



Erie County Industrial Development Agency  
Meeting of the Membership  
January 22, 2020  
@ 12:00 P.M.  
95 Perry Street  
5th Floor ESD Conference Room  
Buffalo, New York 14203  
**Meeting is being Livestreamed**

**1.0 Call to Order**

- 1.1 Call to Order Meeting of the Membership

**2.0 Approval of Minutes:**

- 2.1 Approval of Minutes of November 20, 2019 Meeting of the Membership (Action Item) (Pages 2-7)

**3.0 Reports / Action Items / Information Items:**

- 3.1 Financial Report (Informational)  
3.2 2019 Tax Incentive Induced/Closing Schedule/ Backlog Report - (Informational (Pages 8-9)  
3.3 Medical Conservation Devices, LLC – Conversion of Membership Units (Action Item) (Pages 10-22)

**4.0 Inducement Resolutions:**

- 4.1 (None)

**5.0 Management Team Reports:**

- 5.1

**6.0 Adjournment - Next Meeting February 26, 2020 @ 12:00 p.m.**

**MINUTES OF THE MEETING  
OF THE  
MEMBERSHIP OF THE  
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)**

- DATE AND PLACE:** November 20, 2019, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203
- PRESENT:** Denise Abbott, Hon. Joseph H. Emminger, Hon. Howard Johnson, Tyra Johnson, Richard Lipsitz, Jr., Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Sister Denise Roche, Kenneth A. Schoetz and Art Wingerter
- EXCUSED:** Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Bryon W. Brown, James F. Doherty, Dottie Gallagher, Hon. Brian J. Kulpa, Hon. Darius G. Pridgen and Charles F. Specht
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Chief Financial Officer; and Karen M. Fiala, Assistant Treasurer/Secretary
- GUESTS:** Robert G. Murray, Esq., General Counsel/Harris Beach PLLC; Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist

There being a quorum present at 12:28 p.m., the meeting of the ECIDA Board of Directors was called to order by its Chair, Ms. McDuffie.

**MINUTES**

The minutes of the October 23, 2019 meeting of the members were presented. Sister Denise moved and Mr. Emminger seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic presented the October 2019 financial report, noting that the balance sheet shows that the Agency finished the month with total assets of \$29.8 million and net assets of \$22.5 million. The monthly income statement reflects an operating deficit of \$63,000 for October. Operating revenue was under budget by about \$70,000, due largely to administrative fees. Operating expenses overall were also below the monthly budget by about \$7,000. After factoring in strategic initiatives and depreciation, there was an overall net loss of \$79,000 for the month. The year-to-date income statement shows operating revenue of \$1.8 million, being \$544,000 below budget for the year, and expenses of \$2.2 million, being

\$126,000 below budget. These plus special project grants net to an operating loss of \$429,000 through October. After strategic initiatives and depreciation, there is currently net income of \$392,000 for the year. Ms. McDuffie directed that the report be received and filed.

2019 Tax Incentive Induced/Closing Schedule/Backlog Report. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Approval of a Resolution for a County Rail Lease/Agreement Operator. Mr. Cappellino reviewed the memorandum that was provided in the Board package. Mr. Poloncarz advised that he would be abstaining from the vote.

Mr. Emminger moved and Mr. Nellis seconded to approve of the Resolution for a County Rail Lease/Agreement Operator. Ms. McDuffie then called for the vote and the following resolution was approved with Mr. Poloncarz abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING: (1) THE EXTENSION OF A CERTAIN RAIL LINE LEASE AGREEMENT WITH THE COUNTY OF ERIE, AND (2) THE NEGOTIATION AND EXECUTION OF CERTAIN RAIL LINE OPERATING AGREEMENTS WITH EXISTING OPERATORS

