



**Buffalo and Erie County Regional Development Corporation  
Joint Annual Board of Directors & Membership Meeting  
May 26, 2021 @ 12:00 p.m.**

**Via Conference Call & Livestreaming**

- 1.0 Call to Order**
- 2.0 Approval of Minutes**
  - 2.1 Approval of the March 24, 2021 Minutes of the Meeting of the Membership (Action Item) (Pages 2-6)
- 3.0 Reports / Action Items / Information Items:**
  - 3.1 Financial Report (Informational) (Pages 7-10)
  - 3.2 Loan Status Report (Pages 11-12)
  - 3.3 Nominating Committee Update
    - a) Election of Officers/Committee Appointments (Action Item) (Pages 13-15)
  - 3.4 Approval of the Following Loan Case(s)
    - a) KSL Diagnostics (Pages 16-21)
- 4.0 Management Team Reports:**
  - 4.1
- 5.0 Adjournment- Next Meeting June 23, 2021**

**MINUTES OF THE  
MEETING OF THE BOARD OF DIRECTORS  
OF THE  
BUFFALO AND ERIE COUNTY REGIONAL  
DEVELOPMENT CORPORATION  
(RDC)**

- DATE AND PLACE:** March 24, 2021, held via telephone conference. Governor Cuomo’s Executive Order 202.1, as amended from time to time, issued in response to the Coronavirus (COVID-19) crisis, suspended Article 7 of the Public Officers Law to the extent necessary to permit any public body to take actions without permitting in public in-person access to such meetings and authorized such meetings to be held remotely by conference call or other similar service, provided the public has the ability to view or listen to such proceedings and that the meeting is recorded and transcribed.
- LIVE STREAMED:** This Board meeting is being live-streamed and made accessible on the Erie County Industrial Development Agency website at [www.ecidany.com](http://www.ecidany.com).
- PRESENT:** Denise Abbott, Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Joseph Emminger, Tyra Johnson, Richard Lipsitz, Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Darius G. Pridgen, Sister Denise Roche and Kenneth A. Schoetz
- EXCUSED:** Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, Hon. Howard Johnson, Hon. Brian Kulpa, Hon. Mark C. Poloncarz, Paul Vukelic and Renee Wilson
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Karen M. Fiala, Vice President/Secretary; Atiqah Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer; Jamee Lanthier, Compliance Officer; Beth O’Keefe, Business Development Officer; Grant Lesswing, Business Development Officer; Brian Krygier, Systems Analyst; Carrie Hocienec, Administrative Coordinator; Robbie Ann McPherson, Director, Marketing & Communications, Pat Smith, Bookkeeper and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC
- GUESTS:** Maria Whyte, Deputy County Executive; Hon. April Baskin; Andrew Federick, Erie County Senior Economic Development Specialist; Lisa Hicks on behalf of the City of Buffalo; and Seth Piccirillo on behalf of Buffalo Niagara Partnership

There being a quorum present at 1:11 p.m., the Meeting of the Board of Directors of the Buffalo and Erie County Regional Development Corporation was called to order by Chairwoman McDuffie.

## MINUTES

The minutes of the February 24, 2021 meeting of the members were presented. Mr. Nellis moved and Ms. Abbott 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 February 2021 financial report, noting that the balance sheet shows that the RDC ended the month with total assets of \$17.4M and net assets of \$17M. There was one loan payoff during the month, as noted in the portfolio summary. The February income statement shows \$46,000 of revenue, mostly loan interest income, and \$42,000 of expenses, netting to income of \$4,000 in February. The year-to-date income statement shows revenue of \$83,000 and \$72,000 of expenses, for net income of \$11,000 through the first two months of the year. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update and Committee Self-Evaluation. Ms. Profic presented this report including the Freed Maxick draft 2020 financial statements. Ms. Profic noted that the three main points of the presentation were an unmodified (clean) opinion on the financial statements, there were no uncorrected audit adjustments, and there were no material weaknesses or significant deficiencies noted (no management letter comments). The Committee also reviewed and recommend the following for approval: 2020 Public Authorities Report, 2020 Investment Report, Investment & Deposit Policy, Committee Charter, Committee Self-Evaluation, Management's Assessment of the Effectiveness of Internal Controls, and Corporate Credit Card Policy with no suggested changes. Each year the Committee completes a self-evaluation, based on the Committee Charter. In 2020, the Committee fulfilled its duties as documented. Ms. McDuffie directed that the reports be received and filed.

