 10/28 - 3/30 Start time: 10:30 am End time: 1:00 pm
Estimated crowd size: 50 # of Vendors/Displays 20

WILL THE EVENT INCLUDE:

- Block Party: Yes No (MAP OF STREET CLOSURE MUST BE ATTACHED)
 - Parade: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Run or Walk: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
 - Music: Yes No (SITE DRAWING OF STAGE OR DJ LOCATION ATTACHED)
 - Street Closure(s): Yes No (MAP OF CLOSED STREETS AND DROP LOCATION OF BARRICADES)
 - Other: Yes No (MAP OF DESIRED ROUTE MUST BE ATTACHED)
- Fireworks or Hazardous Materials? Yes No Carnival or Amusement Rides? Yes No

Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

Music: Live Group Recorded/DJ

Possibly will use Stage for local musicians
Name of Company Providing Above: _____ Company Contact/Representative _____ Phone # _____

Address, Street _____ City _____ Zip Code _____

CITY SERVICES SUPPORT:

City Code 66-15, D-2 The City reserves the right, as part of the permitting process, to require the applicant to pay for additional operational costs of the City associated with the event.

FOR EVENTS IN CITY PARKS, GARBAGE PICK-UP WILL BE MADE ONLY TO GARBAGE CANS ON SITE. ADDITIONAL GARBAGE MUST BE BAGGED AND REMOVED FROM PREMISES BY EVENT SPONSOR.

ELECTRIC:

Will electric be needed for the event? Yes No

What will you be providing electric to? vendors who need it for displays & refrigeration, etc.

Will generators be used? Yes No *see Special Events Inspection list for compliance*

If yes, INCLUDE SITE DRAWING INDICATING PLACEMENT/LOCATION OF GENERATOR

SIZE OF GENERATOR(S) _____ FUEL SOURCE - GAS - - DIESEL - - PROPANE -

TENTS/CANOPIES/POP-UPS: See appendices for compliance checklist – all tents will be inspected **

Will Tents/Canopies or other membrane structures be erected at event? *possibly* Yes No
Will a bounce house or other air supported structures be erected at event? *possibly* Yes No

NOTE – Appropriate anchoring is required for all tents, canopies, and pop-up structures

Please list size(s) of Tents/Canopies or other temporary structures erected* Small pop-ups.

ANCHORING INTO PAVEMENT IS PROHIBITED!

If anchoring in grass, soil areas please contact the NYS Dig Safe # at: 1-800-962-7962 or 811

STREET CLOSURE(S):

ANY EVENT REQUIRING A STREET CLOSURE REQUIRES 90 DAY ADVANCE NOTICE

Will street(s) need to be closed for the event? Yes No Reason: _____

List Street(s) and Cross Street(s) that will be affected:

Street to be closed

Street to be closed

Street to be closed

Street to be closed

Cross Streets
&

Cross Streets
&

Cross Streets
&

Cross Streets
&

Cross Streets

Will street barricades be requested from the City? Yes No How Many? _____

Will traffic cones be requested from the City? Yes No How Many? _____

(Drop off locations of requested items must be identified on the site drawing)

BANNERS / SIGNS OR OTHER DECORATIONS ARE NOT TO BE ATTACHED TO STREET BARRICADES, TRAFFIC CONES, LIGHT POLES, OR ANY OTHER CITY PROPERTY

Are there any other city materials or personnel requested for the event? Identify below: *(there may be additional costs)*

Block parties must allow local traffic and driveways cannot be blocked. Initial here: _____ (if hosting block party)

POLICE

Will City Police Officers be requested for the event? Yes No

If yes, what type of request? Traffic control Security Community Policing

Other : Specify _____

FINAL DETERMINATION FOR NUMBER OF POLICE OFFICERS and UTILIZATION WILL BE AT THE DISCRETION OF THE CITY.

PLEASE NOTE:

1. Be as specific as possible in the description so we have the best understanding of your event. Also, be clear as to what you would like provided by the City. **Applications should be submitted at least 30 days in advance.**
2. Fire hydrants, Cross Streets/Alleys and Store Fronts **Shall Not Be Blocked** by any Vehicle or Concession at any time.
3. An Emergency Vehicle Safety Lane Must be Maintained at All times at All Locations
4. Fuel Containers Must be of an Approved type and Must be Properly Secured
5. Deep Fryers Must Be Approved. Commercial Types Require a Type "K" Portable Fire Extinguisher
6. All Food Vendors Must Have a Type ABC Fire Extinguisher. All Fire Extinguishers Must Be Inspected Within The Last Year. **A Valid Health Department Permit Must Be Displayed.**
7. No grease or substance of any kind may be discharged upon the streets, sidewalks, or into the storm drains and/or sewers
8. City Sign Ordinances Shall Be Complied With At All Times And In All Regards
9. No paint or other markings may be placed on the street surface.
10. Additional operational costs of the City, as determined by City Departments, must be paid by the event sponsor at the conclusion of the event. The application fee is due at time of submission and is non-refundable.
11. Vendor/participants must also follow all inspection/temporary structure rules found in the appendices (pg 6-7)
12. For block parties, sponsors must notify all affected neighbors and local traffic/driveway access must be maintained.
13. If approved, a Certificate of Liability Insurance of at least \$1,000,000 naming the City of Batavia as an additional insured for at least the day(s) of the event must be submitted to the City Clerk prior to the event date.

Hold Harmless Agreement

BDC, the organizer/sponsor, shall indemnify, hold harmless, assume liability for and defend the City of Batavia, its employees, officers and agents from any and all damages, costs and expenses including but not limited to, attorney's fees, court costs, and all other sums which the City of Batavia its employees, officers and agents may pay or become obligated to pay on account of any and every demand, claim or assertion of liability, or any claim founded thereon, arising or alleged to have arisen out of the activities described in this special event application and sanctioned by the permit issued by the City of Batavia or by any act or omission of the BDC (Organizer/Sponsor), its members, agents, employees, volunteers, officers, or directors in relation to activities described in this application and sanctioned by the issuance of a special event permit.

8.31.23

Date:

Bataviz Development Corp.

Name of Event Sponsor:

Tammy S. Hathaway

Authorized Signature, Title

Tammy S. Hathaway

Name - Printed or Typed

The rules and information contained within this application have been read and will be adhered to.

8.31.23

Date:

Tammy S. Hathaway

Signature of Applicant:

Please forward this application to:

**City Clerk's Office
Attention: Events Applications Department
One Batavia City Centre
Batavia, New York 14020**

**SPECIAL EVENT APPLICATION
DEPARTMENT APPROVAL SUMMARY**

FOR OFFICIAL CITY USE ONLY

| <u>OFFICIAL USE ONLY</u> | | | | |
|--|--------------------------|--------------------------|------------------|---------------------|
| Department Recommendations: | Approved | Denied | Additional Costs | Department Initials |
| DPW (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| Fire Dept. (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| Police Dept. (if applicable) | <input type="checkbox"/> | <input type="checkbox"/> | _____ | _____ |
| <i>If recommendation is denied, please attach a brief explanation</i> | | | | |

| <u>OFFICIAL USE ONLY</u> | |
|---|--|
| _____ | _____ |
| <small><i>Date Received</i></small> | <small><i>Council Action: (Approved / Disapproved)</i></small> |
| _____ | _____ |
| <small><i>Date of Council Action:</i></small> | <small><i>Insurance Received (if applicable)</i></small> |

Event Application #: _____

Department: _____
List Department Name Here

| Department Approval | YES | NO |
|---------------------|--------------------------|--------------------------|
| DPW | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire | <input type="checkbox"/> | <input type="checkbox"/> |
| Police | <input type="checkbox"/> | <input type="checkbox"/> |

Department Cost Estimate: _____
If applicable

Estimate based on: *Fillable table – type your response here:*

If Application not Approved, Provide Reason Here: *Fillable table – type your response here:*

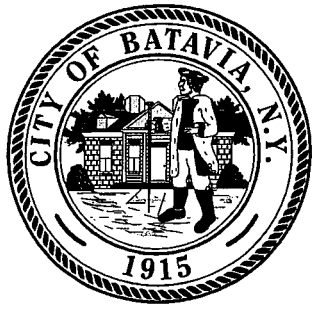
Submitted By: _____ _____
Name / Title *Date Submitted*

Appendices

| SPECIAL EVENTS INSPECTION | | | |
|---------------------------|---|----|---|
| YES | Item to verify | NO | Corrective action |
| | Extension cords plugged into approved electrical boxes? | | Do not use unless cords plugged direct |
| | Generator in use 20 feet from any structure? | | Do not use generator unless moved to safe area |
| | Generator has appropriate extinguisher available | | Do not use unless extinguisher present |
| | Generator grounded? | | Do not use unless grounded |
| | Inflatable secured to ground? | | Do not use unless secured |
| | Inflatable rods covered? | | Do not use unless rods are covered for safety |
| | Propane tanks secured? | | Do not use unless secured |
| | Outside cooking has appropriate extinguisher? | | Do not use unless extinguisher present |
| | Fireworks display 75 feet from any structure? | | Do not light unless in approved location |
| | Fireworks display has proper extinguishers? | | Do not light unless extinguisher is present |
| | Does cooking under tent meet the safety standard? | | Do not cook unless tent is rated for fire resistance or cooking outside tent |
| | Are Easy up tents properly roped, braced or anchored to withstand elements of weather and collapse? | | Do not occupy until proper securing is approved by inspector |
| | Does Easy up tent have permanent label ID of size and fabric? | | Tent not to be used without proper label |
| | Outdoor cooking that produces sparks or grease laden vapors? | | Shall be outside of tents unless tent is fire rated and extinguishers or hood present |
| | Does the venue have a crowd of 250 people or more? | | Must have crowd managers trained as approved by inspector |

TEMPORARY STRUCTURE SETUP AND DAILY CHECKLIST (tent and membrane structures)

| YES | Item to Verify | NO | Corrective Action |
|--------------------------|--|-------|--|
| | Is structure at least 20 feet from any property lines? | | Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any property lines. |
| | Is structure within 20 feet of any building? | | Do not occupy or use structure. Structure needs to be relocated a minimum of 20 feet from any building. |
| | Is structure within 20 feet of another structure? | | Evaluate all structures within 20 feet of each other as a single structure meeting all applicable requirements. |
| | Is structure within 20 feet of parking? | | Restrict parking or relocate structure at least 20 feet from parking. |
| | Is structure within 20 feet of any internal combustion engines? | | Do not use internal combustion engine until relocated at least 20 feet from structure. |
| | Are "No Smoking" signs posted inside and outside? | | Do not occupy or use structure unless no smoking signs are posted and enforced. |
| | Are fireworks and unapproved open flames prohibited inside and outside the structure? | | Do not occupy or use structure unless fireworks and all unapproved open flames are prohibited in the structure and within 20 feet of exterior of structure. |
| | Are all points in the structure within 100 feet of an exit? | | Do not occupy or use structure unless sufficient nearby exits are provided. |
| | Ensure "Exit" signs are posted and clearly visible. | | Do not occupy or use structure unless required "Exit" signs are provided. |
| | Ensure "Exit" signs are illuminated. | | Do not use or occupy structure unless illuminated exits are provided. |
| | Ensure that exit signs have either two separate circuits or two sources of power depending on occupant load. | | Do not use or occupy structure until a minimum of two circuits or sources of power are provided as required. Typically this is accomplished through the use of AC Powered Exit signs with internal battery backup. |
| | Are exits open and uncovered? | | Do not occupy or use structure unless all required exits are functional. |
| | Are all aisles at least 44 inches wide? Do aisles increase in width where required? | | Do not occupy or use structure unless proper aisle widths are maintained. |
| | Is the Occupant Load posted appropriately? | | Do not occupy or use structure unless the correct occupant load is posted appropriately. |
| | Ensure emergency lighting is provided. | | Do not use or occupy structure unless emergency lighting is provided. |
| | Is a label permanently affixed to the structure bearing the identification of size and material type? | | Do not use or occupy structure unless label is present. |
| | 2A:10BC Fire extinguishers are provided (see information packet for minimum number required). | | Do not use or occupy structure until sufficient, properly sized, fire extinguishers are provided. |
| | At least one 4OBC rated fire extinguisher shall be provided for each kitchen, mess hall, power generator, or transformer and at locations where flammable or combustible liquids are used, stored, or dispensed. | | Do not use or operate any of these hazards unless appropriate fire extinguishers are provided as described in Temporary Membrane Structures, Tents and Canopies document and applicable codes. |
| | Weeds and other combustible vegetation shall be removed from within 30 feet of the structure area. | | Do not use or occupy the structure unless combustible vegetation has been removed from the specified area. |
| | The floor surface inside, including the grounds adjacent to or within 30 feet outside of temporary tents, canopies, and membrane structures, shall be kept free of combustible waste. | | Do not use or occupy the structure unless combustible waste is removed or stored in proper containers. |
| | Such waste shall be stored in approved containers until removed from the premises. | | Do not use or occupy the structure unless trash containers have been emptied from the previous day. |
| | Outdoor cooking that produces sparks or grease-laden vapors. Must be outside tent. | | Do not use cooking source under tent |
| | Is tent secure | | 20 lbs per leg or tent stakes |
| Inspection performed by: | | Date: | |



Memorandum

To: Rachael Tabelski, City Manager
From: Heidi J. Parker, Clerk-Treasurer
Date: September 14, 2023
Subject: Appointment to Historic Preservation Commission

Pamela Meyer has submitted an application to serve on the Historic Preservation Commission. There are vacancies on this board so her appointment would go to further fill HPC. Her term would expire on December 31, 2025. Ms. Meyer lives in the City of Batavia on Ross St. Her reappointment was sent to Councilmember Briggs for review and approval to be considered at the next conference agenda. Councilmember Briggs was in favor of the appointment.

It is recommended that Council approve the appointment of Pamela Meyer to the Historic Preservation Commission until December 31, 2025.

#XX-2023
**RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/
BOARDS**

Motion of Councilmember

WHEREAS, certain vacancies exist on various City Committees/Boards.

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

Historic Preservation Commission

Pamela Meyer

December 31, 2025

**Seconded by Councilmember
and on roll call**

Please describe your area of expertise, skills and knowledge and/or specific topics of civic interest that can contribute to better local government.

I volunteer at the Holland Land Office Museum and the Richmond Memorial Library, serving on the Board of Directors for the Museum and serve on the Board of Directors as treasurer for the Richmond Memorial Friends of the Library. Also am the Vice President and Treasure of the Genesee Area Genalogy Group here in Batavia. I have learned alot of the history of this community and wish to help preserve it.

Please answer the following questions.

How long have you lived in Batavia?
53 years here.

What do you like best about the City?
Art and community

What do you think can be improved in the City?
Fill empty buildings and clean up the neighborhoods.

What do you see as the most significant changes made to the City in the past five (5) years?
0

How can we improve the quality of life in the City of Batavia?
Living space for middle income individuals and families.

Attendance Policy for Volunteer Boards - Pursuant to Section 15-3 of the Charter entitled "Attendance requirements", any member of a volunteer board or committee who misses more than 1/3 of the total meetings for the calendar year or who misses three consecutive meetings shall be in violation of this chapter and is automatically terminated from his or her respective board or committee effective within 30 days of violation. The Chair will notify the City Manager if someone is in violation of the attendance policy. The member being terminated may appeal to the appointing authority for a one-time waiver.

Residency Requirement - Pursuant to Section 15-6 of the Charter entitled "Residency Requirement", any person appointed to a City Volunteer Board and/or Committee shall be required to be a legal resident of the City of Batavia at the time of appointment and during his/her term, and be required to execute an Affidavit of Residency.

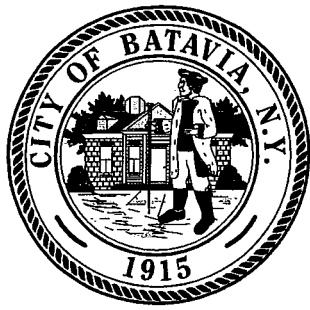
Camela Meyer
Signature

8-22-2023
Date

City Resident? Yes

All applicants **must** be City of Batavia residents. Return completed applications to the Clerk's Office, One Batavia City Centre, Batavia, NY 14020. Applications will be kept on file for three (3) years from the date of signature.

By signing this document, applicant consents to the public release of information submitted in their application in the event they are appointed to a Committee/Board and affirm that the information provided is true to the best of their knowledge and belief.



City of Batavia

Memorandum

To: Honorable City Council
From: Rachael J. Tabelski, City Manager
Date: August 28, 2023
Subject: FY 22/23 Draft Financial Statements

Below is a draft recommendation for the allocation of unassigned fund balance to be transferred to restricted reserve fund balances. After FY 22/23 the City is in a good position to increase the percentage of unassigned fund balance, per the Fund Balance Policy, to 20% of current year's budgeted General Fund expenses (\$19,462,000). This calculates to approximately \$3,892,000 (an increase of \$768,000 from last year) in unassigned fund balance. GFOA recommends two months of expenses to be reserved in fund balance, and this year we are able to achieve this.

I recommend the remaining unassigned General Fund fund balance, \$2,100,000, be allocated to reserve funds as outlined below, for future expenses highlighted in the City's approved Capital Plan.

Over the past decade, the City has diligently built reserve funds to complete projects and control General Fund spending. The reserves are built to fund capital projects, purchase trucks/vehicles, infrastructure improvements, facility improvements, and cover overages in health and workers' compensation costs.

Building the reserve fund now is extremely important as the City prepares to bond for a new Police Facility. In addition, the City will be utilizing "roll-off" debt that is currently being devoted to reserves in the annual budget.

