

**BATAVIA DEVELOPMENT CORPORATION**

**MEETING AGENDA- Annual Meeting  
Batavia City Hall, 2<sup>nd</sup> Floor  
Thursday, April 25, 2019  
8:30 AM**

<b>Page Number</b>	<b>Topic</b>	<b>Action</b>
	<b>Call to Order</b>	
	<b>Presentations –</b> Susie Ott, D&O Insurance, Lawley Genesee	
	<b>Executive Session</b> Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> <li>1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion discipline, suspension, dismissal or removal of a particular person or corporation; or</li> <li>2. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.</li> </ol> <b>Enter Public Session</b>	Vote         Vote
Pg. 2	<b>Presidents Report &amp; Activates</b> <ol style="list-style-type: none"> <li>1. Agenda Additions</li> <li>2. Approval of meeting minutes- March 28, 2019</li> <li>3. Special Meeting May 3, 2019 8:30 AM City Hall- loan application- Eat Well Grill</li> <li>4. Next Regular Meeting May 23, 2019 8:30 AM City Hall</li> </ol>	Vote Vote
	<b>Governance</b> <ol style="list-style-type: none"> <li>1. City RLF/Grant policy discussion</li> <li>2. Board Self Evaluation</li> <li>3. New board member ABO training</li> </ol>	Discussion Discussion Discussion
Pg. 5	<b>Audit &amp; Finance</b> <ol style="list-style-type: none"> <li>1. March 2019 financial statements</li> <li>2. Audit fieldwork- April 12<sup>th</sup> and May 29<sup>th</sup></li> </ol>	Discussion/ Vote Discussion
	<b>Real Estate/ BOA</b> <ol style="list-style-type: none"> <li>1. Ellicott Station/Savarino- update</li> <li>2. Batavia DRI Building Improvement Fund- update</li> <li>3. Harvester Theater 56 DRI Project- update</li> <li>4. Creek Park hockey/recreation market feasibility study/ joint MOU's</li> </ol>	Discussion Discussion Discussion Discussion/Vote
	<b>Small Business</b> nothing at this time	
Pg. 12a Pg. 12b	<b>Old Business</b> <ol style="list-style-type: none"> <li>1. Budget amendment to accept \$20K City RLF grant and expend funds to set up Opportunity Zone Fund</li> <li>2. Batavia Opportunity Fund partnership proposal</li> </ol>	Discussion/ Vote Discussion/ Vote
Pg. 16 Pg. 22	<b>New Business</b> <ol style="list-style-type: none"> <li>1. CFA grant writing- professional services engagement</li> <li>2. Harris Beach Attorney engagement letter</li> </ol>	Discussion/ Vote Discussion/Vote
	<b>Adjournment</b>	Vote

**BATAVIA DEVELOPMENT CORPORATION (BDC)  
Meeting Minutes March 28, 2019**

**Attendance**

BDC Attendees: Pier Cipollone, Wesley Bedford, Nate Varland, Lori Aratari, Chris Fix, Jake Whiting, Martin Moore, Steve Pies, and Rachael Tabelski (Director of Economic Development)

Excused: Wesley Bedford, Rebecca Cohen

Guest/Media: Joe Teresi, Jr. Tompkins Insurance Agencies, Brian Quinn, The Batavia Daily News

**Call to Order**

At 8:31 a.m. Pier Cipollone, President of the BDC, called the meeting to order in the Community Room, 2<sup>nd</sup> floor of City Hall.

**Presentations**

**BDC Insurance Review and General Liability Policy-** Joe Teresi, Jr. from Tompkins Insurance Agencies presented to the board an overview of the BDC's General Liability/Business insurance policy from Selective. The total premium is \$624.00 for the policy that covers BDC property (office at City Centre), general liability, automobile for staff as a secondary coverage when they travel for business. The board and Mr. Teresi also discussed the potential to amend the current policy when the BDC adds land into their portfolio. The scaffolding law was discussed. Because the BDC will not be in the chain of title there will be not increased liability associated with the administration of the Batavia DRI- Building Improvement Fund grant awards.

**Enter Executive Session**

S. Pies made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:40 a.m. for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion discipline, suspension, dismissal or removal of a particular person or corporation.

The motion was seconded by C. Fix and approved by all members present.

L. Aratari joined the meeting at 8:45 a.m.

**Enter Public Session**

J. Whiting made a motion to enter back into public session at 9:15 a.m., seconded by L. Aratari and approved by all members present.

**Chairman's Report**

P. Cipollone announced that the next meeting of the BDC is scheduled for April 25<sup>th</sup> 2019 at 8:30 a.m. at City Hall.

P. Cipollone presented the meeting minutes from the previous meeting and C. Fix made a motion to approve the February 27<sup>th</sup> 2019 meeting minutes as presented; seconded by J. Whiting and approved by all members present.

**Committee Reports**

**Governance:**

Meeting Dates 2019: An amended meeting calendar was discussed. The regular BDC meeting will be held on fourth Thursday of the month to accommodate board members schedules. L. Aratari made a motion to approve the amended meeting calendar; seconded by M. Moore and approved by all members present. The new calendar will be posted online.

## **Audit and Finance**

Financial Statements- The January 2019 financial statements were reviewed with the board, and a brief overview was given. R. Tabelański reported that BDC is doing well with their budget, and has a cash balance of \$74,000 with receivables due from the Ellicott Station project for the sale of the LLC. In the 2019-20 budget the BDC will hope to realize more revenue from the administrative fees associated with the Building Improvement Fund and from project referrals to the GCEDC. L. Aratari made a motion to approve financial statements; seconded by J. Whiting and approved by all members present.

Audit Fieldwork- Scheduled for April 12<sup>th</sup> and May 29<sup>th</sup> R. Tabelański will prepare organizational documents for the audit review and Lisa Neary will assist providing the financial information of the organization to Freed Maxick.

General Liability/ Business Insurance- S. Pies made a motion to approve the BDC's business insurance policy with Selective that includes general liability, automobile, and property; seconded by M. Moore and approved by all members present.

## **Real Estate/ BOA**

Ellicott Station/ Savarino- Ellicott Station/ Savarino- Brownfield mixed use development. The project remains active on a daily basis, as multiple scenarios, including dividing the projects into multiple stages, being explored by the City and the developer. The BDC remains positive that this project will advance to ground breaking, and clean up a blighted eye-sore in the center of the City.

Batavia DRI Building Improvement Fund- The BDC received 26 applications for building improvement projects within the Business Improvement District (BID). Rick Hauser with InSite Architecture, and R. Tabelański worked with all of the applicants to help them strengthen their submissions over the last month. The BDC board will meet on March 29<sup>th</sup> to review the applications and make the project selections. Project selected will need to commit, and submit a \$500 deposit, to move forward in the process. The BDC has \$540,000 to distribute, however the total grant ask was \$1.7 million. The BDC will work with the City to potentially apply for a Main Street Grant program in the 2019 Regional Economic Development Council (REDC) Consolidated Funding Application (CFA) to assist more projects.

