

TO: Martin Callahan, Chairman, Community Development Committee

FROM: Laura Newman, City Administrator

DATE: May 12, 2020

RE: RES 20-073-R Authorizing Execution of an Independent Contractor Agreement for Economic Development Consultant (CC Aiston, Inc.)

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Since 2013, the City has retained the services of an economic development consultant, Chris Aiston, to assist on matters such as marketing the city as a welcome place for new business and aiding development opportunities to come to fruition. Last year, Mr. Aiston provided his verbal notice of his intent to retire at the end of May 2020 and has recently provided the attached letter confirming the same. Mr. Aiston's retirement and the end of the current consulting agreement were expected to coincide with the hiring of a Business Development Manager, a new position that was created in the now combined Department of Community and Economic Development.

With the impacts to city revenue due to the COVID-19 pandemic unknown at this time, but expected to be substantial, the City has decided to put a hold on certain planned 2020 expenditures, one of those being the hiring of the Business Development Manager.

At the same time, failure to get unanimous approval for extending the TIF that was to support building the One Washington Place project, leaves the City with the prospect to either de-TIF and re-TIF the redevelopment area or re-market the redevelopment site for a different opportunity. In either case, there is a great deal of time and work necessary to accomplish either of those prospects. The City also has several other downtown potential redevelopment sites for which there have been numerous inquiries over the last year. In light of this, staff is recommending an extension of the City's contract with Chris Aiston to de-TIF and re-TIF the redevelopment site for One Washington Place and such other economic development activities as may be mutually agreed upon. We know from past history that Mr. Aiston has the knowledge and experience necessary to oversee the de-TIF and re-TIF process. That process needs to begin immediately so that the City can begin construction of the One Washington Place project as soon as possible. It is expected that the de-TIF and re-TIF process will take at least the next 6 months.

Therefore, staff recommends that the Committee of the Whole recommends that City Council approves RES-20-073-R Authorizing Execution of a Consulting Agreement with Chris Aiston.



April 30, 2020

Laura Newman, City Administrator  
City of Batavia  
100 North Island Ave.  
Batavia, IL 60510

RE: Update to City of Batavia FY 2020 Budget Discussions Concerning the City's Economic Development Program – Closing Out the City of Batavia and CC Aiston Consulting, Ltd. Contract

Dear Laura,

Per our discussions during the development of the City of Batavia's FY 2020 budget development concerning the City's economic development program which occurred during the Fall of 2019, please find this letter, submitted on behalf of CC Aiston Consulting Ltd., as written notification that the company's Independent Contractor Agreement between the City of Batavia and CC Aiston Consulting, Ltd will close-out, effective May 31, 2020.

It has been a pleasure working for and with the City of Batavia since our contract's inception in August, 2013. I hope that you and the City benefited from my professional consulting services and would welcome the opportunity to discuss future opportunities to provide the City additional economic development and urban planning consulting services under alternative payment conditions (e.g., Time and Materials, Project-Specific Pricing, Monthly Retainer).

Sincerely,

Christopher C. Aiston, Pres/CEO  
CC Aiston Consulting, Ltd

**CITY OF BATAVIA, ILLINOIS  
RESOLUTION 20-073-R**

**AUTHORIZING EXECUTION OF AN INDEPENDENT  
CONTRACTOR AGREEMENT FOR ECONOMIC DEVELOPMENT  
CONSULTANT (CC AISTON, INC.)**

**WHEREAS**, CC Aiston, Inc., has been an independent contractor performing economic development consulting services for the City of Batavia since 2013; and

**WHEREAS**, Chris Aiston, President of CC Aiston, Inc., previously provided the City with notice of his intent to retire at the end of May 2020; and

**WHEREAS**, financial uncertainties surrounding the COVID-19 epidemic have caused the City to put on hold some of its planned 2020 expenditures, including the hiring of a new position of Business Development Manager; and

**WHEREAS**, the City has need for services to pursue creating a new TIF area to support the One Washington Place project, which services are within the expertise of CC Aiston, Inc.; and

**WHEREAS**, it is in the City's best interest to enter into another independent contractor agreement with CC Aiston, Inc. to provide these services,

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk are authorized to execute the Independent Contractor Agreement for Economic Development Consulting Services, attached as Exhibit 1.

CITY OF BATAVIA, ILLINOIS RESOLUTION 20-073-R

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**PRESENTED** to and **PASSED** by the City council of the City of Batavia on this 1st day of June, 2020.