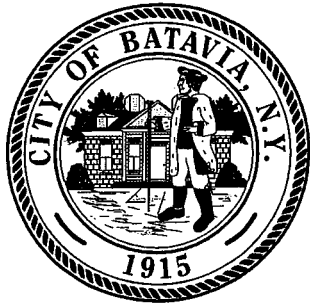
Below are the recommendations for reserve fund allocations:

Police Reserve (\$100,000)- the City is working to replace patrol and detective vehicles on an annual basis based on a fleet replacement schedule. Currently, there is a need to replace two to three vehicles per year to keep up with the replacement schedule. By allocating \$100,000 to the police reserve the City will be able to continue to purchase vehicles and keep up with the rotation. Currently, the oldest patrol vehicle is a 2017

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City of Batavia

and the oldest detective car is a 2009. In August of 2023, the City Council committed \$120,000 of VLT funds for two new vehicles for the Neighborhood Enforcement Team (NET) detail.

Fire Reserve (\$300,000)- the City just authorized a bond to purchase a new pump engine for \$800,000 with a combination of financing of \$100,000 USDA RD grant, a 2.55% USDA RD loan for \$665,000 and a commitment of \$37,000 in reserve funds. City Council approved \$80,000 of reserve funds in the FY 23/24 budget to purchase a one-ton pickup chassis to replace a 2012 vehicle for medical and other responses. By funding the Fire Reserve, and after the purchase of the one-ton, the estimated balance will be \$680,420. This can be used to make debt payments and/or to purchase outright the pumper once it is delivered this fall. Other needs include the purchase of additional (89) police and fire radios (\$375,000) and looking at the longevity of the ladder truck. The Fire Chief is currently analyzing the continuing costs to repair the ladder truck, purchased 2016, and beginning to plan for replacement in the next five years.

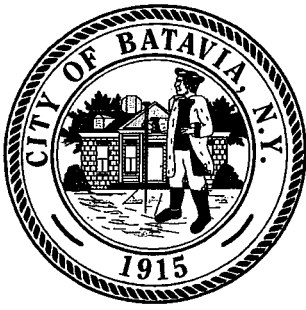
DPW Equipment Reserve (\$400,000) – since 2011, the Equipment Replacement Plan (ERP) has allowed the City to replace over 22 pieces of public works equipment, valued at over \$3.6 million. The City has been able to replace a significant amount of equipment by utilizing reserve funds to absorb the majority of the cost, and not negatively impact the tax rate. The ERP outlines replacing two single axel dump trucks with plows, six sedans, four 4x4 pickups with plows, and a one-ton dump truck by the end of 2025. About \$1.3 million is needed to replace this equipment. By allocating \$400,000, the reserve fund will have a new balance of \$772,038. Continuing to replenish reserve funds allows the City to make these needed investments on a regular basis.

Ice Rink (\$150,000)- The City conducted a Multi Sports Complex Study in 2019. The chiller was one of the items identified as needing to be replaced. The existing refrigeration system runs and operates on R-22 refrigerant, which has been phased out of production. The system has had an increasing number of repairs, replacements and maintenance items that have been hard to procure and are expensive. The R-22 chiller and associated equipment is approaching the end of its useful life and in need of replacement. In 2021 and 2022 the City has spent over \$90,000 in refrigerant costs as well as other maintenance expenses related to the chiller including brine pump and compressor work. The chiller continues to need more and more refrigerant, oil, and costly repairs. In July 2023 City Council authorized the replacement of the existing chiller, evaporative cooler, brine pump motor, and the hot water recovery with a CO2 System that has a lower risk of phase out, is commercially available, good for the seasonality of the rink, and will increase the ice quality. The cost is \$2.5 million. The City has submitted a grant application to fund a portion of the project and will likely need to bond the project at its conclusion. New York Power Authority (NYPA) is providing short-

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City of Batavia

term and construction financing. Adding \$150,000 to the Ice Rink Reserves will bring the balance to \$425,000.

Facilities Reserves (\$400,000)- an objective of the City's Strategic Plan includes creating capital plans for City facilities. Capital plans for the Bureau of Maintenance, Fire Station, and City Centre (mall) roof were completed and identified over \$4,000,000 of needed improvements. The Mall Roof Project Phase I and II was completed in 2022 at a cost of \$935,000. The Fire Station and Bureau of Maintenance (BOM) facility improvement project (Phase I) is underway at a cost of \$1.98M. Mall silo demolition and re-construction will begin next year at an estimated \$1.2M. The Police Station new facility will cost \$15.5M. Continuing to build the Facility Reserve Fund will be critical to the ongoing success of the City to maintain a safe and healthy workplace for employees, and to move these projects forward as prices continue to rise. Adding \$400,000 to the reserve will give the City a balance of \$1,452,000.

Sidewalk Reserve (\$300,000) the ability to continue to maintain sidewalks across the City is imperative to the City's Complete Streets Program that seeks to repair streets and sidewalks simultaneously. This summer the City replaced approximately 5,150 linear feet of City sidewalks and handicap accessible ramps on portions of Fairmont Avenue, Hart Street, Madison Avenue and Norris Avenue. To ensure that we can continue with sidewalk replacements, I recommend funding this reserve with \$300,000. This brings the total reserve fund up to \$469,000 and would allow for the replacement of another approximately 5,000 linear feet of sidewalk.

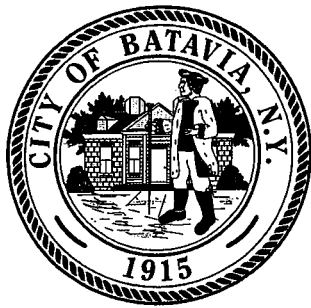
Compensated Absences (\$100,000)- currently the City's compensated absences liability is \$2.2 million (pg. 49 of the Financial Statements) with \$226,000 due within one year. However, based on what we know today, three pending retirements will affect the General Fund by \$110,000. Accordingly, the City utilizes this reserve to fund these one-time payouts. With the addition of \$100,000 to this reserve account the City will have \$235,000 in Compensated Absences Reserve to make payments.

Retirement Reserves (\$100,000)- Retirement expenses continues to rise each year, and over the past few years the City has needed to budget for retirement reserves to balance the general fund budget. In FY 22/23 the City budgeted to utilize \$110,000 in retirement reserves. The actual expense was \$84,640. In FY 23/24 the City did not budget to use retirement reserves, however actual retirement costs can come in higher than estimated. After adding \$100,000 the City will have \$290,000 in this reserve.

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City of Batavia

Parking Lot (\$250,000)- the City maintains multiple parking lots and sports surfaces throughout the City and has a parking lot plan to address payment for the improvements of lots and surfaces overtime. This year the Court Street Parking lot was paved. The Alva lot will be paved in conjunction with the new Police Facility and the Bureau of Maintenance Parking lot needs to be addressed. Funding this reserve will help to advance these projects in future years, and bring the balance of the fund to \$234,000.

Recommendation

After review with the Audit Committee of the City of Batavia, I recommend that City Council allocate \$2,100,000 of unassigned fund balance to be transferred to restricted reserve fund balances.

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#XX-2023

**A RESOLUTION TRANSFERRING FUNDS FROM UNASSIGNED FUND BALANCE
TO VARIOUS RESERVE ACCOUNTS**

Motion of Councilmember

WHEREAS, pursuant to General Municipal Law 6-c and 6-j the City of Batavia has established various reserve funds; and

WHEREAS, the City of Batavia, for the fiscal year ending March 31, 2023, has assigned General Fund balance for funding various reserves; and

WHEREAS, the City has made significant strides in improving their equipment, infrastructure and buildings, by using capital improvement plans and vehicle replacement schedules; and

WHEREAS, the City is desirous to replace vehicles and equipment in each department based on replacement schedules; and

WHEREAS, the City has multiple facility projects, infrastructure and building projects that need to be addressed in the future; and

WHEREAS, the City wishes to continue to fund parking lot and sidewalk improvements; and

WHEREAS, the City will reserve funds for compensated absences and retirement reserves.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer, consistent with the City's Strategic Plan, the following amounts into the following reserves from the General Fund's assigned fund balance:

| | |
|-----------------------------|------------|
| Police Equipment Reserve | \$ 100,000 |
| Fire Reserves | \$ 300,000 |
| DPW Equipment Reserve | \$ 400,000 |
| Ice Rink Reserves | \$ 150,000 |
| Facility Reserve | \$ 400,000 |
| Sidewalk Reserves | \$ 300,000 |
| Compensated Absence Reserve | \$ 100,000 |
| Retirement Reserve | \$ 100,000 |
| Parking Lot Reserve | \$ 250,000 |

**Seconded by Councilmember
and on roll call**



City of Batavia

September 21, 2023

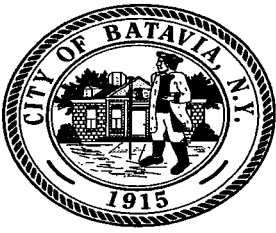
To the Honorable City Council,

The City of Batavia Audit Advisory Committee met on Thursday, August 28, 2023, to review the City's 2022/2023 audited financial statements. Along with the five members of the committee, attendees included City Manager Rachel Tabelski, City of Batavia Assistant City Manager Erik Fix, and Certified Public Accountant Matt Montalbo, partner with Drescher Malecki.

Ms. Barrett kicked off the meeting by reviewing the 2022/2023 financial statements with all of us. Ms. Tabelski followed by presenting several highlights from the fiscal year ending March 31, 2023.

The Audit Advisory Committee raised a number of questions and received direct and thorough answers from Mr. Montalbo, Ms. Tabelski and Mr. Fix. Topics of in-depth and lively discussion included (in no specific order);

- 1) Discussion regarding cash and cash equivalents account and certificates of deposit account and the good position we are in with that regards based on good budgeting.
- 2) The city continues to do a very good job of paying down its debt service. It currently compares very favorably to other cities across New York State. We discussed more debt based on the police station and ice chiller for the rink.
- 3) An examination of the current reserve fund balances and the necessity and appropriateness of these balances. A decision was made this year to transfer additional money from the unassigned fund balance to a specific funds.
- 4) Discussion regarding the enterprise fund and, specifically, the water and sewer funds. Both the water and sewer funds continue to operate in a profitable manner, and both fund balances continue to show a healthy position and an increase in the end-of-year fund balance amounts.
- 5) The self-insured health insurance plans that the city provides to its employees, the ways in which the city has realized savings and the proper funding of the workers compensation fund. We discussed increasing the amount funded specifically to the workers comp fund as we, as a committee, were concerned that one or two claims could wipe out the reserve balance.
- 6) We discussed how an increase from the collection of sales tax from online sales has been a big help to the city, which has truly allowed us as a committee and Rachel, as City Manager, to make the recommendations that we have to move monies from the unassigned balance to the recommended reserves.



City of Batavia

- 7) Discussion on some of the new major expenses that the city is expecting to have over the next few years which included a new chiller for the ice rink, a new fire truck for the fire department and continued work on the mall.

The Audit Advisory Committee remains very satisfied with the current financial status of the City of Batavia. We applaud the leadership and members of City Council for their proactive approach and responsible budgeting, particularly when it comes to building reserve balances to address the future needs of our community and their desire to plan for and implement a 'level debt' strategy going forward. The Audit Advisory Committee asserts that the 2022/2023 financial statements for the City of Batavia appear accurate and tell a very positive story about the direction of the city. In addition, The Audit Advisory Committee also believes it is reasonable and prudent at this current time, and agrees with the city manager's recommendations for the transfers from the unassigned fund balance to other assigned fund balances for the specific reserve.

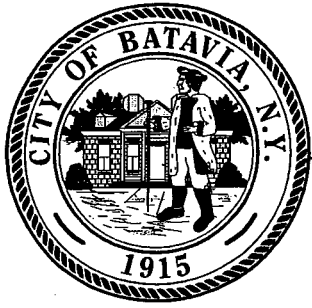
Our city is in a much better financial position than it was in the past. We are also in a much stronger financial position than many other similarly sized cities, primarily due to our focus and ability to fund reserves for identified long-term projects.

We would like to thank City Council for its continued support of paneling an Audit Advisory Committee. Financial transparency and engaging the public remain critical pillars to effective governing, and we are honored to serve our city in this capacity. We would also like to thank Ms. Tabelski and her staff for providing us with all of the appropriate information, both presented and requested, and for the clear and detailed responses to our questions that arose during the meeting.

Sincerely,

Audit Advisory Committee

Marc Staley
Nicholas Harris
Paul Battaglia
Bob Bialkowski
Richard Richmond



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: September 12, 2023

Subject: Appropriate/Commit Unassigned Fund Balance (\$75,000) for Future Land Use Plan and Zoning Code Update

The City's Comprehensive Master Plan was adopted in 1997 and in 2017 the City finalized and adopted the Comprehensive Plan Update. One of the significant recommendations of the 2017 Comprehensive Plan Update was for the City to undertake land use planning and a full zoning code update to reflect the goals of the comprehensive plan.

Much has changed in Batavia since then, including numerous projects such as the redevelopment of the downtown area, changes to the zoning code, reconstruction of several major roads, and completion of a variety of economic development projects.

Additionally, there have been several recent and ongoing development initiatives including Brownfield Opportunity Area Strategic Site redevelopment, construction of the Ellicott Pedestrian/Bicycle Trail, various neighborhood improvement efforts, and the Science, Technology and Advanced Manufacturing Project (STAMP) in Genesee County, among others.

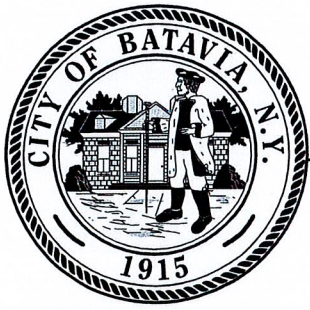
Approximately 59% of the City's total area is zoned for residential districts, which are primarily located north of downtown and the Tonawanda Creek. Commercially zoned land is mainly located along West Main Street, East Main Street and Ellicott Street. The industrially zoned land in the City is predominately to the south of Main Street, mainly along the east-west rail lines traversing the City.

Zoning is the primary implementation tool to achieve the desired future land use in Batavia. Zoning regulations dictate the form and use of properties within the City and therefore shape how and where future

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City of Batavia

private development and redevelopment occurs within the City. The City's zoning regulations should be updated to reflect the Future Land Use Map (below).

Upon review of the zoning code the City may wish to incorporate Form-Based code elements in the commercial, retail, business, and industrial areas. Form-based codes represents "best practices" in zoning regulations.

Conventional zoning provides general massing limitations, primarily through density, setback, and building height restrictions. Conventional zoning is traditionally very limited in terms of use and tends to discourage the mixing of uses.

Form-based codes emphasize the design of development and tend to be more encouraging of a mix of appropriate uses. Typical form-based code regulations include street and building types, build-to-lines, and number of floors.

I recommend that the City Council of the City of Batavia commit \$75,000 of unassigned fund balance for future land use plan and zoning code update.

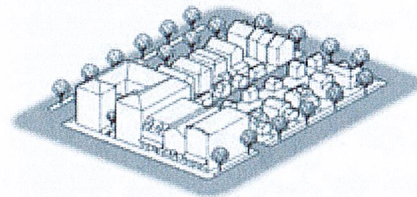
Conventional Zoning

Density use, FAR (floor area ratio), setbacks, parking requirements, maximum building heights specified



Form-Based Codes

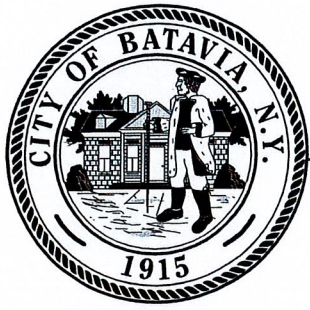
Street and building types (or mix of types), build-to lines, number of floors, and percentage of built site frontage specified.