Creek Park Hockey/ Recreation Market Feasibility Study- An RFP for a hockey and recreation market feasibility study was released by the City of Batavia on Friday March 22<sup>nd</sup>. The board BDC discusses the potential for re-development and the willingness of the BDC to advance the City's Brownfield Opportunity Area plans to incentivize a private developer to build on the site. Next steps include:

1. City RFP for Hockey/Recreation market feasibility study
2. City of Batavia Phase II environmental review of City owned property
3. Discussion/execution of a four-party agreement or memorandum of understanding (MOU) regarding Creek Park rehabilitation plans (City, BDC, County and Town)
4. BDC would potentially enter Creek park into the Brownfield Cleanup Program
5. BDC issues an RFP for a full-campus development

## **Old Business**

Nothing to report at this time.

## **New Business**

Batavia Opportunity Zone Fund Partnership Proposal- The BDC board will continue to pursue setting up the Batavia Opportunity Zone Fund. R. Tabelański is currently working to bring investment projects and businesses into the City inside the Opportunity Zone census tracts (Ward 6 and Ward 3). She reported that the City Council meeting went well and that there has been a lot of attention on Batavia across the state as they are considering setting up their own Opportunity Fund. City Council will have their Business Meeting on April 8<sup>th</sup> and if a positive vote is recorded Urban Vantage will prepare a formal contract for consideration by the BDC board for the April 25<sup>th</sup> meeting.

Attorney Engagement Discussion- The BDC board discussed the potential to engage the services of a local attorney for items like contract review and general release estate questions and transactions as well as an attorney versed in General Municipal Law (GML) public meetings law. Board members will submit names to R. Tabela and they will conduct interviews of local attorney to augment the services received by Bob Murray of Harris Beach.

Adjournment C. Fix made a motion to adjourn the meeting; seconded by S. Pies and approved by all member present. The meeting stood adjourned at 9:45 a.m.

Draft

# BATAVIA DEVELOPMENT CORP

Account Table:  
Alt. Sort Table:

## Revenue / Expense Control Report

Prepared By: LISA

Fiscal Year: 2018 Period From: 4 To: 3

Account No.	Description	Curr. Month Total Rev / Exp	YTD Adjusted Budget	YTD Actual Rev / Exp	YTD Budget Balance	YTD Encumbered	YTD Available Balance	Percent Rev/Exp Balance
Fund 001	BATAVIA DEVELOPMENT CORPORATION							
Type R	Revenue							
001.4000.007	GRANT REVENUE - GOVERNMENT NATIONAL GRID - POWERHOUSE	0.00	100,000.00	0.00	100,000.00	0.00	100,000.00	0.00
001.4000.008	GRANT REVENUE - GOVERNMENT EMPIRE STATE DEV ELLICOTT STATION	0.00	1,900,000.00	0.00	1,900,000.00	0.00	1,900,000.00	0.00
001.4000.009	GRANT REVENUE - GOVERNMENT DRI GRANT - BLDG IMPROVEMENT FUND	0.00	600,000.00	2,723.14	597,276.86	0.00	597,276.86	0.45
001.4120	BDC REVENUE	0.00	110,000.00	110,000.00	0.00	0.00	0.00	100.00
001.5900	OTHER NON OPERATING REVENUE	0.00	25,000.00	108.00	24,892.00	0.00	24,892.00	0.43
<b>Total Type R</b>	<b>Revenue</b>	<b>0.00</b>	<b>2,735,000.00</b>	<b>112,831.14</b>	<b>2,622,168.86</b>	<b>0.00</b>	<b>2,622,168.86</b>	<b>4.13</b>
Type E	Expense							
001.6000	SALARY EXPENSE	2,500.00	65,000.00	55,382.88	9,617.12	0.00	9,617.12	85.20
001.6000.003	SALARY EXPENSE USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	(3,132.54)	0.00	(3,132.54)	0.00	(3,132.54)	0.00
001.6100	FICA & MEDICARE RURAL DEVELOPMENT FRESH LAB GRANT	191.25	5,900.00	4,500.95	1,399.05	0.00	1,399.05	76.29
001.6100.003	FICA & MEDICARE USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	(237.80)	0.00	(237.80)	0.00	(237.80)	0.00
001.6110	STATE UNEMPLOYMENT FEDERAL UNEMPLOYMENT TAX	99.91	826.00	199.82	626.18	0.00	626.18	24.19
001.6111	HEALTH INSURANCE	0.00	177.00	84.00	93.00	0.00	93.00	47.46
001.6120	DISABILITY INSURANCE	0.00	3,000.00	3,038.48	(38.48)	0.00	(38.48)	101.28
001.6130	WORKERS COMP INSURANCE	0.00	65.00	178.32	(113.32)	0.00	(113.32)	274.34
001.6140	RETIREMENT CONTRIBUTION	0.00	708.00	650.00	58.00	0.00	58.00	91.81
001.6150	PROFESSIONAL SERVICES	0.00	5,000.00	1,602.74	3,397.26	0.00	3,397.26	32.05
001.7000	PROFESSIONAL SERVICES, DRI GRANT - BLDG IMPROVEMENT FUND	2,326.40	30,225.00	25,813.92	4,411.08	0.00	4,411.08	85.41
001.7000.009	PROFESSIONAL SERVICES, DRI GRANT - BLDG IMPROVEMENT FUND	0.00	600,000.00	8,115.21	591,884.79	0.00	591,884.79	1.35
001.7100	SUPPLIES AND MATERIALS	0.00	1,450.00	638.78	811.22	0.00	811.22	44.05
001.7100.003	SUPPLIES AND MATERIALS USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	1,000.00	19.20	980.80	0.00	980.80	1.92
001.8100	LEGAL/FILING FEES	0.00	1,200.00	479.98	720.02	0.00	720.02	40.00
001.8100.003	LEGAL/FILING FEES USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	164.50	0.00	164.50	0.00	164.50	0.00

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# BATAVIA DEVELOPMENT CORP

## Revenue / Expense Control Report

Fiscal Year: 2018 Period From: 4 To: 3

Account No.	Description	Curr. Month Total Rev / Exp	YTD Adjusted Budget	YTD Actual Rev / Exp	YTD Budget Balance	YTD Encumbered	YTD Available Balance	Percent Rev/Exp Balance
<b>Fund 001</b>	<b>BATAVIA DEVELOPMENT CORPORATION</b>							
<b>Type E</b>	<b>Expense</b>							
001.8110	TELEPHONE	0.00	0.00	420.45	(420.45)	0.00	(420.45)	0.00
001.8120	TRAVEL AND TRAINING	150.00	750.00	1,644.73	(894.73)	0.00	(894.73)	219.30
001.8130	MARKETING AND PR	100.00	5,000.00	4,346.54	653.46	0.00	653.46	86.93
001.8510	DIRECTORS AND OFFICERS LIABILITY	0.00	900.00	1,451.00	(551.00)	0.00	(551.00)	161.22
001.8520	GENERAL LIABILITY							
001.8520.003	GENERAL LIABILITY.USDA RURAL DEVELOPMENT FRESH LAB GRANT	609.08	500.00	629.08	(129.08)	0.00	(129.08)	125.82
		0.00	1,000.00	0.00	1,000.00	0.00	1,000.00	0.00
001.9000.003	NON OPERATING EXPENDITURES.USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	(2,465.50)	0.00	(2,465.50)	0.00	(2,465.50)	0.00
001.9000.007	NON OPERATING EXPENDITURES,NATIONAL GRID - POWERHOUSE	0.00	100,000.00	0.00	100,000.00	0.00	100,000.00	0.00
001.9000.008	NON OPERATING EXPENDITURES,EMPIRE STATE DEV ELLICOTT STATION Expense	0.00	1,900,000.00	0.00	1,900,000.00	0.00	1,900,000.00	0.00
<b>Total Type E</b>		<b>5,976.64</b>	<b>2,717,029.66</b>	<b>109,196.08</b>	<b>2,607,833.58</b>	<b>0.00</b>	<b>2,607,833.58</b>	<b>4.02</b>
<b>Total Fund 001</b>	<b>BATAVIA DEVELOPMENT CORPORATION</b>	<b>(5,976.64)</b>	<b>17,970.34</b>	<b>3,635.06</b>	<b>14,335.28</b>	<b>0.00</b>	<b>14,335.28</b>	<b>20.23</b>