Approval of a Resolution to Amend Regulatory Agreement for Affinity Sutton Place. Mr. Murray reviewed the memorandum that was provided in the Board package. Mr. Lipsitz moved and Ms. Abbott seconded to approve the resolution amending the declaration of restrictive covenants. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING, WITH REGARD TO THE 2003 AFFINITY SUTTON PLACE L.P. MULTIFAMILY HOUSING PROJECT, THE CONSENT TO AN AMENDMENT OF THE DECLARATION OF RESTRICTIVE COVENANTS, TOGETHER WITH THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL RELATED DOCUMENTS

Policy Committee Update. Mr. Cappellino provided members with a review of the meeting, noting the Policy Committee approved both projects to be reviewed at today's Board meeting. Ms. McDuffie directed that the report be received and filed.

## **INDUCEMENT RESOLUTION**

Niagara Wind Power, LLC (Steel Winds I Replacement Project) and Erie Wind, LLC (Steel Winds II Replacement Project), 2303 Hamburg Turnpike, Lackawanna, New York. Mr. Murray reviewed the Lead Agency SEQRA Negative Declaration with regard to both projects. Mr. Poloncarz moved to approve the negative declaration for both projects and spoke in favor of the Projects and in favor of renewable energy to help New York State meet 2030 and 2050 renewable energy goals. Mr. Lipsitz seconded the motion and spoke in favor of the Projects

which encourages the Agency to promote renewable energy projects. Ms. McDuffie then called for the vote and the Lead Agency SEQRA Negative Declaration was unanimously approved.

Niagara Wind Power, LLC (Steel Winds I Replacement Project)

Mr. Cappellino then reviewed the proposed project known as Niagara Wind Power LLC which proposes to extend the useful life of the wind turbines located in the City of Lackawanna by engaging in a replacement project that would update the equipment and continue to generate real property taxes under a custom payment-in-lieu of tax (“PILOT”) arrangement. The project consists of replacing the existing nacelle (enclosed engine housing), rotor, hub and blades for each turbine with new equipment from a different manufacturer without disrupting the existing tower, foundation and electrical equipment.

As a condition precedent of receiving Financial Assistance, and as a material term and condition established by the Agency in connection with its approval of the Project, Mr. Cappellino noted that the Company must, subject to potential modification, termination, and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$14,595,715 (which represents the product of 85% multiplied by \$17,171,429, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and that the Company has maintained the Baseline FTE as stated in the Company’s application for Financial Assistance. In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Mr. Johnson moved and Mr. Poloncarz seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF NIAGARA WIND POWER, LLC AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, A FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Erie Wind, LLC (Steel Winds II Replacement Project)

Mr. Cappellino then reviewed the proposed project known as Erie Wind LLC which proposes to extend the useful life of the wind turbines located in the City of Lackawanna by engaging in a replacement project that would update the equipment and continue to generate real property taxes under a custom payment-in-lieu of tax ("PILOT") arrangement. The project consists of replacing the existing nacelle (enclosed engine housing), rotor, hub and blades for each turbine with new equipment from a different manufacturer without disrupting the existing tower, foundation and electrical equipment.

As a condition precedent of receiving Financial Assistance, and as a material term and condition established by the Agency in connection with its approval of the Project, Mr. Cappellino noted that the Company must, subject to potential modification, termination, and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$3,648,929 (which represents the product of 85% multiplied by \$4,292,858, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE") and that the Company has maintained the Baseline FTE as stated in the Company's application for Financial Assistance. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the

Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Ms. Johnson moved and Mr. Johnson seconded to approve the Project as proposed. Mr. Lipsitz noted that public hearing comments were received relating to the use of local labor for construction.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ERIE WIND, LLC AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, A FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

## **MANAGEMENT TEAM REPORTS**

Mr. Emminger moved and Mr. Wingerter seconded to enter into Executive Session for the purpose of discussing current litigation. The motion was then unanimously approved.

At 12:54 p.m., the Agency entered into Executive Session.

Upon motion made by Mr. Emminger and seconded by Mr. Schoetz, and unanimously approved, the Agency terminated Executive Session at 1:12 p.m.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:12 p.m.