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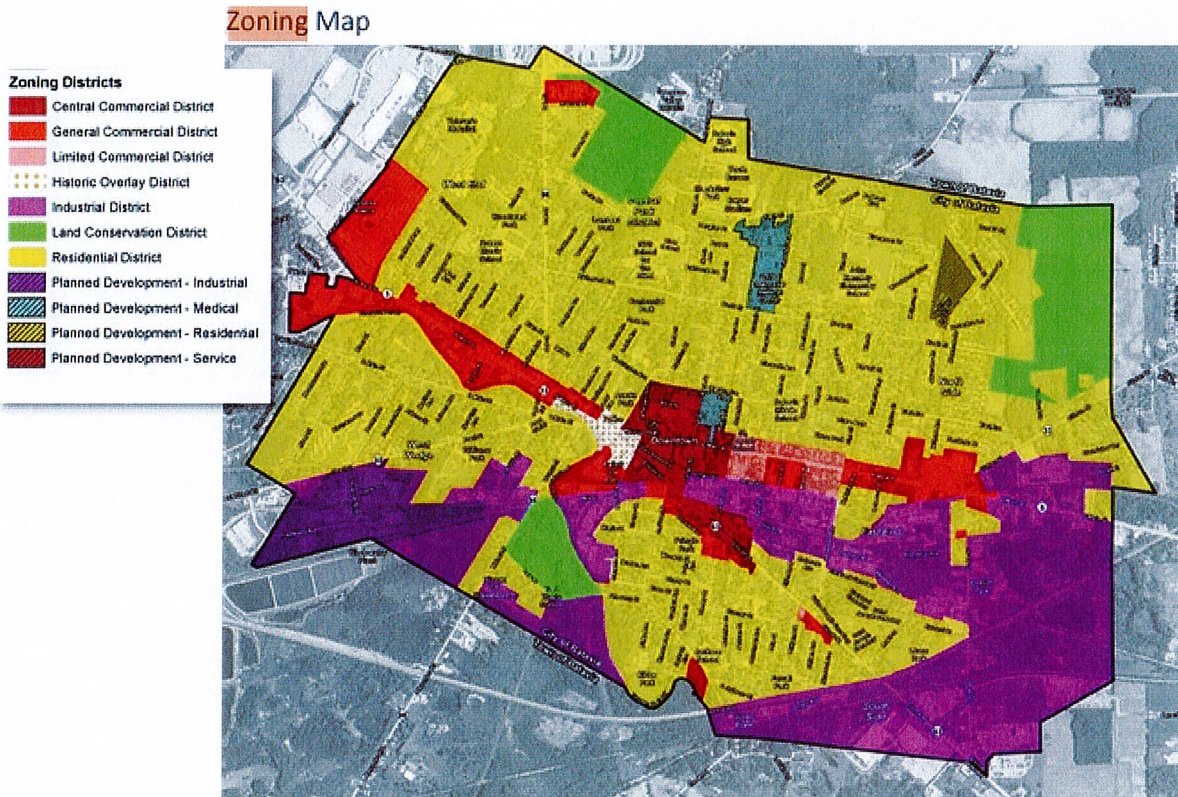
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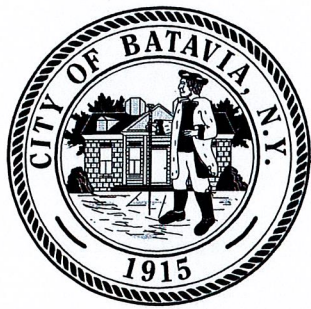
Current Zoning Map



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| City of Batavia Zoning by Area | | | |
|-----------------------------------|--------------|--------------|-------------|
| Zoning District | Acres | Square Miles | Percentage |
| Residential District | 1,970 | 3.08 | 59% |
| Industrial District | 682 | 1.07 | 20% |
| Land Conservation District | 221 | 0.35 | 7% |
| General Commercial District | 223 | 0.35 | 7% |
| Planned Development - Industrial | 86 | 0.13 | 3% |
| Central Commercial District | 75 | 0.12 | 2.2% |
| Limited Commercial District | 32 | 0.05 | 1.0% |
| Planned Development - Medical | 32 | 0.05 | 1.0% |
| Historic Overlay District | 16 | 0.03 | 0.5% |
| Planned Development - Residential | 16 | 0.02 | 0.5% |
| Planned Development - Service | 6 | 0.01 | 0.2% |
| Total | 3,360 | 5.25 | 100% |

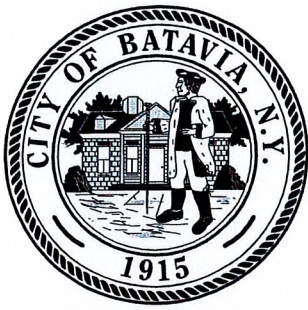
Source: City of Batavia

Future Land Use Map and Definitions

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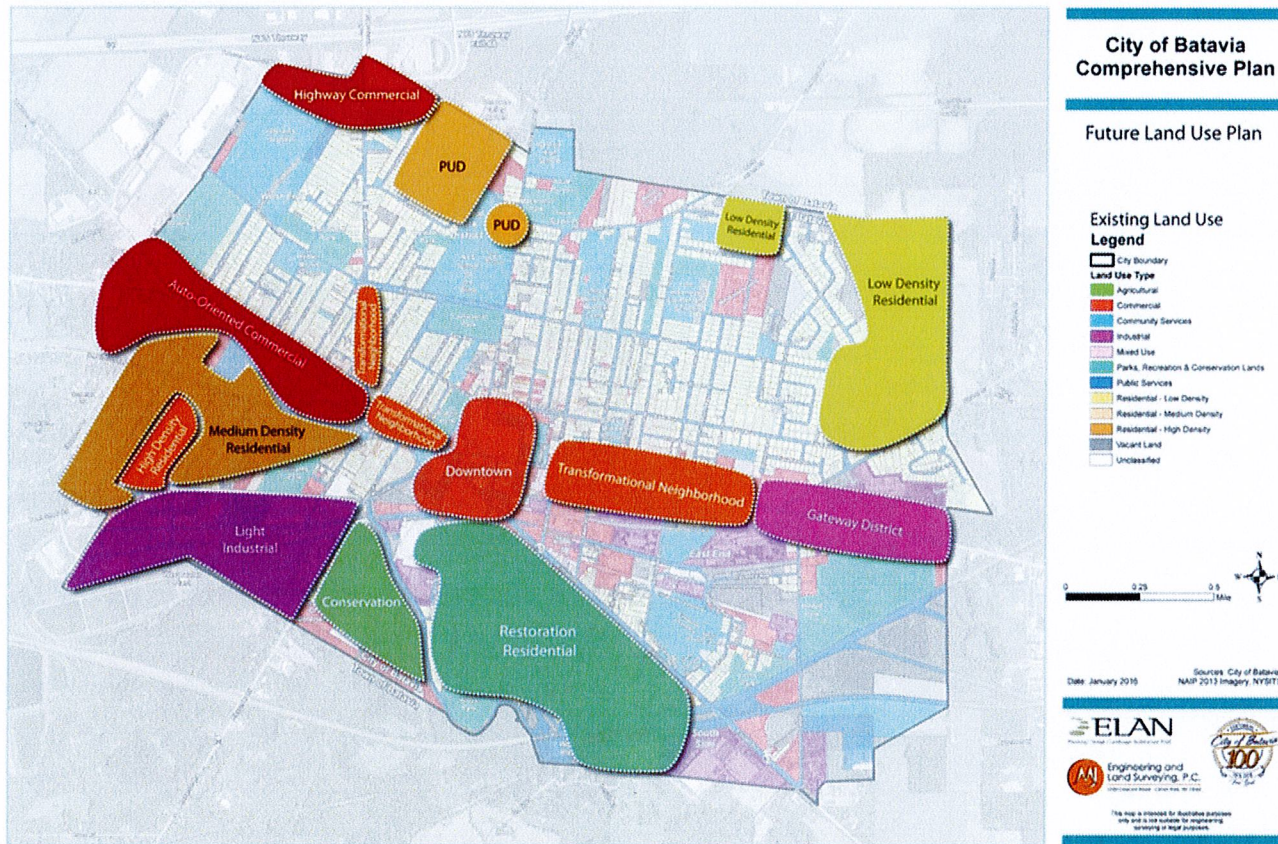
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Future Land Use Map



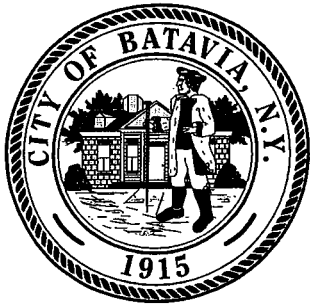
The Future Land Use Plan is a technique used to illustrate preferred future land use patterns. It is a reflection of the stated goals, objectives, and recommendations of the Comprehensive Plan. Most importantly, the Future Land Use Plan sets the foundation for the City's zoning. In essence, the Future Land Use Plan is a statement of what residents would like the Batavia of tomorrow to look like. The Future Land Use Plan presented here only highlights areas of proposed change from existing land use patterns. It is important to state that the Plan is focused on the future – it does not imply that existing houses or businesses must “convert” to the future desired land use.

Low-Density Residential: designation is intended to apply to lands that are not appropriate for urban levels of development and/or land that is appropriate for low-intensity larger-lot residential development.

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Medium-Density Residential: designation is intended to create the opportunity for neighborhoods that offer a variety of lot sizes, housing, and ownership options.

Residential Medium Density neighborhoods should include a variety of unit types designed to incorporate features from both single-family and multi-family developments, support cost-efficient housing, facilitate infill development, encourage use of transit service, and promote the efficient use of urban services and infrastructure.

High-Density Residential: designation is intended to encourage a variety of high quality multi-family living environments for people in differing living situations, from all income levels, and in all stages of life. Should be limited to where there is adequate infrastructure to accommodate higher densities with direct access to an arterial and adequate buffering from lower intensity land uses.

Restoration Residential: intended to enhance residential development on land that is significantly constrained by environmental factors, i.e. located within the floodplain.

PUD: designation to allow greater flexibility in development standards (lot coverage, setbacks, building heights, lot sizes, etc.) to facilitate adaptation of development to the unique conditions while permitting a mixture of uses which, with proper design and planning, will be compatible with each other and with surrounding uses or zoning districts all to permit a response to market demand.

Light Industrial: designated to establish and protect industrial areas for the use of light manufacturing operations and for the distribution of products at wholesale. The standards will be established to promote sound light industrial development, and to protect nearby areas from undesirable aspects of industrial development.

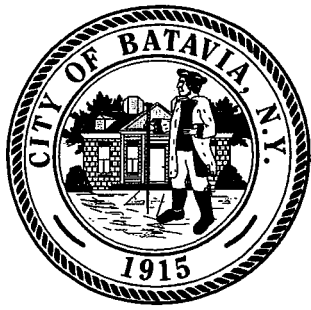
Auto-oriented Commercial: designation is intended to encourage the redevelopment of strip commercial areas into vibrant business districts that are physically connected to the surrounding community by pedestrian pathways as well as major arterials.

Highway Commercial: designation is intended to encourage development of uses that cater to the needs of highway travelers.

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Gateway District: The purpose of the Gateway District is to encourage the development of a safe and compatible mix of commercial, office and light industrial uses immediately adjacent to East Main Street, without compromising the safety of the adjoining neighborhoods, imposing hazards and nuisances on the community, or degrading the environment. A primary function of this district is to encourage the location of businesses that can service the broader regional community and to function as a gateway into the City of Batavia. Improving the visual integrity of this segment of East Main Street is a priority goal in this future land use designation. To encourage economic opportunity in this uniquely located area, future land uses should be more focused on the area's visual integrity and less on specific allowed uses.

Additionally, in an effort to achieve improved compatibility between adjacent land uses, design standards should be adopted that minimize off-site impacts. Transformational Neighborhood: designated for a compatible mix of residential, office and limited specialty retail uses in close proximity to downtown and the surrounding residential development. The designation recognizes the need to protect adjacent residential uses, thus the basic character of the designation encourages a compatible mixture of residential and office types of land uses.

Review of building design, uses, buffers, landscaping, lighting and parking are recognized as essential for the establishment and maintenance of the character of this designation. This designation is not intended for moderate-to-large office centers. Downtown: designation features a mix of private and public uses designed to create a compact, friendly small-town feel, with an emphasis on a strong pedestrian network and public realm. Public places, sidewalks, extensive landscaping, transit orientation, shared or structured parking, protection of environmentally sensitive areas, and high-quality design and signage are key features. Permitted uses emphasize mixed or multiple use developments, and include high-density housing, civic and governmental, offices, medical, small-scale commercial and retail, and locally oriented professional and personal services.

Conservation: located within the floodplain, this area experiences repeated loss from flooding waters. Future regulations will be developed to alleviate these losses without adversely impacting natural resources.

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#XX-2013

**A RESOLUTION TRANSFERRING \$75,000 FROM UNASSIGNED FUND BALANCE
TO COMMITTED FUND BALANCE FOR ZONING CODE UPDATE AND FUTURE
LAND USE PLANNING**

Motion of Councilmember

WHEREAS, the City Council would like to undertake land use planning and a zoning code update as recommended in the 2017 Comprehensive Plan Update; and

WHEREAS, zoning is the primary implementation tool to achieve desired future land use in the City; and

WHEREAS, the 2017 Comprehensive Plan Update outlined a future use land map where new zoning regulations will dictate the form and use of properties within the City; and

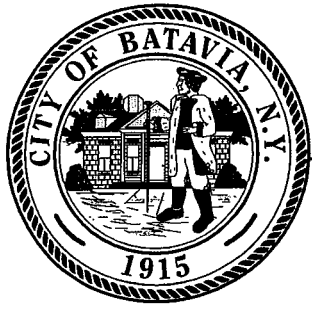
WHEREAS, to achieve the goals of the 2017 Comprehensive Plan Update the City will need to review and update the zoning code; and

WHEREAS, the City of Batavia, for the fiscal year ending March 31, 2013, has built an unassigned General Fund balance to 20% and funded various reserves; and

WHEREAS, the City Council can commit fund balance to specific project and undertakings and does so from time to time.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer, consistent with the City's Strategic Plan, \$75,000 from the General Fund Unassigned Fund Balance to Committed Fund Balance for the project of zoning code update and future land use planning.

**Seconded by Councilmember
and on roll call**



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: September 18, 2023

Subject: Assign Sewer Funds to Sludge Reserve

The City's Waste Water Treatment Plant (WWTP) consist of a lagoon system that was designed to treat wastewater by natural means with supporting mechanical processes and routine operation and maintenance. The aeration ponds (A1, A2, A3), secondary ponds, tertiary treatment consist of 246 acres of treatment ponds plus an additional 26+ acres of polishing wetlands.

Each of the aeration ponds has a depth of up to 20 feet and the secondary and tertiary ponds have a depth of 10 feet. The plant has a maximum volume capacity of nearly 900 million gallons. The WWTP serves approximately 20,000 residential and commercial customers with a current average influent of 4MGD.

Based on recent discussions with the New York State Department of Environmental Conservation (NYSDEC), and in conjunction with the Headworks Study, we investigated the depth of sludge blanket in each of the aeriated ponds to prioritize sludge removal. A bathymetric survey, conducted by ASI Marine, was performed on all three "A" Ponds and based on the results we determined that the A2 Pond should be cleaned first.

The City contracted with GHD Engineers who helped the City in 2016 with the sludge removal in Pond S1 and in 2021 with the replacement of the air header system. Removal of sludge not only creates more room in the ponds for the treatment process to work, but can mitigate the algae in the ponds by decreasing nutrients, specifically phosphorus that can accumulate in sludge.

As the City moves to a construction bid for sludge removal I recommend the City of Batavia City Council assign \$2 million for the Unassigned Sewer Fund Balance to the Sludge Reserve. The current balance of the Sludge Reserve is \$2.5 million.

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#XX-2023

**A RESOLUTION ASSIGNING \$2 MILLION FROM UNASSIGNED SEWER FUND
BALANCE TO SLUDGE RESERVE**

Motion of Councilmember

WHEREAS, the City of Batavia is desirous to pay for the upcoming sludge removal at the Waste Water Treatment Plant with reserve funding; and

WHEREAS, from time to time the City needs to contract dredge and clean out the sludge ponds at the Waste Water Treatment Plant; and

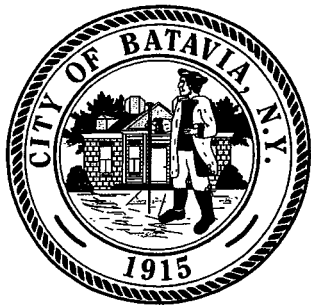
WHEREAS, the current Sludge Reserve Fund currently has a balance of \$2.5 million; and

WHEREAS, to complete a project of sludge removal in aerated pond #2 the City needs to reserve more funding for the project; and

WHEREAS, the City can utilize unassigned fund balance in the Sewer Fund to build up the Sludge Reserve in anticipation of the project.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$2 million from the Sewer Fund Unassigned Fund Balance to the Sludge Reserve for a future sludge removal project.

**Seconded by Councilmember
and on roll call**



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: September 15, 2023

Subject: Ice Rink Chiller Phase II SEQR

The City of Batavia, in partnership with the New York Power Authority (NYPA), is undertaking a \$2.5M Ice Rink Chiller Capital Project to replace the existing R-22 Chiller.

The existing refrigeration system runs and operates on R-22 refrigerant, which has been phased out of production. The system has had an increasing number of repairs, replacements and maintenance items that have been hard to procure and expensive when found. The R-22 Chiller and associated equipment is approaching the end of its useful life and in need of replacement.

The new Chiller System will be a CO2 system and include the replacement of the chiller, evaporative cooler, brine pump motor, and the hot water recovery. CO2 Systems have a lower risk of phase out, is commercially available, good for the seasonality of the rink, and will increase the ice quality.

As part of the project the City needs to declare lead agency status, and make a SEQR determination for the project. Pursuant to 6 NYCRR 617.5(c)(2) this project is a replacement of existing equipment and qualifies for a Type II action. I recommend that the City Council of the City of Batavia declare SEQR Type II action for replacement of ice rink chiller at the David McCarthy Memorial Ice Arena.

#XX-2023

**A RESOLUTION TO DECLARE SEQR TYPE II ACTION FOR REPLACEMENT OF
ICE RINK CHILLER AT THE DAVID MCCARTHY MEMORIAL ICE ARENA**

Motion of Councilmember

WHEREAS, this notice is issued pursuant to 6 NYCRR Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law; and

WHEREAS, The New York Power Authority and the City of Batavia, New York (the C/T/V) have entered into an Agreement for an Energy Efficiency, HVAC Project; and

WHEREAS, under the terms of the Agreement the chiller, evaporative cooler, brine pump and water heater recovery system will be replaced; and

WHEREAS, the project is a replacement project and does not involve any new construction, changes in land use, or changes in the service provided to the public; and

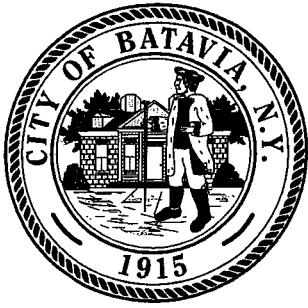
WHEREAS, The City Council of the City of Batavia will act as lead agency pursuant to the New York State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, the proposed action described below is a Type II action, pursuant to 6 NYCRR 617.5(c)(2), and will not have a significant adverse effect on the environment; and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(2) this project is a replacement, rehabilitation or reconstruction of existing equipment, on the same site.

NOW, THEREFORE, BE IT RESOLVED, that based on City Councils review, and in consideration of the criteria set forth in 6 NYCRR 617.5 identifying Type II Actions under SEQRA, the replacement of the chiller, evaporative cooler, brine pump and water heater recovery system is a Type II action under SEQR pursuant to 6 NYCRR Part 617.5(c)(2) and requires no further review.