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# BATAVIA DEVELOPMENT CORP

Account Table:  
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## Revenue / Expense Control Report

Fiscal Year: 2018 Period From: 4 To: 3

Prepared By: LISA

Account No.	Description	Curr. Month Total Rev / Exp	YTD Adjusted Budget	YTD Actual Rev / Exp	YTD Budget Balance	YTD Encumbered	YTD Available Balance	Percent Rev/Exp Balance
<b>Fund 002</b>	<b>CREEK PARK LLC</b>							
Type R	Revenue							
002.4900	OTHER OPERATING REVENUE	100.00	100.00	100.00	0.00	0.00	0.00	100.00
002.5900	OTHER NON OPERATING REVENUE	0.00	24,900.00	0.00	24,900.00	0.00	24,900.00	0.00
<b>Total Type R</b>	<b>Revenue</b>	<b>100.00</b>	<b>25,000.00</b>	<b>100.00</b>	<b>24,900.00</b>	<b>0.00</b>	<b>24,900.00</b>	<b>0.40</b>
Type E	Expense							
002.7000	PROFESSIONAL SERVICES	0.00	23,000.00	0.00	23,000.00	0.00	23,000.00	0.00
002.8100	LEGAL/FILING FEES	0.00	650.00	0.00	650.00	0.00	650.00	0.00
002.8510	DIRECTORS AND OFFICERS LIABILITY	0.00	750.00	0.00	750.00	0.00	750.00	0.00
002.8520	GENERAL LIABILITY	0.00	100.00	0.00	100.00	0.00	100.00	0.00
002.9000	NON OPERATING EXPENDITURES	0.00	500.00	0.00	500.00	0.00	500.00	0.00
<b>Total Type E</b>	<b>Expense</b>	<b>0.00</b>	<b>25,000.00</b>	<b>0.00</b>	<b>25,000.00</b>	<b>0.00</b>	<b>25,000.00</b>	<b>0.00</b>
<b>Total Fund 002</b>	<b>CREEK PARK LLC</b>	<b>100.00</b>	<b>0.00</b>	<b>100.00</b>	<b>(100.00)</b>	<b>0.00</b>	<b>(100.00)</b>	<b>0.00</b>
<b>Grand Total</b>		<b>(5,876.64)</b>	<b>17,970.34</b>	<b>3,735.06</b>	<b>14,235.28</b>	<b>0.00</b>	<b>14,235.28</b>	<b>20.78</b>

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Account Table:  
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# BATAVIA DEVELOPMENT CORP

## Rev/Exp Comparison Control Report

Period From: 4 To: 3

Prepared By: LISA

Account No.	Description	2018		2018 Actual Rev / Exp	2018 Encumbered	2018 Available Balance	2018 % Exp. Balance	2017 Actual Rev / Exp	2016 Actual Rev / Exp	
		Original Budget	Adjusted Budget							
<b>BATAVIA DEVELOPMENT CORPORATION</b>										
<b>Revenue</b>										
001.4000.002	GRANT REVENUE - GOVERNMENT.MICROENTERPRISE -14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	92,779.44	
001.4000.003	GRANT REVENUE - GOVERNMENT.USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	0.00	0.00	0.00	0.00	0.00	23,661.77	42,980.28	
001.4000.004	GRANT REVENUE - GOVERNMENT.HARVESTER PARK EMPIRE STATE DEV PLANNING	0.00	0.00	0.00	0.00	0.00	0.00	15,000.00	(797.31)	
001.4000.005	GRANT REVENUE - GOVERNMENT.NEWBERRY - NYS MAIN STREET ANCHOR BLDG	0.00	0.00	0.00	0.00	0.00	0.00	490,000.00	9,067.81	
001.4000.006	GRANT REVENUE - GOVERNMENT.NG - NEWBERRY	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00	
001.4000.007	GRANT REVENUE - GOVERNMENT.NATIONAL GRID - POWERHOUSE	0.00	100,000.00	0.00	0.00	100,000.00	0.00	0.00	0.00	
001.4000.008	GRANT REVENUE - GOVERNMENT.EMPIRE STATE DEV ELLCOTT STATION	0.00	1,900,000.00	0.00	0.00	1,900,000.00	0.00	0.00	0.00	
001.4000.009	GRANT REVENUE - GOVERNMENT.DRI GRANT - BLDG IMPROVEMENT FUND	0.00	600,000.00	2,723.14	0.00	597,276.86	0.45	0.00	0.00	
001.4120	BDC REVENUE	0.00	110,000.00	110,000.00	0.00	0.00	100.00	110,000.00	90,000.00	
001.4900	OTHER OPERATING REVENUE	0.00	0.00	0.00	0.00	0.00	0.00	55,000.00	5,000.00	
001.5900	OTHER NON OPERATING REVENUE	0.00	25,000.00	108.00	0.00	24,892.00	0.43	3,323.50	155.00	
<b>Total Type R</b>	<b>Revenue</b>	<b>0.00</b>	<b>2,735,000.00</b>	<b>112,831.14</b>	<b>0.00</b>	<b>2,622,168.86</b>	<b>4.13</b>	<b>796,965.27</b>	<b>239,185.22</b>	
<b>Type E</b>	<b>Expense</b>									
001.6000	SALARY EXPENSE	0.00	65,000.00	55,382.88	0.00	9,617.12	85.20	71,352.68	44,610.31	
001.6000.002	SALARY EXPENSE.MICROENTERPRISE -14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,594.49	
001.6000.003	SALARY EXPENSE.USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	(3,132.54)	0.00	0.00	(3,132.54)	0.00	0.00	2,033.64	
001.6000.004	SALARY EXPENSE.HARVESTER PARK EMPIRE STATE DEV PLANNING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,964.80	

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Account Table:  
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# BATAVIA DEVELOPMENT CORP