Dated: November 20, 2019

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Karen M. Fiala, Secretary





**Tax Incentives Closings - 2019**

Project Name	Project Amount at Closing	FT Jobs at App	Projected Year 2 FT Jobs	PT Jobs at App	Projected Year 2 PT Jobs	Project City	Induced Date	Est. Project Completion Date
Marina Vista Apartments	\$ 23,599,000	5	5	0	0	Buffalo	2/27/2019	6/30/2021
Sumitomo Rubber USA, Inc.	\$ 9,915,409	1,241	1,241	0	0	Tonawanda	4/26/2017	6/30/2019
Triad Recycling and Energy Corp.	\$ 2,993,000	0	3	0	0	Tonawanda	1/27/2016	3/31/2019
Niagara Label/12715 Lewis Road, LLC	\$ 1,300,000	49	54	1	1	Newstead	5/23/2018	12/31/2019
Buffalo Material Handling	\$ 1,315,000	30	33	0	0	Depew	6/27/2019	6/30/2020
1485 Niagara, LLC	\$ 4,500,000	53	53	0	1	Buffalo	10/24/2018	12/31/2020
6 Projects Closed								
11 FT Projected New Jobs								
1 PT Projected New Jobs								
	\$43,622,409	1,378	1,389	1	2			



### Item 3.3

To: ECIDA Board of Directors  
From: Steve Weathers, President & CEO  
Re: Medical Conservation Devices, LLC Investment  
Date: January 22, 2020

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In August 2018, ECIDA was informed by Brian Bell, CEO of First Wave Technologies, Inc. (FWT) and Medical Conservation Devices, LLC (MCD), that the Board of Managers and majority of equity shareholders of FWT and MCD had agreed to merge MCD with First Wave Technologies, Inc. First Wave Technologies, Inc. (FWT) and its subsidiaries, MCD and First Wave Products Group LLC (FWPG) would become one company with two product lines, resulting in a stronger and streamlined profile, with the goal of accelerating overall growth.

The Buffalo & Erie County Industrial Land Development Corporation (ILDC), both individually and as part of the Western New York Business Development Fund (BDF), made a series of investments in FWT, FWPG and MCD between 2005-2010.

#### First Wave Technologies, Inc.

In 2005, ILDC invested \$500,000.00 in FWT in exchange for 166,666 shares of non-voting Series A convertible preferred stock alongside Moog, Greatbatch Inc., Nanodynamics, and Buffalo Economic Renaissance Corporation (BERC) as part of a \$1.4 million issuance of 468,331 Series A convertible preferred shares. Another investment of \$49,998.00 was made in 2008 in exchange for 16,666 shares of non-voting Series A convertible preferred stock as part of another raise with Moog, Greatbatch Inc., BERC, Keith Blakely (individually) and Brian Bell (individually). Also in 2010, the ILDC invested \$50,000.00 in FWT in exchange for 10,000 shares of Series B convertible preferred stock as part of the BDF. The total investment in FWT was transferred from ILDC to ECIDA in 2010. At this point, ECIDA owned 193,332 non-voting shares of FWT, approximately 12% of total shares outstanding. These shares were converted to FWT common stock (1:1) in 2011 as a result of a reorganization.

#### First Wave Products Group, LLC

In 2007, ILDC made a \$100,000.00 investment in FWPG (Pill Crusher Ventures, LLC at the time of purchase) for Series A preferred units. At this point, ILDC already had an approximate 22% interest in Pill Crusher Ventures, LLC due to FWT's approximately 67% interest in Pill Crusher Ventures, LLC. Another investment of \$99,999.36 was made in 2008. In 2010, 24,184 Series A1 units were issued to ECIDA upon the cancellation of prior preferred shares owned. These shares were converted to 40,000 shares of FWT common stock (1.654:1.0 conversion) in 2011.