**Second by Councilmember
and on roll call**



City of Batavia

Memorandum

To: Honorable City Council

From: Rachael J. Tabelski, City Manager

Date: September 12, 2023

Subject: Creek Park Environmental Review With Roux And Use Of Committed Fund Balance

In 2022 the City Council of the City of Batavia (resolution #91-2022) authorized a contract with Benchmark Environmental Engineering & Science PLLC and TurnKey Environmental Restoration LLC. Benchmark is a professional service firm with a strong record of assisting municipalities and development companies in re-developing blighted brownfield sites. The contract included the preparation of a limited Phase II Environmental Investigation on the Creek Park Area for \$10,800 using committed fund balance.

The Phase II environmental exploration work was delayed until the Batavia Development Corporation (BDC) took title to 60 Evens from the Town of Batavia therefore the work described in Resolution #91-2022 has not yet been completed. The City now has authorization to conduct a Phase II on 60 Evans, as the ownership has transferred from the Town of Batavia to the BDC.

The work will help facilitate redevelopment as the City needs to determine if the site is eligible for the Brownfield Cleanup Program (BCP) and associated tax credits, before looking to a developer for market rate housing.

During the summer of 2023 Benchmark merged with Roux and resubmitted a contract for environmental services at Creek Park for \$11,300. Genesee County also has land within the Creek Park Area and has pledged to contribute 1/3 of the cost of the Phase II.

The City of Batavia still has remaining committed fund balance of \$15,000 for the environmental study of the Creek Park Area. I recommend the City authorization the contract with Roux in the amount of \$11,300 along with an additional contingency of \$3,700.

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, 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

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

**TDD 800-662-
Phone: 585-345-6330
Fax: 585-343-8182
www.batavianewyork.com**

#XX-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BATAVIA
AUTHORIZING THE EXPENDITURE OF \$15,000 OF CREEK PARK COMMITTED
FUND BALANCE FOR THE ENVIRONMENTAL STUDY AND INVESTIGATION**

Motion of Councilmember

WHEREAS, resolution #91-2022 authorized the City of Batavia to contract with Benchmark Environmental Engineering & Science PLLC and TurnKey Environmental Restoration LLC. a professional service firm with a strong record of assisting municipalities and development companies in re-developing blighted brownfield sites, to prepare the limited Phase II Environmental Investigation on the Creek Park Area for \$10,800 using committed fund balance; and

WHEREAS, Benchmark Environmental Engineering & Science PLLC and TurnKey Environmental Restoration LLC. has merged with Roux; and

WHEREAS, the Phase II environmental exploration work was delayed until the Batavia Development Corporation took title to 60 Evens from the Town of Batavia therefore the work described in Resolution #91-2022 has not yet been completed; and

WHEREAS, the City now has authorization to conduct a Phase II on 60 Evans, as the ownership has transferred from the Town of Batavia to the Batavia Development Corporation; and

WHEREAS, the City of Batavia still has remaining committed fund balance of \$15,000 for the environmental study of the Creek Park Area; and

WHEREAS, to help facilitate redevelopment, the City needs to determine if the site is eligible for the Brownfield Cleanup Program (BCP) and associated tax credits; and

WHEREAS, the City of Batavia would like to engage Roux to prepare the limited Phase II Environmental Investigation on the Creek Park Area; and

WHEREAS, the City is seeking authorization to utilize the \$15,000 of committed fund balance with the contract with Roux in the amount of \$11,300 along with an additional contingency of \$3,700; and

WHEREAS, Genesee County has pledged to pay 1/3 of the proposed cost.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia authorizes the City Manager to execute a new agreement for environmental services for the Creek Park Area with Roux and use \$15,000 Committed Fund Balance designated for Creek Park for the expenses associated with these activities.

**Seconded by Councilmember
and on the roll call**

September 12, 2023

Ms. Rachale Tabelski
City Manager
City of Batavia
One Batavia City Centre
Batavia, New York 14020
rtabelski@batavianewyork.com

Re: Proposal for Limited Phase II Environmental Investigation and
Brownfield Cleanup Program (BCP) Consulting Services
City of Batavia Creek Arewa Project
26 & 60 Evans Street, Batavia, New York

Dear Ms. Tabelski:

Roux Environmental Engineering and Geology, D.P.C. ("Roux") is pleased to submit our Proposal for a Limited Phase II Environmental Investigation and BCP Consulting Services at 26 and 60 Evans Street, in the City of Batavia ("Proposal"). The Site is approximately 6.85-acres in size and being evaluated for a potential residential development.

The actual size and specific location of the residential redevelopment area is currently unknown. The Creek Area has been identified in Batavia Opportunity Area Nomination Study as an underutilized asset in the City of Batavia. To help facilitate that redevelopment, the City of Batavia is interested in determining if the portion of the Site subject to the residential redevelopment would be eligible for the New York Brownfield Cleanup Program (BCP).

A key requirement for entry of a Site into the BCP is evidence of soil impact that exceeds the current published soil cleanup objectives (SCOs) for the intended end use of the Site. As discussed below, Recognized Environmental Conditions (RECs) were identified in a Phase I Environmental Site Assessment¹ (ESA) completed by other which indicate that soil/ fill contamination may be present. As such, completion of the Limited Phase II will determine whether the Site is a candidate for the BCP. If the Site is eligible, Roux can assist the Owners with assessing the potential BCP tax credits available to the project, based on the projected residential project redevelopment costs and potential remedial action necessary to fulfill the BCP requirements.

Background

The previously completed ESA for the Creek Area identified RECs for the Site. A summary of the RECs is provided below.

- The Site was used for various manufacturing and industrial operations from at least 1919 to 1980. Occupants included Batavia Steel Products Corporation, Daehler Die Casting Co., Adria Motor Car Corporation, and Gray Machine & Parts Corporation.

¹ "Phase I Environmental Site Assessment, Creek Area - Evan Street, Batavia, New York". Prepared for the City of Batavia. Prepared by Labella Associates, DPC. June 2014.

- 60 Evans Street was identified as a New York State Department of Environmental Conservation (NYSDEC) Superfund Site (Site No. 819016). However, the ESA indicated that no information was available from NYSDEC or other informational sources regarding the listing.
- Environmental investigations and remedial activities were completed at a portion of the Site (26 Evans) between 1990 and 1992. This work was completed under NYSDEC Spill No. 9109575 which was closed in April 1995. Remedial work included removal of one, 500-gallon underground storage tank (UST), two 10,000-gallon USTs, two hydraulic lifts, off-site disposal of lead impacted soil and bio-remediation of 1,700 cubic yards of petroleum impacted soil.

Although NYSDEC closed the Spill, soil analysis for the post excavation sampling from the remedial work was completed using Toxicity Characteristic Leaching Procedure (TCLP) methods which is primarily used to determine if soils exhibit hazardous characteristic. These results cannot be compared to the current NYSDEC SCOs based on that methodology and therefore, exceedances may exist.

- Fill materials are present at the Site consisting of cinders, ash, glass, brick, etc. to depths up to 7 feet below ground surface. The fill material would warrant further investigation as the characteristics of the fill cannot be determined from the previous work at the Site.
- Chlorinated volatile organic compounds (cVOCs) were detected in a 1992 groundwater sample collected from 26 Evans at concentrations exceeding NYSDEC criteria. The source of the contamination is unknown. The detection of cVOCs in the groundwater could represent a potential soil vapor intrusion concern.
- Three (3) fuel oil tanks were noted in a Sanborn Map on the western portion of 26 Evans Street in at least 1948. The status of these tanks is unknown.
- A suspect vent pipe was observed along the south Site boundary in the wooded portion of 60 Evans Street. The purpose of the pipe is unknown.

Labella concluded that further investigation appeared warranted.

Roux agrees that the RECs identified at the Site indicate that there is a potential for contamination to be present. As previously stated, to determine if the Site is eligible for the BCP, evidence of soil impact that exceeds the current published SCOs for the intended end use of the Site must be present. Roux

proposes the following scope of work for the Limited Phase II and BCP Consulting Services within the area of the Site to be developed/redeveloped for residential purposes.

Project Objectives

The focus of the investigation will be on the area proposed for the residential redevelopment. We propose to complete the following work as part of the Limited Phase II Environmental Investigation:

Scope of Services

Task 1 – Test Pit and Soil Sampling

- Roux will contact DigSafe New York to request that buried utilities be marked prior to initiating subsurface work.
- Completion of one (1) days of test pits (TPs), estimated at up to ten (10) locations, using a track-mounted excavator to depths of approximately 10 to 12 feet below ground surface (fbgs).
- Collection of soil/ fill samples for purposes of geologic description, visual and olfactory observations, and field screening using a photoionization detector (PID) to screen for total volatile organics.
- Submission of up to six (6) soil/fill samples (two (2) sample from each parcel that make up the Site) for laboratory analysis. The laboratory analysis will include the following parameters:
 - Target Compound List (TCL) volatile organic compounds (VOCs) via EPA Method 8260. If elevated PID readings are not observed in the field, the number of soil samples submitted for VOCs may be reduced.
 - CP-51 List semi-volatile organic compounds (SVOCs) via EPA Method 8270.
 - Resource Conservation and Recovery Act (RCRA) 8 metals via EPA Method 6010/7470.
 - Polychlorinated biphenyls (PCBs) via EPA Method 8082.
- Following sample collection, each test pit will be backfilled with the excavated spoils and rough graded/ tampered with the excavator bucket.
- Completion of a Limited Phase II report, which will include a description of field activities, analytical testing and results, and the findings of the investigation, including figures, tabulated data, and subsurface information. A summary of the nature of contamination, if any, in comparison to applicable New York State Department of Environmental Conservation (NYSDEC) SCOs will also be included with any conclusions and recommendations.

A draft copy of the Limited Phase II report will be provided for your review. If contamination is identified above the applicable SCOs (e.g., Restricted-Residential) and the Site appears eligible for the BCP, Roux can provide a BCP Cost and Tax Credit Analysis for the project, as discussed below.

Task 2 – BCP Cost & Tax Credit Analysis

The BCP was developed to spur redevelopment and reuse of underutilized and contaminated sites. The BCP was originally authorized in statute under 6NYCRR Part 375 in October 2003 and was revised in April 2015. Revisions to the BCP have been proposed by NYSDEC in December 2021. The public comment period is complete, and the proposed revisions are pending.

The primary incentives for seeking eligibility to participate in the BCP are certain tax credits and a release from environmental liability issued by New York State. By successfully applying to the program,

investigating, and remediating a Site under the BCP, the NYSDEC provides a Certificate of Completion (COC), which provides the release of environmental liability and eligibility of the tax credits.

In the context of the BCP, project redevelopment costs are divided into two (2) categories; "Site Preparation" costs and "Tangible Property" costs. Site Preparation costs include those costs necessary to secure Certificate of Completion from the NYSDEC, and may include environmental remediation, demolition, asbestos, lead and/ or mold remediation, as well as associated engineering and legal costs. Tangible Property costs include the cost of new or renovated buildings and depreciable equipment. In the tax year after receiving the COC, an applicant (i.e., entity redeveloping the Site) is eligible to receive certain tax credits that vary from 22% to 50% of the Site Preparation costs (based on the level of cleanup achieved) and 10% to 24% of Tangible Property costs. We anticipate either Residential Track 2 (40%) or Restricted Residential Track 4 (28%) Site Preparation tax credits and 20% Tangible tax credits (10% base credit plus 5% for En-Zone and 5% for Brownfield Opportunity Area (BOA)) for this project.

The Tangible Property credit for redevelopment projects is "capped" by the lesser of: the applicable percentage of Tangible Property costs (e.g., 10-24%); three (3) times the Site Preparation costs; or a maximum cap of \$35,000,000.

The purpose of the BCP Cost and Tax Credit Analysis is to assess anticipated costs to enter an eligible site into the BCP, prepare the required work plans, perform the required investigation and associated reporting, complete required remedial actions, and redevelop the Site. Roux will provide an assessment of the eligible Site Preparation costs and credits and the anticipated Tangible Property costs and credits under potential cleanup tracks scenarios (as previously discussed) to allow the project team to evaluate the potential tax credits available under the BCP to off-set the project redevelopment costs. We will require some assistance from the Owners and/ or developer on the costs redevelopment plan and associated costs in order to estimate the potential Site Preparation and Tangible Property tax credits.

Project Cost

Roux proposes to complete the scope of services described herein on a time and expenses basis, with the following estimated costs to complete the Limited Phase II and BCP Cost analysis.

- Limited Phase II Environmental Investigation
 - Professional Services (coord, field work, supplier & equipment) \$3,000
 - Excavation Services (equipment and operator) \$2,200
 - Analytical Testing (standard 7-10 day turnaround time) \$2,700
 - Report Preparation \$2,000

Limited Phase II Estimate: \$9,900

- BCP Cost and Tax Credit Analysis \$1,400

Estimated Proposal Total: \$11,300

Written authorization for Roux to commence the Scope of Services set forth in this Proposal shall constitute acceptance by the City of Batavia of the Proposal, the Rate Schedule, and the attached general terms and conditions of the Professional Services Agreement, dated September 12, 2023, between the City of Batavia and Roux ("Agreement"), incorporated herein.

Please indicate your agreement by having an authorized representative execute this Proposal, Rate Schedule, and Agreement and return the same to Christopher Boron. Please retain copies for your records. Upon receipt of the written authorization, Roux will commence the performance of the services described in this Proposal.

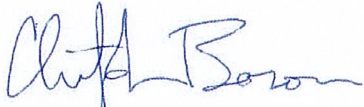
This Proposal may be executed and delivered (a) in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and/or (b) by facsimile and/or electronically, in which case the instrument so executed and delivered shall be binding and effective for all purposes.

Please contact Christopher Boron by telephone at 716-864-2726, or by email at cboron@rouxinc.com if you have any questions or require additional information.

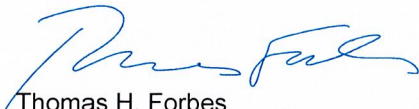
We look forward to the opportunity of working with you on this Proposal.

Sincerely,

ROUX ENVIRONMENTAL ENGINEERING AND GEOLOGY, D.P.C.



Christopher Boron
Principal - Geologist



Thomas H. Forbes
Operations Manager

Enclosures

City of Batavia hereby authorizes ROUX ENVIRONMENTAL ENGINEERING AND GEOLOGY, D.P.C. to commence the Scope of Services set forth herein, and accepts and agrees to the general terms and conditions set forth in the enclosed Professional Service Agreement dated September 12, 2023 and in this Proposal, incorporated therein.

City of Batavia

(Signature)

(Please Print Name)

(Title)

(Date)



PROFESSIONAL SERVICES AGREEMENT

This Agreement for Professional Services ("Agreement"), dated this 12th day of September, 2023, is between ROUX ENVIRONMENTAL ENGINEERING AND GEOLOGY, D.P.C. ("Roux") with offices at 2558 Hamburg Turnpike, Suite 300, Buffalo, New York and City of Batavia ("Client") with offices at One Batavia City Centre, Batavia, New York 14020.

WHEREAS, Client desires to retain certain professional services from Roux, from time to time, and Roux desires to provide such services to Client, pursuant to the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, Roux and Client (collectively "the Parties") agree as follows:

1. Scope and Performance of Work

- 1.1. Client hereby retains Roux to perform the work and/or provide the materials (the "Work") at the property (referred to as the "Subject Property" and/or "Site") in accordance with the specifications and time requirements as described in Roux's September 12, 2023 proposal ("Proposal"), incorporated herein by reference.
- 1.2. ENGINEERING SERVICES: Nothing in the Agreement shall be deemed to require, authorize, or permit Roux Environmental Engineering and Geology, D.P.C. to perform engineering services which are required by the law of the jurisdiction in which the services are to be rendered to be performed by a duly licensed professional through a single purpose professional corporation ("Regulated States"), and all such professional services shall be provided only by duly licensed professional(s) through a single purpose professional corporation. Unless the Agreement expressly states otherwise, all design and engineering services in Regulated States shall be provided by Remedial Engineering, P.C., and Client hereby authorizes Roux Environmental Engineering and Geology, D.P.C. to act as Client's agent for the purpose of engaging Remedial Engineering, P.C. to provide such design and engineering services for the benefit of Client. This Agreement shall in no way be construed as an agreement or offer on the part of Roux Environmental Engineering and Geology, D.P.C. to provide engineering services in Regulated States. Client also acknowledges that Roux Environmental Engineering and Geology, D.P.C. has in no way offered engineering services or held itself out in such Regulated States as an engineering firm whether under this Agreement or otherwise. Roux Environmental Engineering and Geology, D.P.C. shall have no liability to Client with respect to any services provided to Client, directly or indirectly, by any third party including, without limitation, Remedial Engineering, P.C.
- 1.3. Unless otherwise agreed in writing, Client shall furnish and/or secure right of entry to the Subject Property, described in the applicable Proposal, for Roux in order for Roux to perform the Work.

2. Payment Terms

- 2.1 As full consideration for the performance of Work described in Section 1, herein, Client agrees to pay Roux for the Work performed and expenses incurred in accordance with the rates as set forth in the Proposal.
- 2.2 Roux shall deliver its invoices for all Work performed and expenses incurred pursuant to this Agreement after the end of the month in which such Work was performed and expenses incurred or upon completion of the Work, if sooner. Timely payment is a material element of the consideration Roux requires to execute the Services. Client shall pay the full amount of Roux's invoices within thirty (30) calendar days of the date of receipt of the invoice. Invoice amounts in dispute shall not affect Client's obligation to pay invoice amounts not in dispute. If at any time Client has been delinquent in payment during the term of this Agreement, Roux may require a retainer in advance of performing future Work under Proposal.
- 2.3 If Roux has not received payment within ninety (90) calendar days from the date of the invoice, Roux may, after giving five (5) business days' written notice to Client, suspend performance of Work under this Agreement, without liability, until all past due invoices have been paid.