## Rev/Exp Comparison Control Report

Period From: 4 To: 3

Prepared By: LISA

Account No.	Description	2018 Original Budget	2018 Adjusted Budget	2018 Actual Rev / Exp	2018 Encumbered	2018 Available Balance	2018 % Exp. Balance	2017 Actual Rev / Exp	2016 Actual Rev / Exp
<b>BATAVIA DEVELOPMENT CORPORATION</b>									
<b>Expense</b>									
001.6000.005	SALARY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,796.70
	EXPENSE,NEWBERRY -NYS								
	MAIN STREET ANCHOR BLDG								
001.6100	FICA & MEDICARE	0.00	5,900.00	4,500.95	0.00	1,399.05	76.29	5,668.87	3,659.31
001.6100.002	FICA &	0.00	0.00	0.00	0.00	0.00	0.00	(0.01)	425.07
	MEDICARE,MICROENTERPRIS								
	E -14								
001.6100.003	FICA & MEDICARE,USDA	0.00	(237.80)	0.00	0.00	(237.80)	0.00	0.00	153.75
	RURAL DEVELOPMENT								
	FRESH LAB GRANT								
001.6100.004	FICA &	0.00	0.00	0.00	0.00	0.00	0.00	0.00	149.09
	MEDICARE,HARVESTER								
	PARK EMPIRE STATE DEV								
	PLANNING								
001.6100.005	FICA &	0.00	0.00	0.00	0.00	0.00	0.00	0.00	432.31
	MEDICARE,NEWBERRY -NYS								
	MAIN STREET ANCHOR BLDG								
001.6110	STATE UNEMPLOYMENT	0.00	826.00	199.82	0.00	626.18	24.19	141.71	181.91
001.6111	FEDERAL UNEMPLOYMENT	0.00	177.00	84.00	0.00	93.00	47.46	42.00	42.00
	TAX								
001.6120	HEALTH INSURANCE	0.00	3,000.00	3,038.48	0.00	(38.48)	101.28	3,000.00	3,000.00
001.6130	DISABILITY INSURANCE	0.00	65.00	178.32	0.00	(113.32)	274.34	60.00	120.00
001.6140	WORKERS COMP	0.00	708.00	650.00	0.00	58.00	91.81	636.00	617.00
	INSURANCE								
001.6150	RETIREMENT CONTRIBUTION	0.00	5,000.00	1,602.74	0.00	3,397.26	32.05	5,000.00	0.00
001.7000	PROFESSIONAL SERVICES	0.00	30,225.00	25,813.92	0.00	4,411.08	85.41	572.20	7,317.49
001.7000.002	PROFESSIONAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	660.00
	SERVICES,MICROENTERPRIS								
	E -14								
001.7000.005	PROFESSIONAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,500.00
	SERVICES,NEWBERRY -NYS								
	MAIN STREET ANCHOR BLDG								
001.7000.009	PROFESSIONAL	0.00	600,000.00	8,115.21	0.00	591,884.79	1.35	0.00	0.00
	SERVICES,DRI GRANT - BLDG								
	IMPROVEMENT FUND								
001.7100	SUPPLIES AND MATERIALS	0.00	1,450.00	638.78	0.00	811.22	44.05	1,010.20	407.68
001.7100.003	MATERIALS,USDA RURAL	0.00	1,000.00	19.20	0.00	980.80	1.92	0.00	0.00
	DEVELOPMENT FRESH LAB								
	GRANT								
001.8100	LEGAL/FILING FEES	0.00	1,200.00	479.98	0.00	720.02	40.00	782.38	402.47
001.8100.002	LEGAL/FILING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	60.00
	FEES,MICROENTERPRISE -14								
001.8100.003	LEGAL/FILING FEES,USDA	0.00	164.50	0.00	0.00	164.50	0.00	600.00	717.50
	RURAL DEVELOPMENT								
	FRESH LAB GRANT								
001.8110	TELEPHONE	0.00	0.00	420.45	0.00	(420.45)	0.00	0.00	0.00



Account Table:  
 Alt. Sort Table:

# BATAVIA DEVELOPMENT CORP

## Rev/Exp Comparison Control Report

Prepared By: LISA

Period From: 4 To: 3

Account No.	Description	2018		2018 Actual Rev / Exp	2018 Encumbered	2018 Available Balance	2018 % Exp. Balance	2017 Actual Rev / Exp	2016 Actual Rev / Exp	
		Original Budget	Adjusted Budget							
<b>BATAVIA DEVELOPMENT CORPORATION</b>										
<b>Expense</b>										
001.8120	TRAVEL AND TRAINING	0.00	750.00	1,644.73	0.00	(894.73)	219.30	494.76	795.33	
001.8120.002	TRAVEL AND TRAINING.MICROENTERPRIS E -14	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,338.00	
001.8130	MARKETING AND PR	0.00	5,000.00	4,346.54	0.00	653.46	86.93	2,530.85	2,399.35	
001.8510	DIRECTORS AND OFFICERS LIABILITY	0.00	900.00	1,451.00	0.00	(551.00)	161.22	1,451.00	794.00	
001.8520	GENERAL LIABILITY	0.00	500.00	629.08	0.00	(129.08)	125.82	2,123.11	606.14	
001.8520.003	RURAL DEVELOPMENT	0.00	1,000.00	0.00	0.00	1,000.00	0.00	0.00	0.00	
001.9000	FRESH LAB GRANT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,000.00	
001.9000.002	NON OPERATING EXPENDITURES	0.00	0.00	0.00	0.00	0.00	0.00	0.00	74,000.00	
001.9000.003	NON OPERATING EXPENDITURES.MICROENTE RPRISE -14	0.00	(2,465.50)	0.00	0.00	(2,465.50)	0.00	29,013.52	37,493.98	
001.9000.004	NON OPERATING EXPENDITURES.USDA RURAL DEVELOPMENT FRESH LAB GRANT	0.00	0.00	0.00	0.00	0.00	0.00	15,000.00	0.00	
001.9000.005	NON OPERATING EXPENDITURES.HARVESTER PARK EMPIRE STATE DEV PLANNING	0.00	0.00	0.00	0.00	0.00	0.00	490,000.00	0.00	
001.9000.006	NON OPERATING EXPENDITURES.NG - NEWBERRY	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00	
001.9000.007	NON OPERATING EXPENDITURES.NATIONAL GRID - POWERHOUSE	0.00	100,000.00	0.00	0.00	100,000.00	0.00	0.00	0.00	
001.9000.008	NON OPERATING EXPENDITURES.EMPIRE STATE DEV ELLICOTT STATION	0.00	1,900,000.00	0.00	0.00	1,900,000.00	0.00	0.00	0.00	
<b>Total Type E</b>										
<b>Expense</b>		0.00	2,717,029.66	109,196.08	0.00	2,607,833.58	4.02	729,479.27	203,272.32	
<b>BATAVIA DEVELOPMENT CORPORATION</b>										
<b>Total Fund 001</b>		0.00	17,970.34	3,635.06	0.00	14,335.28	20.23	67,506.00	35,912.90	