Audited Financial Statements. Ms. Profic stated that as a special-purpose government engaged in business-type activities, the RDC's financial statements are prepared based on Governmental Accounting Standards and include a Management's Discussion and Analysis section, which provides a condensed overview of the statements. The statements of net position (balance sheets), show total assets of \$17.3M as of December 31, 2020, a slight decrease from 2019. Loans receivable increased \$1M due to loans closed in 2020 and lower than normal principal repayments due to pandemic deferrals. The statements of revenues, expenses, and changes in net position (income statements) detail the \$28,000 decrease in net position for the year. Revenues of \$388,000 were down from \$500,000 in 2019, again due mostly to pandemic-related interest deferrals. Operating expenses decreased substantially from \$1.8M in 2019 to \$541,000 in 2020, due to a decrease in loan loss expense in 2020. The loans that were fully reserved at the end of 2019 were written off on 12/31/20. The cash flows statements details the changes in cash balances from year to year. The remainder of the financials are the notes, supplementary information, and the Schedule of Expenditures of Federal Awards. There were no findings or questioned costs noted as a result of the Single Audit. The report to the Board,

which documents the auditors' required communications, a summary of accounting estimates made within the financials, some recently issued accounting standards, and the management letter noting no significant deficiencies or material weaknesses. Ms. Profic stated an unmodified opinion was issued on the statements. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 17, 2021, and they recommended approval to the Board. Ms. Profic also noted they will continue to work with Freed Maxick to file IRS Form 990 and the Data Collection Form.

Mr. Emminger moved and Ms. Benczkowski seconded to approve of the 2020 Audited Financial Statements. Ms. McDuffie called for the vote and the 2020 Audited Financial Statements were unanimously approved.

2020 Investment Report. Ms. Profic noted that this report is required by Public Authorities Law and includes RDC's investment guidelines, the results of our annual audit, and detail of investment income and fees for the year. It was noted that a new account was opened related to the CARES Act revolving loan fund award. The amount of \$15,000 of investment income was earned on these accounts during 2020, and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 17, 2021 meeting and recommended to the Board for approval.

Mr. Lipsitz moved and Sister Denise seconded to approve of the 2020 Investment Report. Ms. McDuffie called for the vote and the 2020 Investment Report was unanimously approved.

Governance Committee Update, Committee Self-Evaluation and Board Self-Evaluation. Ms. McDuffie presented this report and noted same as ECIDA report at prior meeting. Ms. McDuffie directed that the report be received and filed.

2021 Loan Status Report. Mr. Manhard presented this report. Mr. Emminger thanked the RDC staff and RDC Loan Committee for their great work. Ms. McDuffie directed that the report be received and filed.

Approval of Board Certification of RLF Plan. Ms. Profic reviewed the memo regarding the Board certification of the Revolving Loan Fund plan. This is regarding our original/legacy loan fund, which was originally capitalized in the late 1970s/early 1980s. ECIDA was the original recipient/operator of the RLF, which was then moved to the RDC to administer. As part of our reporting to the EDA, the Board must certify that the RLF is being operated in accordance with the policies and procedures contained in the Loan Administration Plan. The most recent Administration Plan was approved October 1, 2018. Many of the requirements of the LAP overlap with Federal regulations and are tested as part of the Single Audit performed by Freed Maxick. In addition, Ms. Profic advise they asked Freed Maxick to perform a set of agreed-upon procedures to be performed in conjunction with the Single Audit. There were no findings or questioned costs from the single audit and two instances of documentation missing from existing borrowers. There were multiple attempts to obtain the documents and lending staff is continuing efforts to collect the documents.