2.4 All invoices under this Agreement shall be submitted to:

Rachale Tabelski
City Manager
City of Batavia
One Batavia City Centre
Batavia, New York 14020
rtabelski@batavianewyork.com

2.5 Please remit payment to:

Manual
Accounts Receivable
Roux Environmental Engineering and Geology, D.P.C.
209 Shafter Street
Islandia, New York 11749

Electronic/Wire

| | |
|-------------------------|--|
| Company Name: | Roux Environmental Engineering and Geology, D.P.C. |
| Address: | 209 Shafter Street, Islandia, New York 11749 |
| Contact Name: | John Manley |
| Contact Telephone: | (631) 232-2600 |
| E-Mail Address: | jmanley@rouxinc.com |
| Financial Institution: | J.P. Morgan Chase Bank |
| Address: | 395 North Service Road, Melville, New York 11747 |
| Routing Number: | 021000021 |
| Account Number: | 938798159 |
| Depositor Account Name: | Roux Environmental Engineering and Geology, D.P.C. |

3. Modification of Work

Client shall have the right to modify the Work, specifications and time requirements specified in Roux's Proposal, as Client deems appropriate and as agreed to by the Parties, hereto ("Additional Services"). In the event that such modification results in a material change in the value and/or schedule of the Work, an equitable adjustment shall be made to the cost and/or schedule. Additional Services will be compensated at the hourly rates or unit prices, as applicable, as set forth in Roux's Proposal, unless otherwise set forth in a proposal for Additional Services, or as otherwise agreed by the Parties in writing. Written authorization by email is "written" for purposes of this Agreement.

4. Indemnification

4.1 Roux shall indemnify, defend and hold harmless Client and its officers, directors or employees ("Client Indemnitees") from and against any and all liability for damages, losses and expenses, including, but not limited to reasonable legal expenses and attorneys' fees connected therewith, for which the Client may be held liable as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities ("Claim(s)") by reason of injury or harm to any person or damage to property of whatsoever kind or nature to the extent directly arising out of Roux's negligent acts or omissions in the performance of the Work under this Agreement, excepting any damage or loss caused by negligent acts or omissions or willful misconduct of the Client Indemnitees. Client shall indemnify, defend and hold harmless Roux and its officers, directors, employees and agents ("Roux Indemnitees") from and against any and all liability for damages, losses and expenses, including, but not limited to reasonable legal expenses and attorneys' fees connected therewith, for which Roux Indemnitees may be held liable as a result of any and all Claims with respect to and arising out of Client Indemnitee's or any of Client's other contractors' or subcontractors' negligent acts or omissions or willful misconduct. In the event a Claim is the result of the joint negligent acts or omissions of Roux Indemnitees and Client Indemnitees ("Indemnitors"), the Indemnitors' duties of indemnification shall be in proportion to their respective allocable share of joint negligence. In no event shall Indemnitors and their respective officers,

directors, employees and agents be liable to each other and/or to anyone claiming by, through or under the Indemnitors, including Indemnitors' respective insurers, for any lost, delayed and/or diminished profits, revenues, and/or opportunities; and/or any other incidental, special, indirect, and/or consequential damages of any kind and/or nature whatsoever.

- 4.2 Notwithstanding anything to the contrary in this Agreement, (a) Roux's indemnification and defense in Subsection 4.1 shall not extend to any failure of the Client to qualify for a defense to liability under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601-9675 (referred to hereafter as "CERCLA"); (b) Roux's indemnification and defense in Subsection 4.1 shall not extend to cover the negligent acts or omissions, strict liability and/or willful misconduct of Client and its officers, directors, employees and agents; and (c) Roux's aggregate liability under this Agreement, whether arising out of tort, strict liability, contract and/or otherwise, shall be limited to and not exceed the amount covered by insurance and associated limits of liability, which Roux is required to secure pursuant to Section 5, herein. The indemnification and defense provided in Subsection 4.1 with respect to any matter shall not extend beyond the date by which a legal action for negligence would be barred by an applicable statute of repose or statute of limitations.

5. Insurance

- 5.1 Roux shall procure and maintain, at its own expense, during the term of this Agreement, insurance in the following types and amounts:
- (a) Workers' Compensation Insurance at statutory rates and Employer's Liability Insurance with a limit of \$1,000,000;
 - (b) Commercial General Liability Insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
 - (c) Commercial Automobile Liability Insurance (owned, non-owned and hired) with a combined single limit of \$1,000,000; and
 - (d) Professional Liability Insurance with a limit of \$1,000,000 per claim and \$2,000,000 in the aggregate.
- 5.2 Roux shall, at the Client's request, provide the Client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and that such policies are maintained in force throughout the term of this Agreement.

6. Standard of Care

- 6.1 While performing the Work under this Agreement, Roux shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of the environmental and engineering consulting professions, as applicable, performing the kind of work to be performed hereunder and practicing in the same or similar locality at the same period of time.
- 6.2 Roux neither makes, nor offers, nor shall Roux be liable to Client for any express or implied warranties with respect to the performance of Roux's Work.
- 6.3 Roux agrees, upon receipt of written notice from Client, to implement necessary corrections to any Work performed by Roux, which fails to conform to the standard of care that Roux has accepted pursuant to Subsection 6.1, herein, ("Substandard Work"), if such notice from Client is received within one (1) year of the performance of such Substandard Work.
- 6.4 Roux shall not be liable to Client for any damages without being given a reasonable opportunity to correct the Work in accordance with Subsection 6.3, herein. Notwithstanding anything to the contrary in this Agreement, in no event shall Roux and its officers, directors, employees and agents be liable to Client and/or anyone claiming by, through or under Client, including Client's insurers, for any lost, delayed or diminished profits, revenues, or opportunities; losses by reason of shutdown or inability to utilize or complete Work at the Subject Property; or any other incidental, special, indirect, or consequential damages of any kind or nature whatsoever arising from or related to this Agreement.

7. Force Majeure

Except for the obligation to pay for Work performed and expenses incurred, neither Party hereto shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, including, but not limited to strikes or other concerted acts of workmen, whether direct or indirect, riots, war, fire, floods, storms, washouts, acts of God or the public enemy, explosions, accidents, epidemics, breakdowns or failure of machinery or apparatus, injunctions or restraining orders, failure of any public authority or other governmental body or agency to issue, any permit or license, other than any such failures to issue that are directly or indirectly the fault of the nonperforming party, compliance with any law, regulation, order or action, whether valid or invalid, of the United States of America or any governmental body or any instrumentality thereof, whether now existing or hereafter created.

8. Delays or Impediments to Performance

8.1 If any event occurs which causes or may cause Roux: (a) to be impeded in its performance of the Work; or (b) to be delayed in the completion of the Work within the time provided in the Proposal, and/or in an applicable Change Order thereto due to any act or omission of Client, its officers, directors, employees and agents, or Client's contractors, or due to any contingency beyond Roux's control, Roux shall provide written notice thereof to Client within ten (10) business days of the date on which Roux first knew that any such event shall lead to a delay. The notice shall describe the anticipated length of time the impediment or delay may persist, the measures taken or to be taken by Roux to prevent or minimize the impediment or delay, and the timetable by which those measures will be implemented. If the impediment prevents or may prevent performance in accordance with the Proposal, Roux may propose modifications of the Proposal.

8.2 Impediments or delays to performance, addressed pursuant to this Section, shall not: (a) constitute a breach hereunder; (b) give rise to any special right to terminate this Agreement; or (c) give rise to a claim by Client for damages or other relief, if and to the extent that, such impediment or delay is due to any act or omission of Client, its officers, directors, employees and agents, or Client's contractors, or due to any contingency beyond Roux's control.

9. Breach of Agreement Provisions

If Roux shall breach any provision herein, Client shall provide written notice thereof to Roux within ten (10) business days of such breach. Except as provided for in Section 6, upon receipt of Client's notice, Roux shall have the option to take such corrective measures, if any, to remedy the breach, and shall provide written notice to Client within ten (10) business days after receipt of Client's notification, of the corrective measures Roux shall take and the time period within which the corrective measures shall be taken. In no event shall Roux be liable to Client for any damages without being given notice and a reasonable opportunity to remedy its breach as provided for herein.

10. Dispute Resolution

If a dispute under this Agreement arises between the Parties, each shall provide written notice to the other as provided under the applicable Sections of this Agreement. Said notice shall set forth the specific points of the dispute, the position that Roux or Client, as applicable, asserts should be adopted as consistent with the requirements of this Agreement, the basis for Roux or Client's, as applicable, position, and any matters, which Roux or Client, as applicable, considers necessary for final resolution. Roux and Client shall have an additional fifteen (15) business days from the receipt of notice of the dispute during which time representatives of Roux and Client may confer to resolve any dispute. If a resolution is reached, the resolution shall be written and signed by authorized representatives of the Parties, and attached hereto and made a part hereof as a modification of this Agreement.

11. Determination of Underground Apparatus

11.1 Roux shall make reasonable inquiries of the person(s) designated by the Client and the applicable public utility mark out service who/which may be reasonably expected to have knowledge of the location of any subsurface utilities including the location of electric, gas, sewer, and water lines, underground tanks and/or any other underground apparatus ("Subsurface Utilities"). Roux shall be entitled to rely on any plans, specifications, surveys, maps or the like furnished by such person or such mark out service. Roux shall examine the nature and location of the Work to be performed,

the Subject Property on which the Work is to be performed, and the conditions under which such Work is to be performed, prior to beginning the performance thereof, and shall take precautions reasonably necessary for the satisfactory performance thereof.

- 11.2 The Parties acknowledge and agree that although Roux may employ a variety of methods to locate subsurface utilities, any and all damages, losses or expenses, which could result from damage to such Subsurface Utilities due to Roux's performance of Work under this Agreement, shall be the sole and exclusive responsibility of the Client. Client shall indemnify, defend and hold harmless Roux and its officers, directors, employees and agents from any and all damages, losses or expenses including, without limitation, attorneys' fees, sustained or incurred by Roux, its officers, directors, employees or agents, as a result of any and all Claims arising out of any damage to subsurface utilities due to Roux's performance of Work under this Agreement provided that such Claims are not occasioned by the negligent acts or omissions of Roux.

12. Use of Reports

All drafts, reports, forms, statements, certifications, opinions, advice and other documents generated in performance of the Work ("Documents") remain the sole property of Roux until Client has made full payment therefor to Roux. Any Documents provided by Roux to Client as part of the Work provided herein are provided for the sole and exclusive use of the Client for specific application to the Subject Property at which the Work, herein, is provided. Any third-party use of the above-referenced Documents is prohibited without the express, written authorization of Roux. Client shall indemnify, defend and hold harmless Roux and its officers, directors, employees and agents from any and all damages, losses or expenses, including, but not limited to, reasonable legal expenses and attorneys' fees connected therewith, liabilities, penalties, and fines sustained by Roux, its officers, directors, employees or agents as a result of any and all Claims with respect to and arising out of any third-party reliance on the above-referenced Documents, which is not authorized in writing by Roux or exceeds \$250,000 covered by Roux's professional liability insurance.

13. Client Acknowledgements & Requirements

- 13.1 Client acknowledges that, pursuant to 40 CFR Part 312, Amendment to Standards and Practices for All Appropriate Inquires Under CERCLA, Final Rule, published December 30, 2013 and amended on December 15, 2022 ("AAI Rule"), Roux's performance of a Phase I Environmental Site Assessment ("ESA") in accordance with ASTM Standard Practice E1527-21, as allowed by the AAI Rule, will not alone result in Client satisfying all requirements of the AAI Rule and provide a defense to CERCLA liability.
- 13.2 Client acknowledges that the AAI Rule requires Client, and not Roux, to complete certain additional activities and inquiries.
- 13.3 Client agrees that Roux shall not be responsible for conditions or consequences arising from relevant facts that were concealed, withheld, or not fully disclosed at the time the Phase I ESA was performed.
- 13.4 Client agrees that Roux shall not be liable for any use of the Phase I ESA Report as an appraisal or value judgment of the Subject Property.

14. Disclosure of Information

Client shall provide all information and documents in its control, which are relevant to the performance of the Services.

15. Confidentiality

- 15.1 Roux agrees to treat as confidential and proprietary and not disclose to others during or subsequent to the term of this Agreement, except as is necessary to perform Work under this Agreement, any information whether verbal or written, of any description whatsoever, (including any technical information, experience or data) regarding Client's plans, programs, facilities, processes, products, costs, equipment, operations or customers, which may come within the knowledge of Roux (hereinafter "Confidential Information"), unless disclosure is: (a) required by law; (b) required in connection with any claim or cause of action; (c) authorized by the prior written consent of Client; or (d) authorized by Section 28, herein.

- 15.2 Nothing contained within this Section shall prevent Roux from disclosing to others or using in any manner information, which Roux can show: (a) has become part of the public domain other than by acts, omissions or fault of Roux; (b) has been furnished or made known to Roux by third parties (other than those acting directly or indirectly for or on behalf of Client) as a matter of legal right without restrictions on its disclosure; (c) was in Roux's possession prior to the disclosure thereof by Client; or (d) was independently developed by Roux.
- 15.3 In the event that Roux shall be required by law or in connection with any claim or cause of action to disclose any of the Confidential Information, Roux shall make a reasonable effort to provide Client written notice thereof prior to the disclosure of such Confidential Information, and shall give Client a reasonable opportunity to obtain a protective order or otherwise to oppose such disclosure prior to such disclosure.
- 15.4 Client shall reimburse Roux its reasonable expenses incurred for preparation and provision of documents and/or testimony when disclosure is required pursuant to this Section.

16. Patents

- 16.1 Notwithstanding anything to the contrary herein, Client agrees that any and all inventions, discoveries, patents, service marks, and/or copyrightable material relating to the Work provided herein, including improvements and modifications thereto, whether or not subject to further patents, copyrights and/or service marks, which inventions, discoveries, patents, service marks, and/or copyrights, which may be made, conceived and/or filed by Roux and/or any employee of Roux independent of and/or prior to the effective date of this Agreement, shall be the property of Roux and/or any employee of Roux, as applicable. This obligation shall extend to Letters Patent of the United States and all foreign countries.
- 16.2 Client agrees to indemnify, defend and hold harmless Roux and its officers, directors, employees and agents from any and all damages, losses or expenses, including, but not limited to reasonable legal expenses and attorneys' fees connected therewith, liabilities, penalties, and fines sustained by Roux, its officers, directors, employees and agents as a result of any and all Claims with respect to and arising out of patent, copyright or trademark infringement or the use or disclosure of proprietary information or trade secrets of others, which Claims are attributable to or arise from the Work and result from (a) Roux following instructions given by Client, (b) Roux's use of information supplied by Client specifically for such use, or (c) an addition to, deletion from, change in, or other alteration or modification of the Work.

17. Pre-Existing Contamination; Investigation Derived Waste; Sample Disposal

- 17.1 "Pre-Existing Contamination" is any hazardous and/or toxic substance, hazardous waste and/or any other type of environmental hazard, contamination and/or pollutant present at and/or under, and/or emanating from the Subject Property, including, but not limited to the groundwater thereunder, which is not brought onto such Subject Property by Roux. Investigation Derived Waste ("IDW") includes, without limitation, Pre-Existing Contamination, solid waste (e.g., soil, sediment, sludge/slag, drum solids, drill cuttings and muds), disposable sampling equipment, used glassware, dedicated/expendable equipment such as bailers, hose, etc., clean trash, personal protective equipment, decontamination equipment and aqueous waste (e.g., drilling fluids, purge water, development water and decontamination fluid). Client will remain responsible as the generator of record for the disposal of Pre-Existing Contamination and other IDW on Client's Subject Property. Accordingly, the Client shall sign all regulatory paperwork for the transport, treatment, storage and disposal of IDWs, including waste manifests or bills of lading. Roux shall have no title to, ownership of, legal responsibility and/or liability for any and all IDWs or Pre-Existing Contamination. It is understood and agreed that by virtue of providing the Work and assisting the Client with its obligations, Roux shall not be deemed to be, and is not responsible as an "owner", "generator", "operator", "transporter", "arranger" or other "person" as described in Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, or Section 7002 of the Resource Conservation and Recovery Act ("RCRA"), or applicable federal, state or local laws. Client agrees to indemnify, defend and hold harmless Roux and its officers, directors, employees and agents from any and all damages, losses and expenses, including, but not limited to reasonable legal expenses and attorneys' fees

connected therewith, liabilities, penalties, and fines sustained by Roux, its officers, directors, employees or agents as a result of any and all Claims with respect to and arising out of Pre-Existing Contamination, except to the extent such Claims arise out of Roux's negligent acts in the performance of Work under this Agreement.

- 17.2 Unused portions of test samples submitted for analysis are the responsibility of Client. Unless otherwise requested by Client, unused portions of test samples submitted for analysis will be disposed of in accordance with laboratory retention policies or within thirty (30) calendar days after completion of analysis, and in accordance with all applicable laws, regulations and requirements. Upon written request by the Client, Roux may agree, at its option, to retain said test samples for a mutually agreeable storage charge. Roux reserves the right to return to Client or dispose of unused portions of test samples at Client's expense, or to charge Client appropriate disposal fees.

18. Term; Termination

- 18.1 This Agreement shall take effect on the date first written above and shall remain in effect until terminated pursuant to this Section or until the final payment for all Work performed and expenses incurred have been received by Roux.
- 18.2 Either Party may terminate this Agreement for any reason or no reason at all upon thirty (30) days prior notice to the other Party.
- 18.3 The termination of this Agreement under Subsection 18.2, herein, shall not relieve Client of its obligations to pay Roux for any Work performed and expenses incurred as of the date of termination, or constitute a waiver by Roux or Client of any cause of action for breach of this Agreement or any provision herein.