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# BATAVIA DEVELOPMENT CORP

## Rev/Exp Comparison Control Report

Period From: 4 To: 3

Account No.	Description	2018 Original Budget	2018 Adjusted Budget	2018 Actual Rev / Exp	2018 Encumbered	2018 Available Balance	2018 % Exp. Balance	2017 Actual Rev / Exp	2016 Actual Rev / Exp
<b>Fund 002</b>	<b>CREEK PARK LLC</b>								
<b>Type R</b>	<b>Revenue</b>								
002.4900	OTHER OPERATING REVENUE	0.00	100.00	100.00	0.00	0.00	100.00	0.00	0.00
002.5900	OTHER NON OPERATING REVENUE	0.00	24,900.00	0.00	0.00	24,900.00	0.00	21,807.86	189,261.57
<b>Total Type R</b>	<b>Revenue</b>	<b>0.00</b>	<b>25,000.00</b>	<b>100.00</b>	<b>0.00</b>	<b>24,900.00</b>	<b>0.40</b>	<b>21,807.86</b>	<b>189,261.57</b>
<b>Type E</b>	<b>Expense</b>								
002.7000	PROFESSIONAL SERVICES	0.00	23,000.00	0.00	0.00	23,000.00	0.00	16,504.50	7,201.13
002.8100	LEGAL/FILING FEES	0.00	650.00	0.00	0.00	650.00	0.00	25.00	1,250.00
002.8510	DIRECTORS AND OFFICERS LIABILITY	0.00	750.00	0.00	0.00	750.00	0.00	0.00	0.00
002.8520	GENERAL LIABILITY	0.00	100.00	0.00	0.00	100.00	0.00	0.00	1,448.00
002.9000	NON OPERATING EXPENDITURES	0.00	500.00	0.00	0.00	500.00	0.00	173,478.36	11,162.44
<b>Total Type E</b>	<b>Expense</b>	<b>0.00</b>	<b>25,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>25,000.00</b>	<b>0.00</b>	<b>190,007.86</b>	<b>21,061.57</b>
<b>Total Fund 002</b>	<b>CREEK PARK LLC</b>	<b>0.00</b>	<b>0.00</b>	<b>100.00</b>	<b>0.00</b>	<b>(100.00)</b>	<b>0.00</b>	<b>(168,200.00)</b>	<b>168,200.00</b>
<b>Grand Total</b>		<b>0.00</b>	<b>17,970.34</b>	<b>3,735.06</b>	<b>0.00</b>	<b>14,235.28</b>	<b>20.78</b>	<b>(100,694.00)</b>	<b>204,112.90</b>



Date: 4-25-19

Re: Batavia Development Corporation - Budget Amendment

To: BDC Board

From: Rachael Tabelski, Director of Economic Development

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Memorandum

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**Overview:** On April 8, 2019 the Batavia City Council passed a resolution to amend the City of Batavia Revolving Loan Fund Agreement to allow for the "Loan fund, on a project specific basis and with City Council approval, to make grants for an eligible project or funding purpose within the City."

After amending the agreement, the Batavia City Council passed a resolution to grant the Batavia Development Corporation (BDC) \$20,000 to set up and operate an Opportunity Zone Fund.

**Board Action:**

1. Accept the \$20,000 grant from the City of Batavia and amend the BDC's budget to reflect the grant income.
2. Approve the expenditure of \$20,000 to set up the Batavia Opportunity Zone Fund as defined in the CO Batavia QOF Manager LLC. Batavia Opportunity Fund terms Memorandum of Understanding. The BDC will make a capital contribution to the fund of \$15,000 and an unsecured loan of \$5,000 totaling \$20,000. The BDC will have a 25% membership interest in the Newley formed LLC.

*The Batavia Development Corporation is an equal opportunity provider and employer.*



**COMMON OWNER  
CAPITAL**

April 16, 2019

Batavia Development Coporation  
Batavia City Centre  
Batavia, NY

Re: CO Batavia QOF Manager LLC  
Batavia Opportunity Fund Terms

Common Owner Capital LLC (the "Company") is pleased to provide you with this Memorandum of Understanding ("MOU"), which outlines the general terms and conditions of a proposed partnership, known as CO Batavia QOF Manager LLC (the "LLC") between the Company and the Batavia Development Corporation (BDC). The purpose of the Partnership will be to establish and mange one or more Qualified Opportunity Funds ("QOF(s)").

Except for the obligations set forth in the sections entitled Transaction Costs and Engagements and Confidentiality and No-Solicitation below, this MOU does not constitute or create, and shall not be deemed to constitute or create, any legally binding or enforceable obligation on the part of any party and should not be construed as a commitment to provide loans to, or an equity investment in, the LLC. Should the terms of this MOU be acceptable to you, a formal approval process will be pursued, through the preparation of an Operating Agreement.

**Deal Terms**

Management Structure	The LLC shall be co-managed by the BDC and the Company (collectively the "Managers"). The affirmative consent of each Manager shall be required for the LLC to Act.
Capital Contribution	Company = \$5,000 BDC = \$15,000
Membership Interests	Company = 75% BDC = 25%
Member Loans	The BDC shall contribute a \$5,000 Loan. Either Member may, but shall not be required to contribute additional Operating Deficit Loans
Guaranteed Payments & Asset Management Fees	The Managers may authorize guaranteed payments to either Member. Guaranteed payments will reflect time spent on fund management which does not reflect membership interests. The Managers may enter into a "sub-asset management fee" agreement if and when necessary.
Establishment	The LLC may be established at any time between May 1 and December 31, 2019. If not established by December 31, this MOU shall expire.
Goals	The LLC shall identify and analyze the feasibility of the establishment of Qualified Opportunity Funds (QOFs) to invest in eligible project partnerships. If a QOF if feasible, the Company shall form and manage such funds. The fund will be capitalized through a 506(c) exempt offering.
Revenue	The LLC will charge an initial fee equal to 1% of the total size of the fund and 15% of the returns.
Third-Party Expenses	The fund will enter into the following contracts: <ul style="list-style-type: none"> <li>• Flaster Greenberg PC, \$14,000: Preparation of all documents pertaining to Securities Offering.</li> </ul>

- Common Owner Portals LLC, \$6,000: Listing fee for 506(c) Portal. The Managers acknowledge this entity is a related party to the Company.

Other potential fees include:

- Escrow and investor verification currently estimated at roughly \$5,000.
- NOTE: Additional Legal and Accounting Fees may be necessary at the QOF level, but are not direct expenses of the LLC.

**Obligations**

Insurance	The LLC will maintain insurance from an insurer in amounts reasonably satisfactory to the Managers.
Project Identification	The Managers will work collaboratively to identify potential projects, suitable for QOF investments.
Negotiation of Project Terms	The Company, subject to the consent and approval of the BDC, will work collaboratively to negotiate investment terms and management rights with respect to underlying project partnerships. The Company will coordinate and communicate with lenders, tax credit investors and grant disbursement agents to maximize returns at the QOF level and maintain project feasibility.
Projections Review and Underwriting	The Company will be primarily responsible for review and underwriting of project partnership projections. The Managers may require potential project partnerships to procure projections prepared by a qualified CPA, market studies prepared by a qualified appraiser and may require application fees to offset expenses.
Investment Facilitation	Investments will be facilitated through the third-party providers discussed above. The Managers will direct interested eligible investors to the offering facilitated through the portal.
Bookkeeping and accounting	The Managers will retain qualified professionals for such purposes which will be expenses of the LLC.
Investor Relations	The Managers will contemplate, prior to a final agreement, adding a member to the LLC who is an Investment Advisor, at the Company or LLC level. Alternatively, the Managers will explore hiring a contractor for such purposes.
Ongoing Reports & Project Partnership Communication	The BDC will primarily be responsible for obtaining reports from project partnerships and communicating with project partnership sponsors. The reports will be collaboratively reviewed by the Managers.