## Medical Conservation Devices, LLC

In 2010, ECIDA acquired 3,887 membership units of MCD through conversion of a 2008 convertible promissory note in the principal amount of \$12,500.00. No additional investment nor conversions have been made since.

Currently, ECIDA holds 237,378 shares of common stock in FWT (1.8% of outstanding shares) and 3,887 units of membership interest in MCD (.35% of total units), respectively. These are minority positions in both companies. As such, ECIDA's consent was not required to execute the restructuring. FWT closed the transaction on October 25, 2018 as there was sufficient consent from shareholders without the consent of the ECIDA.

ECIDA consulted Harris Beach regarding the reorganization of FWT and the proposed exchange of MCD membership units for shares of common stock in FWT. Under the proposed exchange, ECIDA would receive 3.75 shares of common stock in FWT for each MCD unit (14,576.25 shares). Based on materials from FWT, the MCD units were valued at \$3.75 per unit (\$14,576.25). FWT has recently offered shares for \$1.00 per share, which leads to a fair value of \$14,576.25 for the new shares. Based on this information, ECIDA staff believes the fair value of the FWT stock that would be received is roughly equal to the MCD units to be exchanged. ECIDA's original investment in MCD was \$12,500.00

Harris Beach prepared a memo detailing the reorganization and factors for the ECIDA to consider when deciding. Steve Weathers and Mollie Profic met with Pete Grum and Dan Penberthy from Rand Capital (Rand) on April 11, 2019 to discuss the reorganization. ECIDA has consulted with Rand for several years regarding our investment portfolio. Rand has converted their MCD membership units for shares of FWT and indicated that ECIDA continuing to hold MCD units does not provide ECIDA any value. Rand felt that the restructure provides some momentum for the organization, which currently has backing from some significant individual investors. Currently the business is located in Batavia, NY (Genesee County), and Rand provided information of how FWT has an impact in Erie County through the University at Buffalo, vendors, service providers, etc.

### **Options to consider:**

Option 1: Convert current MCD membership units to 14,576.25 shares of FWT common stock, as requested. This option has no cost and keeps ECIDA in essentially the same investment position. Converting would give First Wave Technologies Holdings, LLC 100% ownership of MCD. FWT holds an 88.2% profits interest in First Wave Technologies Holdings. Converting does not appear to make a significant change to ECIDA's legal obligations or benefits.

Option 2: Continue to hold current MCD membership units. ECIDA would remain a .35% minority interest in MCD and share proportionately in any potential profits of the company.

In addition, ECIDA may also wish to consider any other conditions it would like to request in the case that it agrees to exchange the MCD units. For example, ECIDA could ask for redemption of the units if FWT moves its offices or operations outside of New York State.

**Action:**

The ECIDA Executive Committee met on December 10, 2019 and recommends Option 1 to the Board. I am requesting authorization to sign the Membership Interest Contribution Agreement on behalf of the ECIDA to convert existing Medical Conservation Devices membership units to shares of First Wave Technologies common stock.

## MEMBERSHIP INTEREST CONTRIBUTION AGREEMENT

THIS MEMBERSHIP INTEREST CONTRIBUTION AGREEMENT (this “**Agreement**”), dated as of January \_\_\_\_ 2020, is entered into by and among First Wave Technologies, Inc., a Delaware corporation (the “**Company**”), and each of the other undersigned parties hereto (each, a “**Transferor**” and all of them together, collectively, the “**Transferors**”).