**APPROVED** by me as Mayor of said City of Batavia, Illinois on this 1st day of June, 2020.

\_\_\_\_\_  
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstention(s)					
Total holding office:		Mayor and 14 aldermen								

ATTEST:

\_\_\_\_\_  
Ellen Posledni, City Clerk

## INDEPENDENT CONTRACTOR AGREEMENT

**AGREEMENT** made as of June 1, 2020, between the City of Batavia (“BATAVIA”) an Illinois Municipal Corporation and C.C. Aiston Consulting, Ltd (“Consultant”), Federal Identification (or Social Security) \_\_\_\_\_.

**WHEREAS**, BATAVIA is desirous of hiring a Consultant to provide economic development services to the City and assist the City in the development and implementation of economic development programs and services; and

**WHEREAS**, the parties desire to establish an arrangement by which Consultant may be engaged by BATAVIA to perform services related to economic development and implementation of economic development programs and services in accordance with the terms set forth in this Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby

### **AGREED:**

**1. Scope of Services.** The Consultant shall provide economic development consulting services to assist BATAVIA in the development and implementation of economic development programs and services. The consulting services to be performed by the Consultant ("Services") may include assisting BATAVIA with the following:

- Tax Increment Financing Consultation;
- Economic Impact Analyses;
- Market Feasibility Analyses;
- Pro Forma Development and Gap Analysis;
- “But For” Eligibility Analysis; and
- Coordinating with other 3<sup>rd</sup> Party consultants on behalf of BATAVIA in the above listed activities.

The specific consulting services to be performed by the Consultant shall be related to establishment of a new TIF that includes the One Washington Place redevelopment project (the “Project”) unless additional services are requested by the City Administrator or Director of Community and Economic Development and agreed to by the Consultant.

Consultant is expected to be reasonably available to BATAVIA for consultation, meetings, including reasonable attendance at evening City Council or Committee of the Whole meetings when necessary, provided BATAVIA provides Consultant with no less than seventy-two (72) hours’ notice of such evening meetings. It is understood that from time to time Consultant will be unavailable and will schedule said unavailability and give City adequate notice thereof so that said unavailability does not impact the Project.

BATAVIA acknowledges and agrees that Consultant is an independent contractor and not an agent or employee of the City of Batavia. The Consultant has sole discretion to determine when Consultant will perform services as well as the methods and techniques which will best accomplish the services to be provided under this Agreement. However, the Consultant warrants that such methods and techniques will be in accordance with ethical and reputable business practices and that the Consultant has the requisite expertise, ability, and skill to render the service required by this Agreement.

**2. Independent Contractor.** BATAVIA has retained Consultant as an independent contractor to perform the services outlined in paragraph 1 above. Consultant is only obligated to provide the services outlined in this Agreement and is free to conduct business as Consultant sees fit with or without BATAVIA's guidance or intervention. Consultant shall not be prohibited from providing services to third parties. Consultant will only be measured on the performance and results of the services being performed by the Consultant pursuant to this Agreement. Consultant agrees that professional services rendered under this agreement shall be performed by Chris Aiston, it being agreed that the BATAVIA has entered into this Agreement relying upon the skill and experience of Chris Aiston, and in the event Consultant proposes to have other individuals render such services, BATAVIA shall have the right to terminate this Agreement.

Consultant represents he possesses the necessary skills, tools, and materials to conduct the business independently of BATAVIA. Tools and materials include, but are not limited to: office space computer, Internet service, telephone services, software, office equipment and office supplies.

This Agreement shall not render Consultant an employee or an agent of BATAVIA in any way or for any purpose. Consultant is and will remain an independent contractor for the entire term of this Agreement. Notwithstanding Consultant's independent contractor status with BATAVIA, upon 24-hour notification from Consultant, BATAVIA shall not unreasonably deny Consultant physical workspace accommodations within City Hall from which he may work on BATAVIA economic related project activities, as described in Section 1 above.

Consultant expressly agrees by his signature below that he is not entitled to any type of employee-related benefits such as medical, dental, life, workers compensation, unemployment, insurance, salary, bonus, plans, programs, disability insurance, and the like.

Other than the tools and materials listed above, Consultant may be entitled to reimbursement of certain expenses that are incurred on behalf of BATAVIA provided that they are approved for reimbursement by BATAVIA in writing prior to purchase. This includes reimbursement of all or part of expenses for meetings outside of the area, conferences, etc., which will only be made in the event the City determines that Consultant's presence at such event or meeting is necessary.