19. Independent Contractor

Roux's relationship with Client under this Agreement shall be that of independent contractor. Nothing in this Agreement shall be construed to designate Roux, or any of its employees or subcontractors, as employees, agents, joint ventures or partners of Client. Roux shall have no authority to bind, commit or obligate Client in any manner and shall not hold itself out to third parties as being capable of doing so.

20. Notice

Whenever notice is to be given hereunder, it shall be sufficient if delivered in writing, sent by certified mail, return receipt requested, by hand or by overnight courier with acknowledged receipt or by facsimile or by email. Such notice shall be deemed submitted on the date the notice is delivered by hand or facsimile or email, postmarked and sent by certified mail, return receipt requested, or postmarked for next day mail service, as applicable. When written notice to Client or Roux is required by the terms of this Agreement, it shall be addressed as follows.

To Client: City of Batavia
Rachael Tabelski, City Manager
One Batavia Centre
Batavia, New York 14020
Telephone: 585-345-6334
Email: rtabelski@batavianewyork.com

To Roux: Thomas Forbes
Operations Manager
Roux Environmental Engineering and Geology, D.P.C.
2558 Hamburg Turnpike, Suite 300
Buffalo, New York 14218
Telephone: 716-856-0559
Email: tforbes@rouxinc.com

With Copy to: Amy Elizabeth O'Connell
General Counsel
Roux
209 Shafter Street
Islandia, New York 11749
Telephone: 631-232-2600
Email: aoconnell@rouxinc.com

21. Governing Laws

This Agreement shall be governed, construed and enforced in accordance with the laws of New York without regard to any law, which would result in the selection or application of the law of any other jurisdiction. The Parties hereto agree and consent that any legal action, suit or proceeding arising out of or in connection with this Agreement shall be instituted in the courts of the State of New York, County of Suffolk or Nassau, or the United States Court for the Eastern District of New York and by execution and delivery of this Agreement, each such Party hereby accepts and submits for itself and in respect to its property, the exclusive jurisdiction of such courts and to all proceedings in such courts.

22. Entire Agreement

This Agreement sets forth the entire agreement and understanding of the Parties with respect to the transactions contemplated hereby and supersedes all prior agreements, purchase orders, arrangements and understandings relating to the subject matter hereof. This Agreement may only be modified expressly in writing, signed by both parties. The preprinted terms and conditions of a purchase order, dated subsequent to this Agreement, shall not supersede this Agreement.

23. Successors and Assigns

23.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns as provided herein. The Parties shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of the other Party. Client hereby acknowledges and agrees that Roux may subcontract any portion of the Work hereunder.

23.2 Notwithstanding Subsection 23.1, herein, Roux shall have the right to assign monies due hereunder for the Work performed and expenses incurred.

23.3 The Parties agree that this Agreement is not intended by any Party to give any benefits, rights, privileges, actions or remedies to any person or entity, partnership, firm or corporation, not a Party to this Agreement, as a third-party beneficiary or otherwise under any theory of law.

24. Survival

In order that the Parties may fully exercise their rights and perform their obligations arising from the performance of the Work under this Agreement, any provisions of this Agreement that are required to ensure such exercise or performance, shall survive the termination of this Agreement, including, but not limited to Sections 4 and 5, herein.

25. Severability

If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby.

26. Attorney's Fees

In the event of any arbitration, legal action, suit or proceeding arising out of or in connection with this Agreement, the prevailing Party shall be indemnified by the other Party for all of its expenses, including, but not limited to reasonable attorneys' fees, in connection with said action, suit or proceeding.

27. No Waiver

The failure of the Parties at any time or times to require performance of any provision herein shall in no manner affect their right at a later time to enforce the same. No waiver by the Parties of a breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more

instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of a breach of any other term or covenant of this Agreement.

28. References

Client agrees that Roux has the authority to use Client's name and a general description of the Work performed as a reference for other prospective clients.

29. Signatories

Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement. This Agreement may be signed in any manner that clearly evidences the Parties' intent to be bound, including via faxed, imaged, electronic or digital signatures. If this agreement is signed electronically, then both Parties (i) have agreed to use electronic signatures, (ii) have agreed to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (enacted June 30, 2000, and codified at 15 U.S.C. 7001 et seq.)) and the Uniform Electronics Transactions Act ("**UETA**"), and (iii) that an original is not thereafter required.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**ROUX ENVIRONMENTAL ENGINEERING
AND GEOLOGY, D.P.C.**

CITY OF BATAVIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

AGREED TO FOR PURPOSES OF SUBSECTION 1.2, HEREIN:

REMEDIAL ENGINEERING, P.C.

By: _____

By: _____

Name: _____

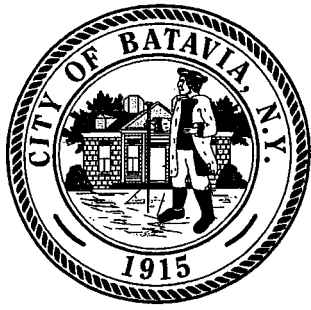
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



City of Batavia

Memorandum

To: Honorable Council Members

From: Rachael J. Tabelski, City Manager

Date: September 19, 2022

Subject: Benchmark-TurnKey Professional Environmental Services- Creek Park

For over two decades, the City has contemplated re-development of the Creek Park Area (behind the Fire Station and Ice Rink). The 2014 Brownfield Opportunity Area Study (BOA), completed by the City, laid out a strategic framework to assist the City in advancing the site to development. To help facilitate redevelopment, the City needs to determine if a portion of the site is eligible for the Brownfield Cleanup Program (BCP). If a property is accepted into the BCP by NYS DEC the site will have access to significant tax credits and liability relief which can aid in re-development.

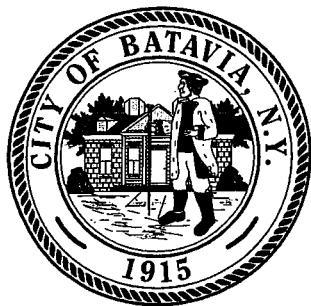
Recently, amid an influx of market-rate housing developer interest, the Batavia Development Corporation (BDC) has worked with the Town of Batavia to acquire 60 Evans (formerly owned by Graham) and set up the Creek Park LLC. By acquiring this parcel the BDC will collaborate with the City and County to allow a limited scope Phase II environmental investigation of the Creek Park Area. This work will aid in assessing BCP eligibility.

The Site is approximately ±10.74 acres in size and includes three separate tax parcels

- 1-3 West Main Street: SBL 84.010-4-13.1 (3.89 acres)- County owned
- 26 Evans Street: SBL 84.014-2-14 (3.35 acres)- City owned
- 60 Evans Street: SBL 84.014-2-61 (3.5 acres)- soon to be owned by the BDC's Creek Park LLC.

As the City, County and the BDC evaluate the potential residential redevelopment of a portion of the three parcels the Phase II will assist in determining if the site is eligible for BCP.

The BCP, developed to spur redevelopment and reuse of underutilized and contaminated sites, was originally enacted in October 2003 and was revised in April 2015 and December 2021.



City of Batavia

The primary incentives for seeking eligibility to participate in the BCP are certain tax credits, a release from environmental liability issued by New York State Department of Environmental Conservation (DEC), remediation of sites to DEC standards and obtaining a Certificate of Completion (COC) which qualifies the party to such tax credits.

The cost to remediate and develop a brownfield site can be more expensive than a greenfield site, but the advantages are numerous including reducing urban sprawl, utilizing existing utilities and placing a non-contributing parcel at the edge of downtown into productive use.

The City has chosen Benchmark Environmental Engineering & Science PLLC-TurnKey Environmental Restoration LLC, a professional service firm with a strong record of assisting municipalities and development companies in re-developing blighted brownfield sites to perform the Phase II site investigation. Benchmark-TurnKey will also assess the eligible Site Preparation costs and credits and the anticipated Tangible Property costs and credits under potential cleanup tracks scenarios to allow the project team to evaluate the potential tax credits available under the BCP to off-set the project redevelopment costs.

The County has agreed to fund 1/3 of the cost of the proposal to assist the City.

I recommend that City Council approve the Benchmark-TurnKey proposal for \$10,800 and utilize Creek Park Committed Fund balance for the expense.

#91-2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BATAVIA
AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR ENVIRONMENTAL
SERVICES FROM BENCHMARK ENVIRONMENTAL ENGINEERING & SCIENCE
PLLC AND TURNKEY ENVIRONMENTAL RESTORATION LLC FOR THE CREEK
PARK AREA**

Motion of Councilmember

WHEREAS, the cost to remediate and develop a brownfield site can be more expensive than a greenfield site, but the advantages are numerous including reducing urban sprawl, utilizing existing utilities and placing a non-contributing parcel at the edge of downtown into productive use; and

WHEREAS, the City of Batavia identified the Creek Park Area Site as a brownfield site in the 2014 Brownfield Opportunity Area (BOA) Study; and

WHEREAS, the City of Batavia has committed fund balance of \$15,000 for the environmental study of the Creek Park Area; and

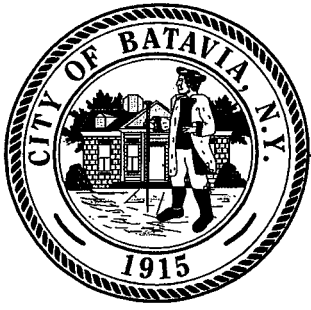
WHEREAS, to help facilitate redevelopment, the City needs to understand if a portion of the site is eligible for the Brownfield Cleanup Program (BCP); and

WHEREAS, the City of Batavia would like to engage Benchmark Environmental Engineering & Science PLLC and TurnKey Environmental Restoration LLC, a professional service firm with a strong record of assisting municipalities and development companies in re-developing blighted brownfield sites, to prepare the limited Phase II Environmental Investigation on the Creek Park Area; and

WHEREAS, the total contract to Benchmark & TurnKey LLC is \$10,800 and Genesee County has pledged to pay 1/3 of the proposed cost.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia authorizes the City Council President to execute an agreement for environmental services for the Creek Park Area with Benchmark Environmental Engineering & Science PLLC and TurnKey Environmental Restoration LLC, and use Committed Fund Balance designated for Creek Park for the expense.

**Seconded by Councilmember
and on the roll call**



City of Batavia

Memorandum

To: Honorable Council Members

From: Rachael J. Tabelski, MPA, Interim City Manager

Date: September 18, 2023

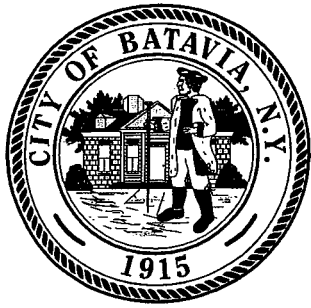
Subject: Dwyer Stadium Lease and Sublease

The City has had a long history with the Batavia Muckdogs and teams in the New York Penn League dating back many decades. Based on Major League Baseball's (MLB) decision to move on from the New York Penn League (NYPL), the cessation of the NYPL and the expiration of the Miami Marlins' Player Development agreement the current sublease with the NYPL owned franchise was cancelled and the City move forward with a new operator, Mr. Nichols and CAN-USA Sports, LLC., at Dwyer Stadium.

CANUSA took over the lease of Dwyer Stadium in January, 2021. They have operated for three complete seasons as part of the Perfect Game Collegiate Baseball League (PGCBL). They have been successful in bringing in many different community activities to the park including a dance team, high school baseball, festivals, and music and kid friendly events.

Highlights of the agreement include the following:

- Commencing on April 1, 2024, the annual rent shall be \$7,500.00; and on April 1, 2025, the annual rent shall be \$10,000.00.
- The capital payments, when paid, shall be placed in the Dwyer Stadium capital reserve fund for use on facility improvements as may be agreed upon from time to time between the Landlord and Subtenant for projects over \$25,000.
- Owner will undertake a Capital Improvement Program during lease extension
 - Paint home team and visiting team locker rooms
 - Install new flooring in home team and visiting team locker rooms
 - Paint men's and women's restrooms
 - Replace home and visiting team locker room signage
 - Install new/upgrade sound equipment
 - Repair and/or replace outfield fencing
 - Redesign Dwyer Stadium landscaping
 - Repair and/or replace home and visiting team bullpen areas



City of Batavia

- Subtenant shall be granted the right to extensions of the lease. Similar to the Ice Rink agreement the term of the lease can be extend up to three (3) consecutive periods of five (5) years each.
- The City and tenant shall agree to an updated capital improvement plan to be implemented by the subtenant for each period (below)

Annual Rent and Capital Improvement Fee Schedule

| Due Date | Rent Payment | Capital Payment |
|----------|--------------|-----------------|
| 4/1/2021 | \$ - | \$ - |
| 4/1/2022 | \$ - | \$ - |
| 4/1/2023 | \$ - | \$ - |
| 4/1/2024 | \$ 7,500 | \$ - |
| 4/1/2025 | \$ 10,000 | \$ - |
| 4/1/2026 | \$ 11,500 | \$ 5,000 |
| 4/1/2027 | \$ 11,650 | \$ 5,250 |
| 4/1/2028 | \$ 11,801 | \$ 5,513 |
| 4/1/2029 | \$ 11,955 | \$ 5,788 |
| 4/1/2030 | \$ 12,110 | \$ 6,078 |
| 4/1/2031 | \$ 13,926 | \$ 6,381 |
| 4/1/2032 | \$ 14,107 | \$ 6,700 |
| 4/1/2033 | \$ 14,290 | \$ 7,036 |
| 4/1/2034 | \$ 14,476 | \$ 7,387 |
| 4/1/2035 | \$ 14,664 | \$ 7,757 |
| 4/1/2036 | \$ 16,864 | \$ 8,144 |
| 4/1/2037 | \$ 17,083 | \$ 8,552 |
| 4/1/2038 | \$ 17,305 | \$ 8,979 |
| 4/1/2039 | \$ 17,530 | \$ 9,428 |
| 4/1/2040 | \$ 17,758 | \$ 9,900 |

I recommended that City Council execute the lease agreement with CAN-USA Sports, LLC.

#XX-2023

**A RESOLUTION AUTHORIZING THE CITY COUNCIL PRESIDENT TO SIGN AN
AMENDED AND RESTATED DWYER STADIUM LEASE AND SUBLEASE
AGREEMENT**

Motion of Councilmember

WHEREAS, the City of Batavia is the owner of Dwyer Stadium and the Batavia Regional Recreation Corporation (BRRC) operates and manages the Dwyer Stadium facility as outlined in the Dwyer Stadium Lease Agreement; and

WHEREAS, the BRRC has sublet the premises to CAN-USA Sports, LLC., to use the facility to play its home baseball games in the Perfect Game Collegiate Baseball League (PGCBL) at Dwyer Stadium; and

WHEREAS, CAN-USA Sports, LLC. has successfully operated for three seasons bringing in many different community activities to the park including dance team, high school baseball, festivals, music and kid friendly events; and

WHEREAS, the parties need to amend and restate the Lease and Sublease agreements and the City of Batavia shall agree to extend the lease agreement for three consecutive five (5) year periods after the first term with written notice from CAN-USA Sports, LLC; and

WHEREAS, CAN-USA Sports, LLC. agrees to pay the City of Batavia rent and capital improvement fees and to undertake specific improvements and upgrades at Dwyer Stadium as outlined in the lease agreement.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the Council President be and is hereby authorized to sign said Amended and Restated Dwyer Stadium Lease and Sublease Agreement as attached on behalf of the City of Batavia.

**Seconded by Councilmember
and on roll call**

SUBLEASE AGREEMENT

THIS AGREEMENT, dated as of _____, 2023 between the BATAVIA REGIONAL RECREATION CORPORATION, a New York not-for-profit corporation, having its offices at 1 Batavia City Centre, Batavia, New York 14020 (“Sublandlord”), and CAN-USA Sports, LLC, a New York limited liability company, having its offices at _____ (“Subtenant”).

RECITALS

A. The City of Batavia is the owner of certain real property with improvements thereon consisting of an athletic field and grandstand facilities, the improvements thereon, and the surrounding structures, including the surrounding parking areas which are known as Dwyer Stadium (the “Premises”). Sublandlord is a not-for-profit corporation with one of its purposes being to operate and manage the Premises.

B. The City leases the Premises to Sublandlord pursuant to an Amended and Restated Lease Agreement dated _____, 2023 (the “Lease”).

C. Subtenant intends to operate a collegiate league baseball team in the Batavia, New York area and is desirous of using the Premises to play its home baseball games.

D. Upon the terms and conditions set forth in this Agreement, Sublandlord is desirous of subletting the Premises to Subtenant.

E. Pursuant to the Lease, the subletting of the Premises by Sublandlord to Subtenant requires the consent and approval of the City and the City is willing to consent and approve this Sublease subject to the terms and conditions set forth in this Sublease.

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged by the parties and in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. Sublandlord hereby agrees to sublease the Premises to Subtenant and Subtenant hereby agrees to sublease the Premises from Sublandlord on the further terms and conditions of this Sublease.

2. Subject to the further provisions herein, the term of this Sublease shall be five (5) years commencing on April 1, 2021 and continuing through and including March 31, 2026 unless terminated earlier as more particularly provided for herein.

3. During the first three (3) years of the term, the annual rent shall be \$1.00. Commencing on April 1, 2024, the annual rent shall be \$7,500.00; and on April 1, 2025, the annual rent shall be \$10,000.00. The annual rent shall payable, in advance, on the first day of each lease

year during the term. The annual rent and capital payments, when paid, shall be placed in the Dwyer Stadium capital reserve fund for use on facility improvements as may be agreed upon from time to time between the Landlord and Subtenant for projects over \$25,000.