**Other Matters**

Confidentiality and No-Solicitation	BDC agrees to negotiate in good faith and to keep all information provided by the Company, including this MOU, confidential and to not disclose information without written consent of the Company. Confidentiality obligation shall survive termination and execution.
Exclusivity	Following Execution of this MOU, BDC shall not negotiate fund management terms with any other companies unless and until this MOU expires by its terms as set forth herein.
Date of Closing and Payment of Capital Contributions.	The Managers acknowledge and agree that this MOU will be replaced in its entirety by an Operating Agreement of the LLC, which will be subject to the review and approval of the Company and BDC, prior to execution. The formation of the LLC, adoption of such Operating Agreement, and preparation

of Offering Documents shall not take place until the Managers unanimously agree on projects identified as suitable for investment.

Return of Capital and Winding Up

If the LLC is established and capitalized and one or more QOF(s) is established and either Manager does not agree to move forward with an offering, all capital contributed shall be returned, less actual costs incurred and all commitments for future capital and other obligations shall terminate.

[Remainder of page is intentionally left blank]

If the terms and conditions of the MOU are acceptable, please evidence your approval by executing and returning this MOU to:

Common Owner Capital LLC  
170 Florida Street  
Buffalo, NY 14208

This proposal may only be accepted in writing and is binding upon the parties and valid through the projected formation date of June 30, 2019 but no later than December 31, 2019. Please evidence your approval in the space provided below no later than May 1, 2019.

BATAVIA DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Name: Pierluigi Cippilone  
Its: Board Chair

Accepted and Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

COMMON OWNER CAPITAL LLC

By: \_\_\_\_\_  
Name: Derek King  
Title: Director of Operations

The purpose of this MOU is to generally describe terms of the investment and does not infer liability on behalf of the Company. Subject to completion of due diligence, the terms are subject to change. This MOU does not represent or imply an offer to invest nor a commitment to invest, and no commitment to invest will exist prior to the negotiation and execution of the LLC Operating Agreement. This MOU will terminate upon the execution and delivery of the Operating Agreement and the formation of the LLC except as otherwise provided.





April 18th 2019

Batavia Development Corporation  
One Batavia City Centre  
Batavia, NY 14020

Attn: Rachael J. Tabelski  
Director of Economic Development

Re: Proposal for Consolidated Funding Application Grant Writing Services

Dear Rachael,

Please find enclosed a proposal for consulting services to be provided to the Batavia Development Corporation via the annual New York State Consolidated Funding Application process. We propose to provide the following services for the project:

**Prepare and submit an Empire State Development Capital Grant**  
Urban Vantage will prepare the necessary documentation and submit an ESD Capital Grant for a project yet to be determined in an opportunity zone in the City of Batavia.

For this, we propose an **hourly rate of \$75**, with a not to exceed amount of **\$5,000**.

Urban Vantage is excited about the opportunity to work with you on this project, and we look forward to assisting you in implementing your vision.

If these terms are agreeable please sign and return the enclosed documents. We appreciate your consideration and look forward to working with you soon.

Best Regards,

Travis Gordon, M.U.P.  
Principal  
Urban Vantage

## Proposal for Regional Planning Consulting Services



### **Summary**

Urban Vantage is an urban planning and real estate development consulting firm located in Buffalo, New York. We are offering to provide grant writing services for an ESD capital grant through the NYS Consolidated Funding Application process.

### **Scope of Services**

#### *ESD CAPITAL GRANT APPLICATION*

Estimated Hours: **60 Hours**      Timeline: **July 2019**

Urban Vantage will work with you to identify a suitable use for ESD capital grant funding, and will submit a grant application for the project on your behalf.

### **Proposed Fee Structure**

For this, we propose an **hourly rate of \$75**, with a not to exceed amount of **\$5,000**.

### **About the Firm**

Urban Vantage is a team of planning and development professionals based in Buffalo, New York. The Firm is currently comprised of 3 planners, each of which holds a Masters Degree in Urban Planning. Their work is informed by municipal government experience in the cities of Buffalo and Dunkirk, work in government agencies, academic research and writing, law practice and private consulting firms.

Principals Richard Rogers and Travis Gordon started Urban Vantage in the spring of 2017 to address urban and regional planning issues in Buffalo and across Western New York. In 2018, following increased client demand, they added Garret Wyckoff to the firm.

The firm primarily provides community and economic development solutions, with a focus on project implementation. This includes holistic project financing, grant writing, and innovative public-private partnerships. Additionally, they have experience in other areas of planning practice, including land-use and housing strategies. They are currently seeking larger projects with the opportunity to engage in more design and public engagement-intensive land use and conservation plans. The firm is currently involved in its first real estate development project as an owner, reusing the Monroe Building, in Buffalo, New York.

Substantive Terms of Consulting Services

These substantive terms and conditions are intended to form the basis of a Consulting Agreement between **Rachael J. Tabelski** ("Owner"), and **Urban Vantage LLC**, ("Consultant") (collectively the "Parties") are as follows:

Owner desire to retain Consultant as an independent contractor to provide the services described in that certain Proposal for Real Estate Development Consulting Services (the "Proposal") submitted by the Consultant to the Owners (the "Services") at the prices (the "Fee") set forth therein. Consultant is willing to provide those services on the terms and conditions contained below.

1. Services: Consultant agrees to provide the Services to Owner, on the terms and conditions contained in this Agreement.

2. Schedule; Termination: Upon completion of the Services by the Consultant as set forth in the Proposal, and payment in full of the Fee, as defined below, by the Consultant, this Agreement will terminate. Owner may terminate this Agreement upon 14 days prior written notice to Consultant. Upon such termination, Owner will pay to Consultant any accrued but unpaid portion of the Fee and any unpaid expenses incurred by Consultant with respect to the Services. Additionally Owner shall pay a \$500 cancellation fee to Consultant, which may be waived by consultant in its sole but reasonable discretion. Upon termination of this Agreement and payment by Consultant of any outstanding portions of the Fees, including the cancellation fee (if any), and expenses, neither party will have any further liability hereunder after the date of such termination.

3. Payment of Fees: In consideration for Consultant providing the Services, Owner will pay to Consultant the fee on the dates and as described in the Proposal in a good and timely manner. The Consultant is hereby entitled to apply a 2% late fee (the "Late Fee") on any payments overdue by ten (10) business days or more. Any such Late Fee shall accrue weekly and may be increased monthly at the reasonable discretion of the Consultant. Notwithstanding the foregoing, the Late Fee shall never exceed ten percent (10%) under any circumstances whatsoever.