Mr. Emminger moved and Ms. Abbott seconded to approve of the Board Certification of the RLF Plan. Ms. McDuffie then called for the vote and the following resolution was then unanimously approved:

RESOLUTION OF THE BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT CORPORATION (THE "RLF LOAN BOARD" OR "RDC") IN CONNECTION WITH AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE ECONOMIC DEVELOPMENT ADMINISTRATION (THE "EDA")

## **REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS**

The following policies, reports and committee charters, policies, amended policies, and charters were presented to board members, and brief discussion ensued noting that these are the same items previously reviewed and approved by the board of directors at the immediately preceding meeting of the members of the Erie County Industrial Development Agency:

- 2020 Mission Statement, Performance Measures and Results
- 2021 Mission Statement and Performance Measures
- 2020 Public Authorities Report
- Procurement Policy
- Sexual Harassment Policy
- Employee Compensation Program
- Code of Ethics & Conflict of Interest Policy
- Investment & Deposit Policy
- Whistleblower Policy and Procedures
- Defense & Indemnification Policy
- Finance & Audit Committee Charter
- Governance Committee Charter
- Property Disposition Guidelines
- Real Property Acquisition Policy
- Board Member Compensation, Reimbursement & Attendance Policy
- Travel, Conferences, Meals & Entertainment Policy
- Statement of Duties & Responsibilities of the Board of Directors
- Statement of the Competencies & Personal Attributes Required by Board Members
- Corporate Credit Card Policy

Mr. Lipsitz moved, and Mr. Blue seconded, to approve of all of the aforementioned policies, reports and committee charters, policies, amended policies, and charters. Ms. McDuffie called for the vote, and the motion was then unanimously approved.

## **MANAGEMENT TEAM REPORT**

Mr. Cappellino provided the 2020 Year in Review. Ms. McDuffie directed that the report be received and filed.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:28 p.m.

Dated: March 24, 2021

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Karen M. Fiala, Secretary

**Regional Development Corporation**

**Financial Statements**

As of April 30, 2021

**REGIONAL DEVELOPMENT CORPORATION ("RDC")**

**Balance Sheet**

April 30, 2021

	April 2021	March 2021	December 2020
<b>ASSETS:</b>			
Restricted Cash**	\$ 8,117,877	\$ 7,314,880	\$ 6,542,914
Accounts Receivable	-	-	11,015
Prepaid Expenses	-	-	-
Direct Loans *	11,278,145	10,701,287	10,789,595
50/50 Bank Participation Loans *	145,428	145,428	149,514
Reserve for Loan losses	(179,791)	(179,791)	(181,412)
Total Loan Assets, net	<u>11,243,781</u>	<u>10,666,924</u>	<u>10,757,697</u>
<b>TOTAL ASSETS</b>	<u><u>\$ 19,361,659</u></u>	<u><u>\$ 17,981,804</u></u>	<u><u>\$ 17,311,626</u></u>

<b>LIABILITIES &amp; NET ASSETS</b>			
Accounts Payable	\$ -	\$ -	\$ 2,659
Due to ECIDA	117,484	383,301	293,638
Total Liabilities	<u>117,484</u>	<u>383,301</u>	<u>296,298</u>
Restricted Fund Balance	<u>19,244,175</u>	<u>17,598,503</u>	<u>17,015,328</u>
<b>TOTAL LIABILITIES &amp; NET ASSETS</b>	<u><u>\$ 19,361,659</u></u>	<u><u>\$ 17,981,804</u></u>	<u><u>\$ 17,311,626</u></u>

<b>* Loan Portfolio Summary:</b>	April 2021	March 2021	December 2020
# of Legacy RLF Loans	31	31	33
# of CARES Act RLF Loans	8	5	2
# of 50/50 Bank Participation Loans	1	1	1
	<u>40</u>	<u>37</u>	<u>36</u>

\*\* Cash is invested in interest bearing accounts at M&T Bank. The maximum FDIC insured amount is \$250,000, with the remainder collateralized with government obligations by the financial institution.