Consultant may consult with the City Attorney and/or other BATAVIA-compensated outside professionals in completing City work, provided that the City Administrator approves such consultation and work, which approval shall not be unreasonably denied or delayed. The expense of such legal work shall be the City's.

**3. Confidentiality.** In the course of performing Services, Consultant may acquire confidential information regarding techniques, bank accounts, finances, customer lists, prospects, historical sales tax information and other matters which are not generally known relating to BATAVIA businesses with which Consultant is working (collectively referred to as "Confidential Information"). It is agreed that all Confidential Information, whether produced by Consultant or by others, is and shall remain the property of the disclosing party. Consultant agrees that it will hold all material that is expressly identified and labeled as Confidential Information in strict confidence and will not use such material for its own benefit; provided, that the Consultant's obligations of confidentiality will not apply to information which the Consultant is required to disclose by lawful order of a court or governmental agency in which case, prompt notice of such order will be provided to the disclosing party. As between BATAVIA and Consultant, BATAVIA is and shall remain the exclusive owner of all rights, title, and interest in and to the Confidential Information. Confidential Information shall not include information which is in the public domain.

**4. Contract Price and Payment Terms.** The total consulting fee for such services, exclusive of out-of-pocket expenses which are reimbursed by BATAVIA shall be \$3,000.00 per month, payable on the final day of each month during the contract period. If this Agreement is terminated early, no further consulting Services shall be provided hereunder, and therefore BATAVIA will cease any further payments and will not need to satisfy this Agreement in full.

**Consultant and BATAVIA acknowledge that Consultant will (i) treat the fees as ordinary income for income tax purposes, (ii) be responsible for all withholding obligations, if any, and (iii) pay on a timely basis all taxes due in respect of the fees (the "Consultant's Taxes"). Except as otherwise required by the IRS, if Consultant reports the receipt of the fees as other than ordinary income and/or fails to pay the Consultant's Taxes, Consultant shall indemnify and hold BATAVIA harmless from any and all taxes, penalties, interest, losses, liabilities, costs and expenses, including reasonable attorneys' fees and accounting fees, which are incurred by BATAVIA as the result thereof.**

**5. Warranties.** Consultant hereby represents and warrants that (i) he has the legal right and capacity to enter into this Agreement; (ii) Consultant's engagement by BATAVIA and performance of his duties in connection therewith will not breach any confidentiality or other agreement with any third party to which Consultant is bound; and (iii) Consultant is not a party to, or bound by the terms of, any agreement (a) restricting Consultant from using or disclosing any confidential or proprietary information in the course of Consultant's performance of the Services, (b) restricting Consultant from competing, directly or indirectly, with the business of any party, or (c) that otherwise in any way prohibits, restricts, limits, would be breached by, or otherwise would be in conflict with Consultant's performance of the Services for BATAVIA.

**6. Term and Termination** This Agreement will remain in effect until November 20, 2020, or until after BATAVIA has formally established a new TIF that includes the One Washington Place redevelopment project; provided, that neither party may terminate this Agreement without cause during the course of the performance of Services except upon (30) days prior written notice. Upon termination of this Agreement, all Confidential Information in tangible form, via computer files, emails, computer disk, and other forms shall be returned immediately to the disclosing party.

Following the termination of this Agreement, no further Services shall be provided hereunder. All other provisions of this Agreement shall remain in full force and effect.

**7. General.**

a. Consultant agrees to comply with all reasonable record keeping and reporting requirements established by or imposed by law on BATAVIA in connection with Services provided hereunder.

b. This Agreement is the entire agreement of the parties on the subject matter hereof. Its provisions may be waived or modified only by a written instrument signed by the party against whom such waiver or modification is sought to be enforced.

**8. Indemnification and Hold Harmless.** Consultant shall reimburse and indemnify BATAVIA and its officers and employees, and hold the Indemnified Parties harmless against, any and all actions, damages, losses, expenses, claims, demands, costs and liabilities of any nature whatsoever (including reasonable attorneys' fees and court costs), incurred by BATAVIA in connection with or arising out of Consultant's breach of any of his obligations, representations or warranties set forth herein, or other violations of this Agreement or otherwise for any loss arising out of Consultant's performance of the Services.