### RECITALS

**WHEREAS**, the Company owns all of the issued and outstanding capital stock of FWT Holdings, Inc., a Delaware corporation (“**Holdings**”) that owns a majority of the issued and outstanding membership interests of each of First Wave Products Group, LLC, a Delaware limited liability company (“**FWPG**”), and Medical Conservation Devices, LLC, a New York limited liability company (“**MCD**”);

**WHEREAS**, each Transferor owns that number of units of FWPG and/or MCD set forth on Exhibit A hereto (such units, together, collectively, each Transferor’s “**Contributed Interests**”); and

**WHEREAS**, in connection with a corporate restructuring involving the Company, Holdings, FWPG, and MCD, each Transferor and the Company desire to enter into this Agreement pursuant to which each Transferor will contribute, transfer, and assign its Contributed Interests to the Company in exchange for the issuance by the Company to such Transferor of that number of shares of the ordinary common stock of the Company (i.e., shares of common stock that are not designated as shares of “Class A Common Stock” pursuant to the Company’s Certificate of Incorporation), \$0.001 par value per share, set forth on Exhibit A hereto (such shares of the Company’s common stock, each Transferor’s “**Issued Shares**”, and the Transferors’ transfer of all of the Contributed Interests to the Company in exchange for their respective Issued Shares, the “**Contribution**”).

### AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Contribution of Contributed Interests.** On the terms and subject to the conditions set forth in this Agreement, each Transferor hereby contributes, transfers, assigns, conveys and delivers to the Company, and the Company does hereby acquire and accept from such Transferor, all of such Transferor’s right, title and interest in and to its Contributed Interests.

2. **Assumed Liabilities.** The Contribution is subject to the assumption by the Company of all liabilities and obligations of each Transferor to the extent exclusively or primarily resulting from, relating to or arising out of such Transferor’s Contributed Interests of whatever kind or nature (whether absolute, accrued, contingent, determined, determinable, disclosed, known or unknown, or otherwise) (the “**Assumed Liabilities**”). The Company hereby assumes and shall perform, pay and discharge when due the Assumed Liabilities. Nothing contained herein shall prevent the

Company or its affiliates from contesting in good faith any of the Assumed Liabilities with any third-party obligee.

3. Consideration. As consideration for the contribution of the Contributed Interests, the Company hereby issues the applicable Issued Shares to each Transferor.

4. Representations and Warranties of the Transferors. Each Transferor represents and warrants to the Company as follows:

(a) Organization; Authority. If not a natural person, such Transferor is duly organized, formed, or incorporated (as applicable), validly existing and, if applicable, in good standing under the laws of the jurisdiction of its organization, formation, or incorporation (as applicable), and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations thereunder. If a natural person, such Transferor has the legal capacity to execute and deliver this Agreement and to perform its obligations thereunder. If not a natural person, such Transferor has obtained all necessary corporate or other approvals required for the execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by such Transferor and (assuming due authorization, execution and delivery by the Company) shall constitute such Transferor's legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) Ownership and Transfer of Contributed Interests. Such Transferor has valid, good, and marketable title to its Contributed Interests, such Contributed Interests are free and clear of all liens, and such Contributed Interests are the only membership interests of FWPG and/or MCD held by such Transferor as of the date hereof. Such Transferor has the unrestricted right to contribute, sell, transfer, assign, convey, and deliver to the Company all right, title and interest in and to its Contributed Interests.

(c) Acquisition of Issued Shares. With respect to its acquisition of the Issued Shares:

(i) Such Transferor is an "accredited investor" within the meaning of Rule 501 under the Securities Act of 1933, as amended, and such Transferor has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company;

(ii) Such Transferor is a resident of the state set forth on the signature page to this Agreement executed by such Transferor, and such Transferor is acquiring its Issued Shares for its own account, not on behalf of other persons or entities, for investment and not with a view to resale or distribution;

(iii) Such Transferor recognizes that any investment in the Company involves substantial risk, including the risk of losing all of its capital investment in the Company, and such Transferor has evaluated and fully understands all risks in its decision to acquire its Issued Shares hereunder;

(iv) Such Transferor has relied only on the information set forth in this Agreement and such Transferor acknowledges that such information furnished by the Company does not constitute investment, accounting, legal or tax advice and such Transferor is relying on its own professional advisors for such advice;