**REGIONAL DEVELOPMENT CORPORATION ("RDC")**

**Income Statement**

Month of April 2021

	<b>Actual vs. Budget</b>		
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>REVENUES:</b>			
Interest Income - Loans	\$ 35,410	\$ 45,000	\$ (9,590)
Interest Income - Cash & Inv.	312	167	146
Administrative Fees	-	1,250	(1,250)
Other Income	23,065	417	22,648
Total Revenues	<u>58,787</u>	<u>46,833</u>	<u>11,953</u>
<b>EXPENSES:</b>			
Management Fee - ECIDA*	26,700	26,667	33
Rent & Facilities Expenses	2,100	2,083	17
Professional Services	1,415	6,250	(4,835)
General Office Expenses	-	142	(142)
Other Expenses	7,900	2,481	5,418
Total Expenses	<u>38,115</u>	<u>37,623</u>	<u>492</u>
<b>NET INCOME/(LOSS):</b>	<u>\$ 20,672</u>	<u>\$ 9,210</u>	<u>\$ 11,462</u>

\* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to RDC. The amount booked reflects 2020 budgeted figures.

**REGIONAL DEVELOPMENT CORPORATION ("RDC")**  
**Income Statement**  
Year to Date: April 30, 2021

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
<b>REVENUES:</b>						
Interest Income - Loans	\$ 150,527	\$ 180,000	\$ (29,473)	\$ 150,527	\$ 109,915	\$ 40,612
Interest Income - Cash & Inv.	1,561	667	894	1,561	10,454	(8,894)
Administrative Fees	-	5,000	(5,000)	-	8,000	(8,000)
Other Income	33,879	1,667	32,212	33,879	987	32,892
<b>Total Revenues</b>	<b>185,967</b>	<b>187,333</b>	<b>(1,367)</b>	<b>185,967</b>	<b>129,356</b>	<b>56,611</b>
<b>EXPENSES:</b>						
Management Fee - ECIDA*	106,800	106,667	133	106,800	106,667	133
Provision for Loan Losses	(1,621)	83,333	(84,954)	(1,621)	-	(1,621)
Rent & Facilities Expenses	8,400	8,333	67	8,400	8,333	67
Professional Services	15,364	40,600	(25,236)	15,364	77,065	(61,700)
General Office Expenses	960	567	394	960	106	855
Other Expenses	27,217	9,925	17,292	27,217	4,099	23,117
<b>Total Expenses</b>	<b>157,120</b>	<b>249,425</b>	<b>(92,305)</b>	<b>157,120</b>	<b>196,269</b>	<b>(39,149)</b>
<b>NET INCOME/(LOSS):</b>	<b>\$ 28,846</b>	<b>\$ (62,092)</b>	<b>\$ 90,938</b>	<b>\$ 28,846</b>	<b>\$ (66,913)</b>	<b>\$ 95,760</b>

\* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to RDC. The amount booked reflects 2020 budgeted figures.



**Loan Status Report  
March 24, 2021 – May 26, 2021**

<u><b>RDC Loans Approved Since Last Meeting (April/May)</b></u>	<u><b>Municipality</b></u>	<u><b>Amount</b></u>
AFT Lenox, LLC	Buffalo	\$ 250,000
Brian Parisi Copier Systems, Inc.	Williamsville	\$ 200,000
Buffalo Niagara Weldworks	Buffalo	\$ 125,000
Divorce Mediation Services of Buffalo, LLC	Williamsville	\$ 40,000
Harisa's Massage Therapy P.C.	East Amherst	\$ 50,000
Kathy's Kid Care	Amherst	\$ 100,000
KJJ Group, LLC d.b.a. J's White Elephant	Lackawanna	\$ 150,000
KSL Diagnostics, Inc.	Williamsville	\$1,000,000
Mainspring, LLC d.b.a. Lakeward Spirits	Buffalo	\$ 400,000
Mataji's, Inc.	Williamsville	\$ 100,000
Peterson Heating and Cooling, Inc.	Buffalo	\$ 100,000
Premium Coffee of WNY, LLC	Lackawanna	\$ 250,000
Rosewood Signs, Inc.	Tonawanda	\$ 100,000
Styles of Man	Buffalo	\$ 50,000
Tomric Systems, Inc.	Buffalo	\$ 250,000
Tundra Transport, LLC	Blasdell	\$ 330,000
Underground Gym	Orchard Park	\$ 60,000
WNY Medical Management, LLC	Amherst	\$ 250,000
<b>Total – 18</b>		<u><b>\$3,805,000</b></u>