**Indemnification.** BATAVIA shall not be responsible for any action or failure to act by the Consultant. The Consultant agrees to indemnify and hold harmless the BATAVIA, its officers, directors, employees, agents, assigns, and successors against any claims, demands, or liability related to or arising out of the Consultant's breach of any representation in this Agreement, failure to properly perform any obligations under this Agreement, and for any violations of law.

**9. Remedies.** Each party shall be entitled to such legal remedies as may be available to it at law or in equity in the event of a breach of this Agreement by the other party. In the event of litigation between the parties, the prevailing party shall be entitled to reimbursement of its reasonable attorney's fees and costs. Notwithstanding the foregoing to the contrary, Consultant acknowledges and agrees that the agreements and covenants set forth in this Section 3 of this Agreement are reasonable and necessary for the protection of BATAVIA's interests, that irreparable injury will result to BATAVIA if Consultant breaches the terms of Section 3 of this Agreement, and that in the event of Consultant's actual or threatened breach of the terms of Section 3, BATAVIA shall be entitled to injunctive and other equitable relief, without the necessity of showing actual monetary damages or of posting any bond or other security. Nothing contained herein shall be construed as prohibiting BATAVIA from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages it is able to prove. Consultant also understands and agrees that he will pay all of these costs and expenses, including attorneys' fees and court costs, BATAVIA incurs in obtaining any judicial relief or in

otherwise enforcing any of the consultant's obligations or BATAVIA's rights under this Agreement.

**10. Severability .** If any clause, term or provision of this Agreement, or the application thereof to any individual, entity or circumstance, shall to any extent be deemed by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement and the application of such clause, term or provision to individuals, entities or circumstances other than those in respect of which it is invalid and unenforceable, shall not be affected thereby, and shall be valid and be enforced to the fullest extent permitted by law. If any court of competent jurisdiction shall deem any provision of this Agreement too restrictive, the other provisions shall stand, and the court shall modify the provision at issue to the point of greatest restriction permissible by law.

**11. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.**

a. This Agreement and the rights and obligations of the parties hereunder shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Illinois, without regard to its rules of conflicts of law.

b. The Parties hereby irrevocably submit themselves to the exclusive personal jurisdiction of the courts of the Sixteenth Judicial Circuit, Kane County, Illinois for the purposes of any suit, action or other proceeding arising out of this Agreement or with respect to Consultant's engagement hereunder. Consultant and BATAVIA hereby expressly waive any right to a trial by jury in any action or proceeding to enforce or defend any right, power or remedy under or in connection with this Agreement or arising from any relationship existing in connection with this Agreement. The terms and provisions of this Section 11 constitute a material inducement for the parties entering into this Agreement.

**12. Miscellaneous.** This Agreement supersedes any and all prior oral or written agreements between the parties, and constitutes the entire agreement between Consultant and BATAVIA, with respect to the subject matter hereof. No modification or amendment of this Agreement, or any waiver of any right, power, or privilege under this Agreement, will be binding upon either BATAVIA or Consultant unless set forth in a writing signed by BATAVIA and Consultant. No failure on the part of Consultant or BATAVIA to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. Consultant may not assign this Agreement without the prior written consent of BATAVIA. All uses of the word "including" hereunder shall be construed to mean "including, but not limited to." This Agreement may be executed by the

Parties in two separate counterparts, and such counterparts so executed together shall constitute one agreement binding on both Parties.

*Consultant understands that executing and agreeing to be bound by this Agreement is a condition to and prerequisite of his engagement by BATAVIA. Consultant acknowledges that he has had the opportunity to consider this Agreement and confer with anyone of his choice concerning this Agreement and that, by signing below, he acknowledges he is entering this Agreement knowingly and voluntarily and intends to be bound by it.*

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement, effective June 1, 2020.

**CONSULTANT**

\_\_\_\_\_  
**Chris Aiston, President  
CC Aiston Consulting, Ltd**

\_\_\_\_\_  
**DATE**

**CITY of BATAVIA**

\_\_\_\_\_  
**By its Mayor, Jeffery D Schielke**

\_\_\_\_\_  
**DATE**

State of Illinois, County of \_\_\_\_\_ ss.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that

\_\_\_\_\_ personally known to me to be the same person whose name \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that \_\_\_ he \_\_\_ signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of right of homestead.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Commission expires \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

State of Illinois, County of \_\_\_\_\_ ss.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY

that \_\_\_\_\_ personall y known to me to be the same person whose name \_\_\_\_\_ subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that \_\_\_ he \_\_\_ signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of right of homestead.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Commission expires \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public