(v) Such Transferor is familiar with the business and financial condition and operations of the Company, and such Transferor has had (a) access to such information concerning the Company and the Issued Shares and (b) the opportunity to ask questions and receive answers about such information as it deems necessary to enable it to make an informed investment decision concerning its acquisition of the Issued Shares pursuant to this Agreement;

(vi) Such Transferor believes the acquisition of the Issued Shares pursuant to this Agreement to be reasonable and is satisfied with contributing such Transferor's Contributed Interests;

(vii) Such Transferor has not paid or given to any third party any commission or other remuneration in connection with its acquisition of the Issued Shares or sale and assignment of the Contributed Interests, and such Transferor has not received any public media advertisements and has not been solicited by any form of mass mailing solicitation in connection with the transactions contemplated by this Agreement;

(viii) Such Transferor acknowledges that none of the Issued Shares may be transferred by such Transferor (1) except as provided in the certificate of incorporation, bylaws, and other applicable organizational documents (if any) of the Company as in effect from time to time and (2) pursuant to registration under the applicable federal and state securities laws or appropriate exemptions therefrom; and

(ix) Such Transferor understands the meaning and legal consequences of the foregoing representations and warranties and acknowledges and agrees that the Company is relying upon the representations and warranties made herein in determining to issue the Issued Shares to such Transferor, and such Transferor certifies to the Company that each of the foregoing representations and warranties is true and correct as of the date hereof and shall survive the execution hereof and such Transferor's acquisition of the Issued Shares.

5. Indemnification by Transferor. Each Transferor, severally (and not jointly and severally), for itself and on behalf of any successors, assigns, affiliates, heirs, estates, executors, administrators and legal or personal representatives of such Transferor, hereby agrees to indemnify and hold harmless the Company and each director, officer, advisor, employee, or affiliate thereof, and each of their respective successors, assigns, affiliates, heirs, estates, executors, administrators and legal or personal representatives (each, an "**Indemnified Party**"), from and against any and all loss, damage or liability due to or arising out of any inaccuracy in or breach of any representation or warranty of such Transferor set forth in this Agreement or the failure of such Transferor to comply with any covenant or agreement set forth in this Agreement. Each Transferor shall reimburse each Indemnified Party for its legal and other expenses (including the cost of any investigation and preparation) as they are incurred in connection with any such claim, action, proceeding, or investigation. The reimbursement and indemnification obligations of each Transferor and its successors, assigns, affiliates, heirs, estates, executors, administrators and legal

or personal representatives under this paragraph shall survive the execution of this Agreement and shall be binding and inure to the benefit of any successors, assigns, affiliates, heirs, estates, executors, administrators and legal or personal representatives of the Indemnified Parties.

6. Representations and Warranties of the Company.

(a) Organization of the Company. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

(b) Authority. The Company has all requisite corporate power and authority to execute and deliver this Agreement, to carry out its obligations hereunder, and to consummate the transactions contemplated hereby. The Company has obtained all necessary corporate approvals for the execution and delivery of this Agreement, the performance of its obligations hereunder, and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and (assuming due authorization, execution, and delivery by each Transferor) shall constitute the Company's legal, valid, and binding obligation, enforceable against it in accordance with its terms.

(c) Valid Issuance of Issued Shares. Assuming the accuracy of the representations of the Transferors in Section 4 of this Agreement, the Issued Shares issued to each Transferor, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will have been duly authorized and will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the certificate of incorporation and bylaws of the Company, applicable state and federal securities laws, and liens or encumbrances created by or imposed by the applicable Transferor with respect to its Issued Shares. Assuming the accuracy of the representations of the Transferors in Section 4 of this Agreement, the Issued Shares issued to each Transferor will be issued in compliance with all applicable federal and state securities laws.

7. Further Assurances. Each Transferor and the Company agree to execute any and all documents and instruments of transfer, assignment, assumption or novation and to perform such other acts as may be reasonably necessary or expedient to further the purposes of this Agreement and the transactions contemplated by this Agreement.