<u><b>RDC Loans Closed Since Last Meeting</b></u>	<u><b>Municipality</b></u>	<u><b>Amount</b></u>
Allied Circuits, LLC	Buffalo	\$ 250,000
AFT Lenox, LLC	Buffalo	\$ 250,000
Amherst Pizza & Ale House, Inc.	Getzville	\$ 250,000
Bhavani Group	Cheektowaga	\$ 100,000
Buffalo Film Works	Buffalo	\$ 250,000
Frank Minisci, CPA	Williamsville	\$ 125,000
Law Firm of Jennifer Hurley	Buffalo	\$ 200,000
Peterson Heating & Cooling	Buffalo	\$ 100,000
Radio One Buffalo, LLC	Cheektowaga	\$ 250,000
Tundra Transport, LLC	Lackawanna	\$ 330,000
<b>Total - 10</b>		<u><b>\$2,105,000</b></u>

<u><b>Loans in Closing Process</b></u>	<u><b>Municipality</b></u>	<u><b>Amount</b></u>
<b>Total – 19</b>	Various	<u><b>\$4,050,000</b></u>

<u><b>Loans in the Pipeline</b></u>	<u><b>Municipality</b></u>	<u><b>Amount</b></u>
<b>Total - 12</b>	Various	<u><b>\$2,278,000</b></u>



<u>2021 - Loans Closed</u>	<u>YTD Loan Total</u>	<u>Jobs to be Created</u>	<u>Retained Jobs</u>	<u>Dollars Leveraged</u>
Erie County 60/40 Loans – 5	\$175,000	5	4	0
RDC Loans – 10	\$2,105,000	50	131	\$680,000

### Loan Portfolio Performance

**Past Due Loans:**

<u>Loan</u>	<u>Outstanding Balance</u>	<u>Amount Past Due</u>	<u>Days Past Due</u>	<u>Comments</u>
NONE				

**Portfolio Delinquency Rate** (Past Due Outstanding Loan Balance *divided by* Portfolio Balance):

\$0/\$11,918,324    0% Delinquency Rate

## 2021-2022 Draft ECIDA/RDC/ILDC Board Committees & Officers

<b>Executive Committee ECIDA/RDC</b>	<b><u>Current Committee Members</u></b>	<b><u>Proposed Committee Members</u></b>
7 Board members, President & CEO, as specified in By-Laws	Chair - Brenda McDuffie (Chair)	Chair - Brenda McDuffie (Chair)
	Vice Chair - Richard Lipsitz	Vice Chair - Richard Lipsitz
	County Executive - Hon Mark Poloncarz	County Executive - Hon Mark Poloncarz
	Mayor Buffalo – Hon. Byron Brown	Mayor Buffalo – Hon. Byron Brown
	Hon. Joseph Emminger (Chair, RDC Loan Committee)	Hon. Joseph Emminger (Chair, RDC Loan Committee)
	Glenn Nellis - (Representing the Finance & Audit Committee)	Glenn Nellis - (Representing the Finance & Audit Committee)
	Hon. Darius Pridgen (Chair, Loan Write- Off)	Hon. Darius Pridgen (Chair, Loan Write- Off)
	President & CEO John Cappellino [non- voting]	President & CEO – John Cappellino [non-voting]