4. Proposed Operator/Subtenant Capital Improvement Program during lease extension
 - a. Paint home team and visiting team locker rooms
 - b. Install new flooring in home team and visiting team locker rooms
 - c. Paint men’s and women’s restrooms
 - d. Replace home and visiting team locker room signage
 - e. Install new/upgrade sound equipment
 - f. Repair and/or replace outfield fencing
 - g. Re-design Dwyer Stadium landscaping
 - h. Repair and/or replace home and visiting team bullpen areas

5. Subtenant shall have and is hereby granted the right (the “Extension”) to extend the Term of this lease for up to three (3) consecutive periods (each an “Extension Period”) of five (5) additional Lease Years each, provided (i) subtenant provides written notice to sublandlord for this election to exercise such Extension no later than six (6) months prior to the expiration of the last Lease Year of the initial Term or the then current Extension Period, as applicable; (ii) no Event of Default hereunder exists at the time of the Subtenant’s exercise of the Extension option or at the commencement of the term of the Extension Period, and no event exists at such times, which event by notice and or the passage of time would constitute and Event of Default if not cured within the applicable cure period. All terms and conditions of this Lease shall remain in full force and effect during any Extension Period. In consideration of the subtenant’s exercise of the Extension Period, the City and tenant shall agree to an updated capital improvement plan to be implemented by the subtenant for each period.

6. Annual Rent and Capital Improvement Fee Schedule

| Due Date | Rent Payment | Capital Payment |
|----------|--------------|-----------------|
| 4/1/2021 | \$ - | \$ - |
| 4/1/2022 | \$ - | \$ - |
| 4/1/2023 | \$ - | \$ - |
| 4/1/2024 | \$ 7,500 | \$ - |
| 4/1/2025 | \$ 10,000 | \$ - |
| 4/1/2026 | \$ 11,500 | \$ 5,000 |
| 4/1/2027 | \$ 11,650 | \$ 5,250 |
| 4/1/2028 | \$ 11,801 | \$ 5,513 |
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| 4/1/2033 | \$ 14,290 | \$ 7,036 |

| | | |
|----------|-----------|----------|
| 4/1/2034 | \$ 14,476 | \$ 7,387 |
| 4/1/2035 | \$ 14,664 | \$ 7,757 |
| 4/1/2036 | \$ 16,864 | \$ 8,144 |
| 4/1/2037 | \$ 17,083 | \$ 8,552 |
| 4/1/2038 | \$ 17,305 | \$ 8,979 |
| 4/1/2039 | \$ 17,530 | \$ 9,428 |
| 4/1/2040 | \$ 17,758 | \$ 9,900 |

7. Subtenant hereby agrees to assume any and all duties and obligations of Sublandlord in its capacity as Tenant under the Lease, and Subtenant shall be entitled to all of the rights and privileges of Sublandlord in its capacity as Tenant under the Lease.

8. In addition to any and all other terms, conditions or provisions set forth herein, Subtenant hereby agrees to indemnify, defend and hold Sublandlord harmless pursuant to and in accordance with the indemnification provisions set forth in the Lease that are applicable to Sublandlord as Tenant therein and hereby undertakes and assumes such indemnification obligations of Sublandlord as Tenant therein.

9. (a) This Agreement may be terminated at any time by Sublandlord upon the material breach or material default of the terms and conditions of this Sublease by Subtenant, which breach or default is not corrected or remedied within ten (10) days of written notice to Subtenant. Sublandlord or Subtenant may terminate this Sublease following completion of the baseball season by providing sixty (60) days prior written notice. The party seeking termination shall be responsible for all obligations through the date of termination.

(b) This Sublease shall terminate or expire upon the expiration of the Lease.

10. Subtenant shall provide Sublandlord with copies of its financial statements as they relate to its operations at the Premises at least annually or more frequently as reasonably requested by Sublandlord.

11. Each party hereby consents to the jurisdiction of the Courts of the State of New York in Genesee County in any action or proceeding pursuant to this Sublease. The parties further agree that all matters with respect to the validity, construction or interpretation of this Sublease shall be governed by the laws of the State of New York, without reference to any conflict of laws provision.

12. Each of the parties hereto hereby represents to each of the other parties that this Sublease has been duly authorized and executed and is a valid and binding obligation of such party enforceable against such party in accordance with its terms.

13. This Sublease may not be modified or amended except by the written agreement of the parties hereto.

14. Failure of any party at any time to require performance of any provision of this Sublease shall not limit the rights of that party to enforce such provision thereafter, nor shall any waiver of any breach of any provision of this Sublease constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself. Any waiver of any provision of this Sublease shall be effective only if set forth in writing and signed by each of the parties hereto.

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

16. All notices, requests and other communications hereunder shall be in writing and shall be delivered personally or deposited in the U.S. Mails, postage prepaid, return receipt requested, for express or "next day" delivery, together with a contemporaneous telefax transmission to the address set forth above:

If to Sublandlord; Attention President

If to Subtenant; Attention _____

or to such other address as may be furnished to the others by written notice in the manner provided in this Section. Any such notice, request, consent or other communication shall be deemed received at such time as it is personally delivered or actually received, as the case may be.

17. This Sublease may not be assigned by Subtenant, nor may Subtenant further sublease the Premises or otherwise transfer its rights to possession of the Premises without the prior written consent of Sublandlord, which consent shall not be unreasonably withheld.

18. This Sublease may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day first written above.

BATAVIA REGIONAL
RECREATION CORPORATION

By: _____
_____, President

CAN-USA SPORTS, LLC

By: _____
_____, _____

For the sole purpose of evidencing consent
to this Sublease:

CITY OF BATAVIA

By: _____

City Council President

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2023, 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 whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2023, 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 whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2023, 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 whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

AMENDED AND RESTATED DWYER STADIUM LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT, made the _____ day of _____, 2023 between the CITY OF BATAVIA, hereinafter referred to as “Landlord”, and BATAVIA REGIONAL RECREATION CORPORATION, hereinafter referred to as “Tenant.”

WITNESSETH:

WHEREAS, Landlord is the owner of certain real property with improvements thereon consisting of a baseball field and grandstand facilities which are known as Dwyer Stadium, and

WHEREAS, Tenant was incorporated as a Not-For-Profit corporation with one of its purposes being to operate and manage the Dwyer Stadium facility, and

WHEREAS, pursuant to Lease Agreement dated January 13, 2021, Landlord and Tenant entered into a Lease Agreement for the Dwyer Stadium facility (the “2021 Lease”) and Landlord, Tenant and the Batavia Muckdogs, Inc., as subtenant (“BM”) also on January 13, 2021, entered into a Sublease Agreement whereby BM would operate a Collegiate Baseball Team, and

WHEREAS, Landlord and Tenant intend to provide an extension of the lease to the subtenant to continue to use the Premises as an athletic facility for the benefit of the Batavia community (“Subtenant”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant agree to amend and restate the 2021 Lease to incorporate therein many of the amendatory provisions thereto set forth in the 2021 Sublease to read in its entirety as follows:

1. Lease. Subject to each, and all, of the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, as hereinafter defined, for the uses and purposes hereinafter described.
2. Premises. The term “Premises” as used in this Agreement shall include only the athletic field, the improvements thereon, and the surrounding structures, including the surrounding parking areas, known as Dwyer Stadium.

3. Term. The term of this Agreement shall be five (5) years commencing on April 1, 2021 and continuing through and including March 31, 2026 unless terminated earlier as more particularly provided for herein.

4. Rent. During the first five (5) years of the term, the annual rent shall be \$1.00. Commencing on April 1, 2024, the annual rent shall be \$7,500.00; and on April 1, 2025, the annual rent shall be \$10,000.00. The annual rent shall payable, in advance, on the first day of each lease year during the term. The Landlord agrees that, when paid, the capital payments shall be placed in the Dwyer Stadium capital reserve fund for use in facility improvements as may be agreed upon from time to time by Landlord and Tenant for projects over \$25,000.

1. Proposed Operator/Subtenant Capital Improvement Program during lease extension

- a. Paint home team and visiting team locker rooms
- b. Install new flooring in home team and visiting team locker rooms
- c. Paint men’s and women’s restrooms
- d. Replace home and visiting team locker room signage
- e. Install new/upgrade sound equipment
- f. Repair and/or replace outfield fencing
- g. Redesign Dwyer Stadium landscaping
- h. Repair and/or replace home and visiting team bullpen areas

2. Subtenant shall have and is hereby granted the right (the “Extension”) to extend the Term of this lease for up to three (3) consecutive periods (each an “Extension Period”) of five (5) additional Lease Years each, provided (i) subtenant provides written notice to sub landlord for this election to exercise such Extension no later than six (6) months prior to the expiration of the last Lease Year of the initial Term or the then current Extension Period, as applicable; (ii) no Event of Default hereunder exists at the time of the Subtenant’s exercise of the Extension option or at the commencement of the term of the Extension Period, and no event exists at such times, which event by notice and or the passage of time would constitute and Event of Default if not cured within the applicable cure period. All terms and conditions of this Lease shall remain in full force and effect during any Extension Period. In consideration of the subtenant’s exercise of the Extension Period, the City and tenant shall agree to an updated capital improvement plan to be implemented by the subtenant for each period.

3. Annual Rent and Capital Improvement Fee Schedule

| Due Date | Rent Payment | Capital Payment |
|----------|--------------|-----------------|
| 4/1/2021 | \$ - | \$ - |
| 4/1/2022 | \$ - | \$ - |
| 4/1/2023 | \$ - | \$ - |
| 4/1/2024 | \$ 7,500 | \$ - |
| 4/1/2025 | \$ 10,000 | \$ - |

| | | |
|----------|-----------|----------|
| 4/1/2026 | \$ 11,500 | \$ 5,000 |
| 4/1/2027 | \$ 11,650 | \$ 5,250 |
| 4/1/2028 | \$ 11,801 | \$ 5,513 |
| 4/1/2029 | \$ 11,955 | \$ 5,788 |
| 4/1/2030 | \$ 12,110 | \$ 6,078 |
| 4/1/2031 | \$ 13,926 | \$ 6,381 |
| 4/1/2032 | \$ 14,107 | \$ 6,700 |
| 4/1/2033 | \$ 14,290 | \$ 7,036 |
| 4/1/2034 | \$ 14,476 | \$ 7,387 |
| 4/1/2035 | \$ 14,664 | \$ 7,757 |
| 4/1/2036 | \$ 16,864 | \$ 8,144 |
| 4/1/2037 | \$ 17,083 | \$ 8,552 |
| 4/1/2038 | \$ 17,305 | \$ 8,979 |
| 4/1/2039 | \$ 17,530 | \$ 9,428 |
| 4/1/2040 | \$ 17,758 | \$ 9,900 |

5.

6. Acceptance of Premises. Tenant accepts the Premises “as is”.

7. Use of the Premises.

(a) Tenant shall cause the Premises to be used primarily by Subtenant for its home baseball games and practices.

(b) Tenant shall have the exclusive right and authority to schedule both baseball and non-baseball events such as concerts, exhibitions, gatherings, etc., for both profit and not-for-profit, groups on all dates that do not conflict with the use of the Premises by Subtenant with the following provisions and limitations:

(1) The Premises may continue to be used for amateur baseball games, all-star games and sectional games, when practicable, with preference to be given to Batavia High School and Notre Dame of Batavia High School. The Premises may also be used for non-baseball events.

(2) The Premises will continue to be used for other not-for-profit baseball events such as the National Junior College Athletic Association World Series, the Genesee Community College and the Men’s Senior League.

(3) The Premises shall not be used for Youth Football games.

(4) The Premises may be used for events that Tenant arranges, such as concerts, exhibitions, gatherings, etc., for both profit and non-profit groups on available dates.

(c) The requirement that Tenant must allow the use of the Premises to continue for not-for-profit organizations and High Schools does not eliminate the right of Tenant to negotiate and establish reasonable user fees for the use of the field and/or the lights for such events.

(d) All concert or other non-baseball events shall end no later than midnight on Fridays and Saturdays, and no later than 11:00 P.M. on all the other nights.

8. Advertising. Tenant shall have the authority to use the interior side of the outfield fence at the Premises, and any other areas it deems appropriate for the purpose of placing advertising thereon. Tenant may fix and charge rates for said advertising as it deems appropriate. Tenant shall not allow any advertising in or around the Premises for tobacco products of any kind or nature, except with regard to any pre-existing legally enforceable contract for the same.

9. Concessions.

(a) Tenant shall have the exclusive right and privilege of operating concessions during any events to be held at the Premises for the sale of any and all merchandise or food and drink, including but not limited to beer/beverage, for human consumption, except articles forbidden to be sold by law, together with the right to circulate around the patrons of the stadium to sell said wares, or to assign this concession privilege to contract to suitable persons or groups.

(b) Notwithstanding the provisions of the immediately preceding paragraph, Tenant, its successors and assigns, covenants and agrees that no alcoholic beverages shall be sold from said concession stand or elsewhere within the Premises unless and until Tenant provides and maintains at its sole cost and expense a liquor legal liability insurance policy which names Landlord as an additional insured party; said policy to be in an amount not less than \$2 Million or such higher amount as may be deemed appropriate by Landlord during the term of this Lease. This insurance policy shall be obtained from an insurance company licensed to do business in the State of New York, and it shall provide for thirty (30) days written notice to Landlord prior to any amendment or cancellation thereof.

10. Revenue From Use of Premises. Tenant shall have the right to retain any and all revenue of any kind and nature for the use and operation of the Premises, including but not limited to admissions, ticket sales, merchandising, promotions, advertising, user fees and other stadium fees.

11. Insurance. Tenant shall, at its sole cost and expense, furnish a comprehensive general liability insurance policy covering the use of the Premises which names Landlord as an additional insured party; said policy to be in an amount not less than \$2 Million or such higher amount as may be deemed appropriate by Landlord during the term of this Lease. This insurance policy shall be obtained from an insurance

company licensed to do business in the State of New York, and it shall provide for thirty (30) days written notice to Landlord prior to any cancellation thereof.

12. Indemnification.

(a) During the hours that Tenant operates baseball and non-baseball events at the Premises or allows the use of the Premises for such events by outside organizations, Tenant shall be responsible for any personal injury, including wrongful death, and property damage to others whether caused by the carelessness, negligence or improper conduct on the part of Tenant or its agents, servants, invitees or employees including by way of example, but not by way of limitation, Ball Players, Coaches, Staff, Patrons and Spectators. At any other times when the Premises are not being used by Tenant, Subtenant or any other party whose use of the Premises is permitted under this Lease, Landlord shall have the foregoing responsibility and liability.

(b) Tenant shall indemnify, save and hold Landlord harmless from any and all losses not covered by insurance which Landlord may incur, suffer or be required to pay arising from injury to person, including wrongful death, or property damage upon said Premises for which Tenant is responsible under the terms of this Lease, including but not limited to reasonable attorney's fees and legal costs.

12. Events of Default; Termination.

(a) Occurrence of any of the following shall constitute an event of default under this Lease:

(i) The failure of either party hereto to make any payment of any amounts for which it is liable pursuant to this Lease within ten (10) business days after such payment is due.

(ii) The failure of either party to perform or observe any other agreement or condition to be performed or observed by it pursuant to this Lease for a period of ten (10) business days after receipt by such party of the other party's written notice of default, specifying the exact nature of such default; provided, however, an event of default shall not be deemed to have occurred in the event that the defaulting party shall correct such failure within such ten (10) day period, or within such larger period, if the default so specified (other than a default under subparagraph (i) hereof) shall be of such nature that the same, although correctable, cannot be cured or corrected within such ten (10) day period and the defaulting party has in good faith commenced the curing or correcting of such default within such ten (10) day period and has thereafter continuously and diligently proceeded therewith to completion, provided that if cure is not effected within sixty (60) days after the receipt of such notice, the same may, at the other party's option, be deemed a default.

(iii) The institution by either party of any voluntary bankruptcy or insolvency proceedings.

(iv) The institution against either party of any involuntary bankruptcy or insolvency proceedings, and the failure to obtain a dismissal thereof within sixty (60) days following the date of institution of such proceedings.

(b) Either party may terminate this Lease upon default of the other party hereto by serving written notice of termination on the defaulting party. Said notice of termination shall set forth in reasonable detail the specific default complained of and the effective date of termination.

(c) Upon termination for default, all rights and obligations of the parties pursuant to this Lease shall cease as of the effective date of such termination, except for covenants requiring performance after the effective date of termination, claims arising prior to termination, and any rights of either party resulting from the other party's breach of this Lease.

13. Maintenance; Repairs.

(a) Tenant shall maintain and take good care of the Premises and shall, at the cost and expense of Tenant, make all non-structural repairs, and at the end or other expiration of the term, shall deliver up the Premises in good order or condition, ordinary wear and tear excepted.

(b) Landlord shall, at its expense, make all necessary structural repairs. The determination as to what constitutes a necessary structural repair shall be made by Landlord in its sole discretion, acting reasonably.

(c) Landlord shall be responsible for any fire or hazard damage or loss to the Premises and shall provide for any insurance thereof at its own expense.

14. Inspection and Audit. Landlord shall have the right to receive on an annual basis a profit and loss statement of Tenant or any assignee relating to the operation of the baseball team and Dwyer Stadium facility under this Agreement, and to copy therefrom such information as Landlord may reasonably request.

15. Force Majeure. Neither party shall be obligated to perform under this Lease and neither party shall be deemed to be in default if performance of this Lease is prevented by fire, flood, earthquake, act of God, riot, civil commotion, pandemic or any law, ordinance, rule of regulation or determination of any public or military authority, or any failure of suppliers, including the failure of fuel or energy suppliers to furnish sufficient supplies, or failure of contractors to perform as agreed, or any labor dispute, strike, picket or boycott affecting the Premises, or any part thereof, or services to be provided therein, or any other cause beyond the reasonable control of such party, whether similar or dissimilar to the foregoing. Upon the occurrence of any such event, the party whose performance is impaired shall give written notice with full particulars to the other party as soon as possible. Such performance shall be excused only during the continuance of the inability of such party to perform.