4. **Reimbursement for Costs: Consultant expressly waives its right to be reimbursed by Owner for reasonable out-of-pocket expenses incurred by Consultant with respect to the Services, including, without limitation, travel expenses in excess of those contemplated by the Fee. Notwithstanding the foregoing Owner may opt to compensate Consultant for any out-of-pocket expenses Owner deems necessary in its sole and absolute discretion.**

5. Nature of Consultant: Owners agrees and acknowledges that Consultant is, and at all times will remain, an independent contractor and is not an employee of Owner.

6. Excluded Services: which are not included in this contract but can be provided at additional cost as Additional Services or by separate contract with Consultant's sub-contractor:

(a) Services during any construction resulting from or connected to the Consulting Services, including but not limited to, SWPPP inspections.

- (b) Draft and /or Final Environmental Impact Statement or other requirements of the SEQR Law other than those described under Basic Services.
- (c) Traffic, Wetland, Archeological, Endangered Species and other specialized Studies.
- (d) Environmental audits of the property.
- (e) Design, stakeout and construction observation of any special facilities such as: pump stations, bridges, and retaining walls.
- (f) The design and stakeout of any landscaping.
- (g) Design of electric, lighting or other power distribution facilities or the stakeout and construction observation of these facilities.
- (h) Soil Testing.
- (i) FEMA Flood Plain requirements such as permits or modifications to flood plain limits.
- (j) Preparation of separate conveyance maps.
- (k) Construction observation for installation and testing of watermain/sewer main and related appurtenances, as required by the Health Department and/or the local water authority.
- (l) Review and coordination of shop drawings and submittals for use on the project or material and equipment.
- (m) Legal services of any nature whatsoever.

7. Ownership of Intellectual Property; License: The parties agree that Owner owns all right, title and interest in and to all intellectual property created by Consultant with respect to the Services (collectively, the "Materials"). Notwithstanding the foregoing, the Parties expressly agree and acknowledge that Owner shall have no right, title nor interest in any existing assets of Consultant, including without limitation any domain names, vehicles, source code or intellectual property thereto regardless of whether or not such assets are used with respect to the Services. Furthermore, Owner grants to Consultant an unlimited, irrevocable license in the Materials exclusively for the purposes of marketing and attracting future clients.

8. Miscellaneous: These Terms and Conditions may not be amended or otherwise modified, except in writing by both parties. These Terms shall be governed by and construed in accordance with the laws of the State of New York. These Terms represent the entire understanding of the parties with respect to the subject matter hereof to this point. The Parties

**Proposal for Regional Planning Consulting Services**



expressly acknowledge that these Terms will be superseded by a Consulting Agreement with substantially similar, but to be mutually negotiated, terms to those expressed herein.

[Signature Page Follows]

Urban Vantage LLC  
NY 14208

Urbanvantage.com

(716) 796-1142

170 Florida St., Buffalo,

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Proposal for Regional Planning Consulting Services



CLIENT

Rachael J. Tabela

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CONSULTANT

Urban Vantage LLC

By: Travis R. Gordon

Name: Travis R. Gordon

Title: Principal

Date: January 31st, 2019

726 EXCHANGE STREET, SUITE 1000  
BUFFALO, NY 14210  
(716) 200-5050

ROBERT G. MURRAY

DIRECT: (716) 200-5180  
FAX: (716) 200-5224  
BMURRAY@HARRISBEACH.COM

April 22, 2019

Batavia Development Corporation  
Attn: Rachael J. Tabelski,  
Director of Economic Development  
One Batavia City Centre  
Batavia, New York 14020

**RE: Engagement Letter for Legal Services Between Harris Beach PLLC and  
Batavia Development Corporation**

Dear Ms. Tabelski:

This letter summarizes the proposed terms of Harris Beach PLLC's (the "Firm") representation of Batavia Development Corporation (the "Client") including the scope of services the Firm will provide Client pursuant to this engagement and the agreed-upon fee and billing arrangements. Unless otherwise set forth herein, the Firm's representation will be limited to Client only, and does not extend to any separate or differing interests of Client's officers, directors, owners, subsidiaries, affiliates, agents, employees, or family members, or to any other potentially-interested or related parties (individually "Affiliate," and collectively, "Affiliates").

**Scope of Engagement.** The Firm agrees to provide legal counsel to Client with regard to the following (the "Matter"): general corporate legal services for corporate organization and ongoing governance, financial, and operational matters, and will include transaction counsel legal services with respect to the Client's undertaking of the acquisition and sale of properties within the City of Batavia and matters related to encouraging the development of such properties consistent with the corporate purposes of the Client. The Firm will represent Client to the best of its ability, but does not guarantee any particular result.

If Client desires legal counsel on an issue outside the scope of the Matter, the Firm may agree to provide such counsel, but only after executing a separate agreement with Client (which may be communicated by e-mail). Unless expressly included in the foregoing description of the Matter, the Matter does not include any appeals that may arise from the Matter. Please also note that the Firm does not engage in lobbying activities on behalf of any client.

Client agrees that the Firm may disclose the fact of its representation of Client, including in materials that the Firm uses to describe its practices and expertise.

**Firm Personnel; Principal Contact.** Robert G. Murray will be responsible for the supervision of the Matter, but Client is engaging the Firm as a whole and not any individual attorney. He can be reached at: (office) 716-200-5180; (cell) 716-208-8328; (email) bmurray@harrisbeach.com. As necessary or appropriate, the Firm will draw upon the talents and experience of other Firm attorneys, professionals, and staff in providing services relating to the Matter.

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**Fee Arrangement.** The Firm's fee is based on the time spent by the attorneys and legal assistants who work on the Matter. Currently, our hourly rates generally range from \$365-\$475 for members and senior counsel, \$195-\$340 for associates and other attorneys, and \$95-\$195 for paralegals. These rates are subject to change annually. Additionally, for some work or attorneys, the rate may be higher if highly-specialized matters are involved. As a consideration to the Client, the following blended hourly rates will apply: \$250 for members and senior counsel, \$225 for associates and other attorneys, and \$125 for paralegals. In all events, we anticipate working closely with you to establish budget parameters that are sensitive to the Client's budgeted resource. To this end, we understand that the Client may request periodic not-to-exceed cost estimates for incremental phases of services to be provided, and/or seek to establish an overall budget for such services. We will coordinate closely with the Client to establish incremental and overall budget items and will remain within mutually-established budget parameters on a prospective basis. The hourly rates may be adjusted by the Firm with the consent of Client from time to time and are generally adjusted as of January 1st of each calendar year. In the event a dispute arises between Client and the Firm regarding fees, Client may have the right to arbitrate that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to Client upon request.

**Other Charges.** In addition to the Firm's fees for rendering professional services, Client shall be responsible for, and Firm invoices will include, separate charges for performing services such as photocopying, scanning, delivery charges, long distance telephone calls, facsimile transmissions, specialized computer applications, travel, and other expenses and services incurred incidentally to the performance of the Firm's legal services. Client shall also be responsible for payment of any expenses and disbursements incurred by the Firm on Client's behalf (*i.e.*, transcription fees, filing fees, expert witness fees, etc.), which will be billed to Client with the Firm's invoice. Based on the nature of the expense, the Firm may also request that Client pay or advance the fee directly to the person/entity requesting/charging the same. The Firm shall promptly notify Client of any significant expense that is incurred in connection with the Matter.