<b>Nominating Committee ECIDA/RDC/ILDC</b>	<b><u>Current Committee Members</u></b>	<b><u>Proposed Committee Members</u></b>
Number of members not specified in By-Laws  <b>1 Meeting a Year</b>	Hon. Mark Poloncarz (Chair)	Hon. Mark Poloncarz (Chair)
	Rev. Mark Blue	Rev. Mark Blue
	Dottie Gallagher	Dottie Gallagher
	Hon. Howard Johnson	Howard Johnson
	Richard Lipsitz	Richard Lipsitz
	Brenda McDuffie	Sister Denise Roche
	Sister Denise Roche	Ken Schoetz
	Ken Schoetz	<b>Renee Wilson</b>

<b>Compensation Committee ECIDA</b>	<b><u>Current Committee Members</u></b>	<b><u>Proposed Committee Members</u></b>
No by-law requirement  <b>1-2 Meetings a Year</b>	Hon. Mark Poloncarz (Chair)	Hon. Mark Poloncarz (Chair)
	Denise Abbott	Rev. Mark Blue
	Rev. Mark Blue	Dottie Gallagher
	Dottie Gallagher	Richard Lipsitz
	Richard Lipsitz	Sister Denise Roche
	Sister Denise Roche	Ken Schoetz
	Ken Schoetz	<b>Paul Vukelic</b>

<b>Finance &amp; Audit Committee ECIDA/RDC/ILDC</b>	<b><u>Current Committee Members</u></b>	<b><u>Proposed Committee Members</u></b>
At least 3 Board members specified in By-Laws. Not less than 3 independent members per PAL.  <b>3-4 Meetings a Year</b>	Michael Szukala (Chair)	Michael Szukala (Chair)
	Penny Beckwith (M&T)	Penny Beckwith
	Hon. Joseph Emminger*	<b>Brian Kulpa*</b>
	Glenn Nellis*	Glenn Nellis *
	Paul Vukelic*	<b>Paul Vukelic*</b>
	William Witzleben (M&T)	William Witzleben
	(Vacant)	<b>Allison DeHonney</b>

\*=Board members who fill seats required by By-laws  
Nominating Committee Approved Date –  
Board Approved Date –

## 2021-2022 Draft ECIDA/RDC/ILDC Board Committees & Officers

<b>Governance Committee ECIDA/RDC/ILDC</b>	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws. Not less than 3 independent members per PAL.  <b>1-2 Meetings a Year</b>	Brenda McDuffie* (Chair)	Brenda McDuffie* (Chair)
	Howard Johnson*	Howard Johnson*
	Tyra Johnson*	Tyra Johnson*
	Hon. Brian Kulpa	Mark Poloncarz
	Ken Schoetz	Ken Schoetz
	David State	David State
	Maria Whyte	Maria Whyte

<b>Loan Committee ECIDA/RDC</b>	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
By-Laws specify no more than 5 members of the Policy Committee plus 2 City members and 1 County member  <b>6-12 Meetings a Year</b>	Hon. Joseph Emminger (Chair)	Hon. Joseph Emminger (Chair)
	Denise Abbott	Denise Abbott
	[City 2] Rebecca Gandour	[City 2] Rebecca Gandour
	[Other] Nancy LaTulip	[Other] Nancy LaTulip
	[County 1] David McKinley (Community Bank N.A.)	[County 1] David McKinley (Community Bank N.A.)
	[Other] Michael Taylor (NYBDC)	[Other] Michael Taylor (NYBDC)
	[City 1] Royce Woods (Beverly Gray Business Exchange Center)	[City 1] Royce Woods (Beverly Gray Business Exchange Center)

<b>Loan Write-off Committee ECIDA/RDC/ILDC</b>	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws  <b>1 Meeting a Year</b>	Pridgen* (Chair)	Pridgen* (Chair)
	Penny Beckwith (M&T)	Penny Beckwith (M&T)
	Hon. Diane Benczkowski	Hon. Diane Benczkowski*
	Tyra Johnson*	Tyra Johnson
	Ken Schoetz*	Ken Schoetz*
	William Witzleben (M&T)	William Witzleben (M&T)

\*=Board members who fill seats required by By-laws  
Nominating Committee Approved Date –  
Board Approved Date –