8. Entire Agreement; Interpretation. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, representations and warranties and agreements, both written and oral, with respect to such subject matter. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

9. No Assignment by Transferors; Successors and Assigns. No Transferor shall assign this Agreement or delegate its obligations hereunder without the prior written consent of the Company. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.



10. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement.

11. Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

12. No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

13. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

14. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware. Any dispute, controversy or claim arising out of, relating to, or in connection with, this Agreement or any breach, termination or validity thereof shall be brought in the Circuit Court for Genesee County, New York or the United States District Court for the Northern District of New York (Syracuse Division), as appropriate (in either case, the “**Court**”), and each party hereby irrevocably submits to the Court’s jurisdiction and process. Each party hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such dispute, controversy, or claim in any such Court.

16. Releases.

(a) In connection with the transactions contemplated by this Agreement, the Company hereby fully, finally and forever releases and discharges of, from and with respect to, and covenants not to sue and otherwise agrees not to enforce against any Transferor, or any of their respective affiliates, past and present employees, directors, members, and officers and the respective successors, assigns, affiliates, heirs, estates, executors, administrators and legal or personal representatives of the foregoing (collectively, the “**Transferor Releasees**”), any and all claims, demands, covenants, rights, titles, interests, actions, causes of action, judgments, obligations, contracts, agreements, debts and liabilities whatsoever, whether known or unknown,

suspected or unsuspected, both at law and in equity, which the Company and the Company's successors and assigns now have, have ever had or may have after the date of this Agreement against the respective Transferor Releasees on account of, arising out of or relating in any way to any act, omission, fact, or circumstance occurring prior to the date hereof and relating to the Contributed Interests of any Transferor, any Transferor's ownership of its Contributed Interests, or any Transferor's status as a member of FWPG and/or MCD prior to the date of this Agreement.

(b) The Company hereto hereby acknowledges that such party may hereafter discover facts different from, or in addition to, those which it now knows or believes to be true with respect to the claims released hereunder and agrees that the releases contained herein shall be and remain in effect as full and complete releases of such claims, notwithstanding any such different or additional facts. The Company hereto acknowledges that it has been advised to consult with legal counsel and agrees to expressly waive any rights it may have under any statute or common law principle of any jurisdiction that prohibits the release of unknown or unanticipated claims.

(c) The Company hereto absolutely, unconditionally and irrevocably covenants and agrees that, from and after the date hereof, it will not directly or indirectly bring any action or initiate any proceeding in respect of any of the claims released hereunder or benefit from any such action or proceeding in respect of any such claim commenced by a third party. Without limiting or waiving any rights or remedies under this Agreement now or hereafter existing at law or in equity or by statute, Transferor hereto shall be entitled to seek specific performance of the releases contained herein and the Company's obligations contained in this Section.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)), or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

18. Surrender of Contributed Interests. Immediately upon the Company's acquisition and acceptance from each Transferor of its Contributed Interests hereunder, the Company hereby surrenders to each of FWPG and MCD for cancellation the Contributed Interests that represent membership interests in FWPG and MCD, respectively.

[SIGNATURE PAGE FOLLOWS]

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

**TRANSFEROR:**

**Individual(s):**

**Legal Entity:**

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Print Name of Legal Entity

\_\_\_\_\_  
Printed Name(s)

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

Name (Print): \_\_\_\_\_

Title (Print): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Telephone Number: ( ) \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

*[Signature page to Membership Interest Contribution Agreement]*

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

**COMPANY:**

FIRST WAVE TECHNOLOGIES, INC.

By: \_\_  
Name:  
Title:

Each of FWPG and MCD hereby acknowledges and accepts the Company's surrender to them of the Contributed Interests representing membership interests in FWPG and MCD, respectively, which Contributed Interests are irrevocably cancelled and of no further force or effect.