Should Client ever issue a litigation hold to the Firm for a matter unrelated to the Firm (*e.g.*, due to a subpoena or litigation/threatened litigation in which the Firm is not a party or potential party), Client shall reimburse the Firm for its reasonable costs expended in complying with such litigation hold.

**Billing Cycle and Retainer.** The Firm generally requires its clients to deposit a retainer for legal services against which the Firm bills and collects fees and disbursements. The Firm has waived the requirement for an initial retainer with respect to this Matter, but reserves the right to require one if deemed appropriate in the future. Fees for legal services and other charges are billed monthly and are payable within 30 days of Client's receipt of the Firm's invoice. We offer a 2% discount on fees, excluding disbursements, expenses, and monthly retainer arrangements, to clients who submit payment within 10 days of receipt of invoice.

Should Client's account remain unpaid after 30 days, a late-payment fee of 0.75% per month, or 9.00% per annum, will be added to the amount due. If Client's account becomes delinquent by more than 90 days, the Firm will contact Client about making arrangements to bring the account current. It is our hope that, by addressing payment issues promptly, we can



avoid any misunderstanding. However, as a condition to the Firm's continued representation of Client, Client must remain current in Client's payments to the Firm for services and expenses. Should a delinquency continue and satisfactory payment terms not be arranged, the Firm reserves the right to withdraw from its representation of Client and pursue collection of the amount owed. In such an event, Client shall be responsible for the cost of collecting the debt, including court costs, filing fees, and reasonable attorneys' fees incurred by the Firm for the collection.

If Client ever overpays an invoice, Client agrees that the Firm may apply such overpayment to any outstanding fees and expenses or to Client's next bill, with notice to Client as to how the Firm applied the overpayment. If there are no outstanding fees or expenses and no work in progress, the Firm shall refund the overpayment to Client.

**Termination of Engagement.** Either party may terminate the engagement described herein at any time for any reason by providing the other party written notice, subject, on the Firm's part, to the rules of professional conduct. No such termination, however, will relieve Client of the obligation to pay the legal fees owed to the Firm for services performed and other charges owed to the Firm through the date of termination. After the Firm's completion of legal services to Client, changes may occur in applicable laws or regulations that could have an impact upon Client's future rights and liabilities. Unless Client engages the Firm after completion of the Matter to provide additional advice on issues relating specifically to the Matter, the Firm has no continuing obligation to advise Client with respect to future legal developments, whether relating to the Matter or otherwise.

**Conclusion of Representation; Disposition of Client Documents.** Unless previously terminated, the Firm's representation of Client with respect to the Matter will conclude when the Firm sends Client the last invoice for services rendered in the Matter. Following such conclusion, any otherwise nonpublic information Client has supplied to the Firm that is retained by the Firm will be kept confidential in accordance with applicable rules of professional conduct. At Client's request, the Firm will return Client's papers and property promptly after receipt of payment for any outstanding fees and costs. If Client does not make such a request within 90 days following the conclusion of the engagement set forth herein, Client agrees and understands that any materials left with the Firm after the engagement ends may be retained or destroyed at the Firm's discretion.

Please note that "materials" include paper files and information in other storage media, including, but not limited to, voicemail, e-mail, and other electronic files, printer files, copier files, video files, and other formats. The Firm reserves the right to make, at its expense, copies of all documents generated or received by the Firm in the course of its representation. The Firm will retain its files pertaining to the Matter. These Firm files include, for example, Firm administrative records; internal lawyers' work product, such as drafts, notes, and internal memoranda; and legal and factual research, including memos and investigative reports prepared by or for the internal use of lawyers. The Firm will retain all remaining documents for a certain period of time, but reserves the right for various reasons, including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the conclusion of the engagement set forth herein.

**Client Cooperation.** Client agrees to cooperate fully with the Firm and to provide promptly all information known or available to Client relevant to the Firm's representation of Client, as well as any updates or changes to Client's contact information. Such cooperation is essential, as the Firm will, of necessity, be relying on the completeness and accuracy of the information Client provides to the Firm when performing services on Client's behalf. Should Client not fully cooperate with the Firm, both the efficiency and economy of the Firm's representation of Client may suffer.

**Communication with Client.** Unless Client directs otherwise, the Firm will use unencrypted e-mail as the primary means of communication with Client, and Client shall inform the Firm of which e-mail address(es) the Firm should use for such communication. The Firm may also use cellular telephones (including smart phones) and facsimile machines to communicate with Client. Texting is not a preferred method of communication, but may be used on a limited basis to communicate non-sensitive information to Client. The Firm will take reasonable steps to protect the confidentiality of Firm-Client communications, but, unless applicable law provides otherwise, the Firm will not be responsible for disclosures of Client's confidential information occurring from the use of such communication technologies. Client agrees to notify the Firm if Client has any requests or requirements regarding the Firm's methods of communication with Client that differ from the foregoing.

**Possible Conflicts.** Conflicts of interest will be handled as required by applicable rules of professional conduct. Unless otherwise agreed, for the purpose of determining whether a conflict of interest exists, it is only Client that the Firm represents, and not any of its Affiliates. Client agrees not to give the Firm any confidential information regarding any Affiliate unless: (a) that Affiliate has separately engaged the Firm to perform services on that Affiliate's behalf; or (b) such information is essential to the engagement set forth herein. While the Firm recognizes that to act adversely to any Affiliate could jeopardize a long-term relationship with Client, which the Firm does not wish to do, for conflict of interest purposes the Firm reserves the right to represent another client with interests adverse to any Affiliate that is not itself a Firm client without obtaining any consent from Client or Client's Affiliates.

The Firm maintains a Risk Management Committee that acts as in-house counsel to its attorneys and will, on occasion, retain outside counsel when an attorney handling a client matter may have a concern on a matter of professional responsibility. To the extent the Firm is addressing its duties, obligations, or responsibilities to Client in those consultations, it is possible that a conflict of interest might be deemed to exist as between Firm lawyers or the Firm and Client. Client agrees that these consultations are protected from disclosure by the Firm's attorney-client privilege and that Client will not seek to discover or inquire into them. Of course, nothing in the foregoing shall diminish or otherwise affect the Firm's obligation to keep Client informed of material developments in the Firm's representation of Client, including any conclusions arising out of such consultations to the extent that they affect Client's interests.

Please contact me directly with any questions regarding this engagement letter. Otherwise, if this proposal is acceptable, please so indicate by returning a countersigned copy of this engagement letter. Consistent with its policy, the Firm reserves the right to delay

commencement of work on this Matter until Client has signed and returned this engagement letter to us.

We appreciate the opportunity to represent, and look forward to working with Batavia Development Corporation in this Matter.

Very truly yours

Robert G. Murray

RGM/kd

Agreed and Accepted this \_\_\_\_  
day of \_\_\_\_\_, 2019.

**BATAVIA DEVELOPMENT CORPORATION**

BY: \_\_\_\_\_

Rachael J. Tabela  
Director of Economic Development