16. Compliance With Laws. Tenant shall comply with any and all ordinances, rules, orders, regulations and requirements whether local, federal or state; include any noise ordinances that are contained in the Batavia Municipal Code.

17. Reservation of Rights. Landlord expressly reserves any and all notice requirements contained in its Charter and State statutes pertaining to limitations of actions against Landlord.

18. Binding Nature. This Lease shall bind and inure to the benefit of Landlord, and its successors and assigns, and Tenant, and its successors and permitted assigns.

19. Sublease; Assignment. Tenant shall not sublease the Premises or otherwise transfer or assign this Agreement without the prior written approval and consent of Landlord; which may be withheld by Landlord in its sole discretion. It is anticipated by Landlord and Tenant that Tenant shall propose to sublease the Premises to CAN-USA Sports, LLC, which sublease shall be subject to the prior approval and consent of Landlord, in its sole discretion.

20. Damaged Premises. Notwithstanding any other provision of this Lease, in the event of fire or other similar damage to the Premises, Landlord, shall have the right but not the obligation to repair the Premises. If Landlord notifies Tenant of Landlord's election not to repair the Premises within thirty (30) days after any such fire or similar damage, such event shall excuse the parties from further performance under this Agreement and this Lease shall be deemed to have terminated as of the date of such notice.

21. Relationship of Parties. The relationship of the parties hereto is that of landlord and tenant. The parties hereto shall not be deemed to be partners or joint venturers.

22. Notices. All notices or other communications required or permitted to be given pursuant to the terms of this Lease shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid. If mailed, they should be sent to the following respective addresses:

To Landlord:

Rachael Tabelski, Interim City Manager
One Batavia City Centre
Batavia, New York 14020

To Tenant:

Stephen Maxwell
226 State Street
Batavia, New York 14020

or to such other address as shall be given to the notifying party in accordance with the terms of this Section 22. Notices or other communications shall be effective when they are received by the party for whom they are intended.

23. Entire Agreement. This Lease constitutes the entire agreement between parties hereto with respect to the lease of the Premises and supersedes any and all prior or contemporaneous negotiations, understandings, agreements, inducements and conditions of any nature whatsoever with respect to the subject matter hereof. No amendment, waiver or discharge of any provision of this Lease shall be effective against any party unless and until it shall have been duly executed by each of the parties hereto.

24. Consents. In the event that, at any time, the consent of either party hereto shall be required to be obtained pursuant to this Lease, each party agrees that such consent shall not be withheld unreasonably.

25. Controlling Law. This Lease shall be governed, construed, interpreted and enforced in accordance with the laws of the State of New York.

26. Indulgence Not Waivers. No indulgences extended by any party hereto to any other party shall be construed as a waiver of any breach on the part of such other party, nor shall any waiver of any breach of any provision of this Lease be construed as a waiver of any rights or remedies with respect to any subsequent breach of the same or any other provision of this Lease.

27. Titles Not to Affect Interpretation. The titles of sections and subsections contained in this Lease are inserted for convenience of reference only, and they neither form a part of this Lease nor are they to be used in the construction or interpretation thereof.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF BATAVIA

City Council President

BATAVIA REGIONAL
RECREATION CORPORATION

President

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

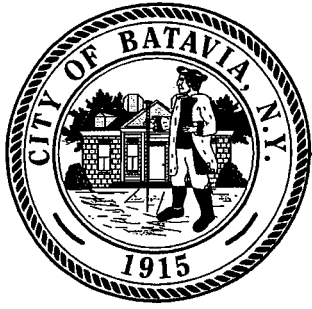
On this ____ day of _____ 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared EUGENE JANKOWSKI, JR. , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his capacity and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
 :SS.:
COUNTY OF GENESEE)

On this ____ day of _____ 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared STEPHEN S. MAXWELL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public



City of Batavia

Memorandum

To: Rachael J. Tabelski, MPA, City Manager
From: Brett J. Frank, Director of Public Works
Date: September 18, 2023
Subject: Amendment of Chapter 190 of Batavia Municipal Code

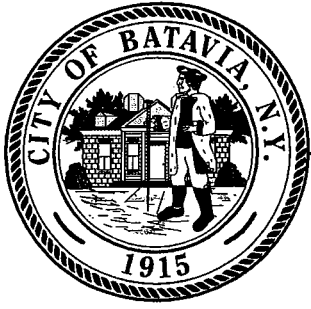
Edwin Smart, sole member of Plansmart LLC, currently owns a parcel of land located at 4 Mix Place.

Mr. Smart submitted a petition to re-zone this parcel from an R-1A to an R-3 residential designation and to Amend Section 190-(c)(2) to read: “Offices for attorneys, physicians, dentists, **and other similar professionals**, not exceeding four offices in a single structure.” (Currently, City Code reads: “Offices for attorneys, physicians, and/or dentists, not exceeding four offices in a single structure.”)

On June 26, 2023 City Council referred the petition to rezone to the Planning and Development Committee. The PDC reviewed the petitioner’s request at their August 15, 2023 meeting. The recommendation to consider the rezoning of 3 and 4 Mix place and include the parcels in R3 zoning was reviewed. The PDC also recommended amending BMC 190-(c)(2) to include the wording “and other similar professionals” with the listing of approved Special Use Permit uses.

After receiving the letter from the PDC and upon further review by City staff I would like City Council to consider an amendment to Chapter 190 Zoning Article IX Subsection 190-37 (Special Use Permits) and Chapter 190 Zoning Subsection 190-11. The proposed amendments would permit professional office use in existing buildings on properties, that meet the standards in the attachments including minimum lot size, parking requirements, site plan review, and impact on residential neighborhoods. These changes would address the land use considerations of the petitioner and a re-zone would not be required. It is our belief that it would not be common for parcels to meet the existing requirements and the impact City wide would be minimal.

Attached are the proposed amendments for your review, along with the current zoning map.



City of Batavia

As New York Consolidated Laws, General City Law - GCT § 27 provides City Council with the authority to refer matters to the Planning and Development Committee, I recommend that Council refer this petition and potential zoning code changes to the City of Batavia Planning and Development Committee for review and recommendation.

#XX-2023

**A RESOLUTION REFERRING ZONING CODE AMENDMENTS TO THE PLANNING
AND DEVELOPMENT COMMITTEE**

Motion of Councilmember

WHEREAS, the City Council is desirous of reviewing potential amendments to Chapter 190 Zoning Article IX Subsection 190-37 Special use permits and Chapter 190 Zoning Subsection 190-11; and

WHEREAS, amend Chapter 190 Zoning Article IX Subsection 190-37 Special use permits and Chapter 190 Zoning Subsection 190-11 to permit professional office use in existing buildings, on properties, that meet specific standards; and

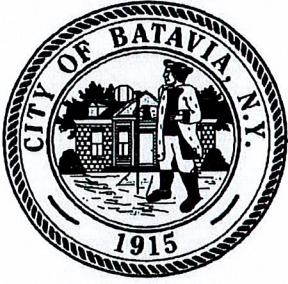
WHEREAS, under the City Charter § 13-3 the City Planning and Development Committee shall have such powers and duties to serve in an advisory capacity and provide such advice as to assist the City Council in developing a strategy that interprets, plans and leads in the implementation of land use matters relating to public and private development within the City of Batavia; and

WHEREAS, General City Law – (GCL) § 27 provides City Council with the authority to refer matters to the Planning and Development Committee requesting reviews and recommendations regarding planning and development within the City of Batavia; and

WHEREAS, BMC § 190-51 provides that City Council may make zoning district classification changes pursuant to GCL § 83 after review and report on the proposed amendment by the Planning and Development Committee.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia hereby requests that the City Planning and Development Committee review potential amendments to Chapter 190 Zoning Article IX Subsection 190-37 Special use permits and Chapter 190 Zoning Subsection 190-11, and make a recommendation to the City Council for consideration within thirty days of referral.

**Seconded by Councilmember
and on roll call**



City of Batavia

August 16, 2023

Batavia City Council
One Batavia City Centre
Batavia NY 14020

Dear Council President:

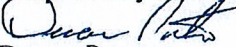
During its regularly scheduled meeting of August 15, 2023, per Council request, the Planning and Development Committee reviewed the zoning of 4 Mix Pl. and text of Batavia Municipal Code 190-10 C(2).

After discussion, a motion was supported to recommend Council consider amending the zoning of properties 4 and 3 Mix Pl. and to include them within the R-3 residential use district abutting 3 Mix Pl. to the southwest. It was determined that changing the zoning of 1 Mix Pl. would not be necessary for the petitioners intention of rezoning 4 Mix.

The PDC also recommends amending BMC 190-10 C (2) to include the wording "*and other similar professionals*" with the listing of approved Special Use Permit uses.

Please feel free to contact me if you have any questions regarding this matter.

Respectfully submitted,


Duane Preston
PDC Chairman

190-11 R-1A Residential district

In R-1A Residential Districts, no building or structure shall be erected, altered, or extended, and no land, building, structure or part thereof shall be used for other than one or more of the following uses:

A.

Permitted principal uses.

(1)

Single-family dwelling.

(2)

Two-family dwelling.

(3)

Church or other place of worship, convent, parish house, cemetery.

(4)

Public park not conducted for profit, public playground or athletic field and field house or other accessory buildings.

(5)

Golf course, except a miniature golf course operated on a commercial basis.

(6)

Agricultural operations, including gardens, nurseries, greenhouses and usual buildings or structures. No greenhouse heating plant shall be less than 100 feet from any lot line.

B.

Permitted accessory uses.

(1)

Such accessory uses as are customarily incidental to the above uses, subject to the provisions of § **190-35**.

(2)

Off-street parking, subject to provisions of § **190-39**.

(3)

Signs subject to the provisions of § **190-43**.

C.

Uses permitted with special use permits.

(1)

Municipal or public utility structures or facilities when necessary for the service of a neighborhood and of a kind and character in keeping with the residential character of the neighborhood.

(2) Existing buildings or portions of buildings may be re-purposed for professional office uses including, but not limited to, attorneys, physicians, dentists, architects, engineers, and similar professions determined by the Planning and Development Committee to have little or no negative impact on the residential neighborhood. Proposed uses shall be in compliance with the standards of 190-37 B (1-8) and 190-37 K (1-14).

Bold Italicized = New text



This electronic version is provided for informational purposes only. For the official version please contact the municipality.

[§ 190-37. Special use permits.](#)

[Amended 11-9-1998]

The following uses may be permitted provided a special use permit is authorized by the Planning and Development Committee under the terms and specifications herein. The necessity for certain specific uses is recognized. At the same time they, or any of them, may be or become inimical to the public health, safety and general welfare of the community if located without consideration to the existing conditions and surroundings. Special use permits authorize a particular land use that is permitted by the provisions of this chapter, but may require additional conditions to assure that the proposed use is in harmony with this chapter and will not adversely affect the neighborhood conditions. The following standards and proceedings are hereby established which are intended to provide the Planning and Development Committee with a guide for the purpose of reviewing certain uses not otherwise permitted in this chapter.

A. Municipal or public utility structures. Municipal or public utility structures or facilities may be permitted by special use permit in residential and commercial zoning districts provided that:

- (1) The proposed installation in a specific location is necessary and convenient for the efficiency of the public utility system or the satisfactory and convenient provision of service by the utility to the neighborhood or area in which the particular use is to be located.
- (2) The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights of the district in which it is located.
- (3) Adequate and attractive fences and other safety devices will be provided.
- (4) A buffer strip 10 feet in width shall be provided around the perimeter of the property.
- (5) Adequate off-street parking shall be provided.
- (6) All of the area, yard and building coverage requirements of the respective zoning district will be met.

B. Professional offices. ~~Professional offices for attorneys, physicians and/or dentists may be permitted by special use permit in the R-3 Residential District, provided that~~Professional offices may be allowed in certain residential districts provided that:

- (1) A minimum area of ~~105,000~~ 105,000 square feet with ~~75-100~~ 75-100 feet of frontage shall be provided.
- (2) Not more than 30% of the lot shall be covered by building area.
- (3) ~~A minimum~~Minimum setbacks of 35 feet for rear and front yards and a minimum of 12 feet for one side yard and a total of 25 feet for both side yards shall be required for all new construction.
- (4) On an existing structure which is connected and providing no additions are required, the City ~~Council~~Planning Board shall determine that the proposed use and structure will not be detrimental to adjoining properties.
- (5) ~~Off-street parking shall be provided at a rate of one space per 150 square feet of floor area or fraction thereof.~~ No parking shall be permitted within any portion of the front yard.
- (6) Where a parking area ~~for four or more cars~~ adjoins a residential property, a planted buffer strip at least 10 feet wide shall be provided between the parking area and the adjoining property.
- (7) No more than four ~~physicians or dentists~~professional offices shall occupy one building.

~~(8)~~ If the proposed use is to be located in a residential building, the residential facade shall be maintained.

~~(9)~~ All offices are subject to site plan review.

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City of Batavia, NY Basic View

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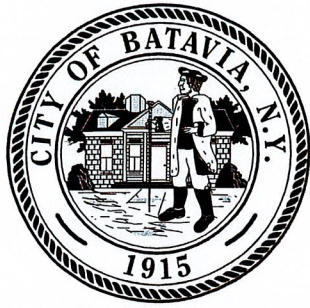
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EXHIBIT A





City of Batavia

Memorandum

To: Rachael Tabelski, City Manager

From: Shawn Heubusch, Police Chief

Date: September 18, 2023

Subject: NYS Governor's Traffic Safety Committee - Police Traffic Services Grant 2023-2024

On September 18, 2023, the City Police were awarded \$ 14,256 from the NYS Governor's Traffic Safety Committee for the Police Traffic Safety grant. The goal of the program is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and deaths resulting from traffic crashes.

The funding received will be used to provide for special traffic details throughout the year, to include targeted enforcement efforts in the downtown corridor. The funding covers the period of October 1, 2023 thru September 30, 2024. The contract must be signed by the City Council President.

Feel free to call with any questions you may have. Thank you.

Attachments: Award Letter
Draft Resolution

Cc: Lisa Neary, Deputy Director of Finance

**Police Department
10 Main Street
Batavia, New York 14020**



**Phone: 585-345-6350
Fax: 585-344-1878
Records: 585-345-6303
Detective Bureau: 585-345-6370
www.batavianewyork.com**

#XX -2023

A RESOLUTION TO AMEND THE 2023-2024 POLICE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A POLICE TRAFFIC SERVICES GRANT

Motion of Councilmember

WHEREAS, the City of Batavia Police Department has received a grant in the amount of \$ 14,256 from the New York State Governor’s Traffic Safety Committee to participate in the statewide Police Traffic Services Program. The goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes; and

WHEREAS, to properly account for the expenditure of this money, a budget amendment needs to be made.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendment to the 2023-2024 budget effective October 1, 2023 to cover various traffic enforcement details:

| | | |
|--------------------------------|----|-----------|
| Increase expenditure accounts: | | |
| A04.3120.3120.0101.199-100003 | \$ | 14,256.00 |
| Increase revenue accounts: | | |
| A.00.0000.0000 4389-100003 | \$ | 14,256.00 |

Seconded by Councilmember

and on roll call

JUSTIN O'CONNOR
Director



Department of Motor Vehicles

(518) 474-0972
Fax: (518) 473-6946

GOVERNOR'S TRAFFIC SAFETY COMMITTEE
6 EMPIRE STATE PLAZA • ALBANY, NY 12228

September 18, 2023

Christopher Camp
Batavia City Police Department
10 West Main St
Batavia, NY 14020-2040

Re: PTS-2024-Batavia City PD -00220-(019)
Police Traffic Services
T007112
CFDA #: 20.600
EFFECTIVE DATE: October 1, 2023

Dear Christopher Camp:

On behalf of the Governor's Traffic Safety Committee, I am pleased to notify you that the Batavia City Police Department has been awarded a total of \$14,256 to participate in the statewide Police Traffic Services Program. Our goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes. A breakdown of your grant award amount is as follows:

| Category | Award Amount |
|------------------------------------|-----------------|
| Seat Belt Mobilization Enforcement | \$3,456 |
| Regular PTS Enforcement | \$10,800 |
| Other Than Personal Services | \$0 |
| Grand Total | \$14,256 |

Before incurring any project related expenses, login to eGrants to review your approved budget as it may have been reduced or otherwise changed from what was requested. Crucial documents regarding your grant, the claims process, equipment, and other grant related topics can be found by visiting <https://trafficsafety.ny.gov/highway-safety-grant-program#grant-award>.

Attached to this email are the contract and a signatory page with instructions. Please follow the instructions to facilitate the prompt processing of your contract. The contract will only be effective after the Signature page has been signed by the County, City, Town, or Village, and notarized, then returned to, **and** signed by, the New York State Governor's Traffic Safety Committee.

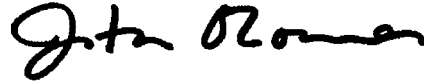
Please note the following requirement:

Payment for claims submitted under this grant award shall be rendered electronically in accordance with the Office of the State Comptroller's procedures and practices governing electronic payment unless payment by paper check is expressly authorized by the head of the State Agency, in his or her sole discretion after the Contractor establishes extenuating circumstances requiring payment by paper check.

TrafficSafety.ny.gov

Thank you for participating in this very important statewide enforcement program. I wish you success in your efforts. If you have any questions, please contact the Governor's Traffic Safety Committee at (518) 474-5111.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin O'Connor". The signature is fluid and cursive, with the first name "Justin" and last name "O'Connor" clearly distinguishable.

Justin O'Connor
Director

CRD:bp
Enclosure
cc: Rebecca Patterson
Shawn Heubusch