**FWPG:**

FIRST WAVE PRODUCTS GROUP, LLC

By: \_\_  
Name:  
Title:

**MCD:**

MEDICAL CONSERVATION DEVICES,  
LLC

By: \_\_  
Name:  
Title:

*[Signature page to Membership Interest Contribution Agreement]*

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**RESOLUTION**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, January 22, 2020, at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING: (1) THE CONVERSION OF CERTAIN MEMBERSHIP INTEREST INTO SHARES, AND (2) THE NEGOTIATION AND EXECUTION OF CERTAIN MEMBERSHIP INTEREST CONTRIBUTION AGREEMENT**

**WHEREAS**, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the “Act”), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) was created as a public benefit corporation of the State with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act to prevent unemployment and economic deterioration; and

**WHEREAS**, the Buffalo and Erie County Industrial Land Development Corporation (the “ILDC”), an affiliate of the Agency, both individually and as part of the Western New York Business Development Fund (“BDF”), made a series of investments in First Wave Technologies, Inc. (“FWT”), First Wave Products Group, LLC (“FWPG”) and Medical Conservation Devices, LLC (“MCD”) between 2005-2010. FWPG and MCD were majority-owned subsidiaries of FWT; and

**WHEREAS**, the ILDC’s total investment in FWT was transferred from the ILDC to the Agency in 2010, at which point, the Agency owned 193,332 non-voting shares of FWT, approximately 12% of total shares outstanding. These shares were converted to FWT common stock (1:1) in 2011 as a result of a reorganization; and

**WHEREAS**, in 2010, ILDC’s 24,184 Series A units in FWPG was transferred to the Agency upon the cancellation of the prior preferred shares owned by the ILDC. These shares were converted to 40,000 shares of FWT common stock (1.654:1.0 conversion) in 2011; and

**WHEREAS**, also in 2010, the Agency acquired 3,887 membership units of MCD through the conversion of a 2008 convertible promissory note in the principal amount of \$12,500.00, following which no additional investment or conversions have been made; and

**WHEREAS**, the Agency currently holds investments in only FWT and MCD. The Agency holds a total of 237,378 shares of common stock in FWT (1.8% of outstanding shares) and 3,887 units of membership interest in MCD (.35% of total units), respectively; and

**WHEREAS**, on October 25, 2018, the Board of Managers and majority of the equity shareholders of FWT and MCD agreed to merge MCD with FWT, said merger being able to be undertaken without first obtaining the Agency's consent due to the Agency's minority positions in both MCD and FWT; and

**WHEREAS**, the Agency's original investment in MCD was \$12,500.00; and

**WHEREAS**, under the terms of the proposed exchange of MCD membership units for shares of common stock in FWT, the Agency would receive 3.75 shares of common stock in FWT for each MCD unit (approximately 14,576.25 shares in FWT). Based on materials from FWT, the MCD units were valued at \$3.75 per unit. FWT has recently offered shares for \$1.00 per share, which leads to a fair value of \$14,576.25 for the new shares. Based on this information, it is believed that the fair value of the FWT stock that would be received is approximately equal to the MCD units to be exchanged; and

**WHEREAS**, all original MCD membership unit holders have already converted their holdings into shares of common stock in FWT and Agency staff have determined that continuing to hold MCD units does not provide the Agency with any value and as such, Agency staff recommend that the Agency exchange its MCD membership units for shares of common stock in FWT.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The Agency hereby approves the proposed exchange of its membership interest in MCD for shares of common stock in FWT, as described herein.

Section 2. The Chair, the Vice Chair, the Chief Executive Officer, the Chief Operating Officer, the Assistant Treasurer, the Treasurer and/or the Chief Financial Officer of the Agency are hereby authorized and directed to enter into a Membership Interest Contribution Agreement with MCD and FWT, for purposes of effectuating the proposed exchange.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to negotiate, execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. These Resolutions shall take effect immediately.

Dated: January 22, 2020