## 2021-2022 Draft ECIDA/RDC/ILDC Board Committees & Officers

Policy Committee ECIDA/RDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
<b>At least 3 Board members specified in By-Laws</b>  <b>10-12 Meetings a year</b>	Richard Lipsitz* (Chair)	Richard Lipsitz* (Chair)
	Denise Abbott	Denise Abbott
	Hon. April Baskin	Hon. April Baskin
	Rev. Mark Blue*	Rev. Mark Blue*
	Hon. Byron Brown	Hon. Byron Brown
	Johanna Coleman	Johanna Coleman
	Richard Cummings	Richard Cummings
	Colleen DiPirro	Colleen DiPirro
	Hon. William Krebs	Hon. William Krebs
	Brenda McDuffie*	Brenda McDuffie*
	Glenn Nellis	Glenn Nellis
	Laura Smith	Laura Smith
	David State	David State
Maria Whyte	Maria Whyte	

<b>OFFICERS</b>	<b>Current Officers</b>			<b>Proposed Officers</b>		
	<u>ECIDA</u>	<u>RDC</u>	<u>ILDC</u>	<u>ECIDA</u>	<u>RDC</u>	<u>ILDC</u>
<b>Chair</b>	Brenda McDuffie		Hon. Mark Poloncarz	Brenda McDuffie		Hon. Mark Poloncarz
<b>Vice Chair</b>	Richard Lipsitz			Richard Lipsitz		
<b>President &amp; CEO</b>	John Cappellino			John Cappellino		
<b>Vice President</b>	Mollie Profic, Karen Fiala			Mollie Profic, Karen Fiala		
<b>Treasurer</b>	Mollie Profic			Mollie Profic		
<b>Assistant Treasurers</b>	Karen Fiala, Jerry Manhard, Atiqa Abidi			Karen Fiala, Jerry Manhard, Atiqa Abidi, Daryl Spulecki		
<b>Secretary</b>	Karen Fiala			Karen Fiala		
<b>Assistant Secretaries</b>	Jerry Manhard, Dawn Boudreau			Jerry Manhard, Jamee Lanthier		

<b>OTHER DESIGNATED POSITIONS</b>	<u>Current Designated Positions</u>	<u>Proposed Designated Positions</u>
<b>Chief Financial Officer</b>	Mollie Profic	Mollie Profic
<b>Senior Accountant</b>	Atiqa Abidi	Atiqa Abidi
<b>Chief Lending Officer</b>	Jerry Manhard	Jerry Manhard
<b>Contracting Officer (required in Property Disposition Policy)</b>	Mollie Profic	Mollie Profic
<b>Electronic Records Retention Officer</b>	Brian Krygier	Brian Krygier
<b>Ethics Officer (required in Conflict of Interest Policy)</b>	John Cappellino	John Cappellino
<b>FOIL Officer</b>	Karen Fiala	Karen Fiala
<b>FOIL Appeals Officer</b>	John Cappellino	John Cappellino
<b>Human Resources Officers</b>	Mollie Profic, Pat Smith	Mollie Profic, Pat Smith
<b>Non-electronic Records Retention Officer</b>	Carrie Hocieniec	Carrie Hocieniec

\*=Board members who fill seats required by By-laws  
 Nominating Committee Approved Date –  
 Board Approved Date –



### RDC Loan Analysis

<b>Borrower:</b>	KSL Diagnostics Inc.	<b>Structure:</b>	C-Corp (Del.)	<b>Year Established:</b>	2018
<b>Address:</b>	1000 Youngs Road, Suite 201	<b>City:</b>	Williamsville	<b>Zip:</b>	14221
<b>Website:</b>	Medical/diagnostics/testing	<b>NAICS:</b>	541380	<b>SIC:</b>	8734
<b>Loan Amount:</b>	\$1,000,000	<b>Interest Rate:</b>	4%	<b>Term:</b>	10 yr
<b>Monthly Payment:</b>	\$11,041	<b>Contact Name:</b>	Kevin Lawson	<b>Site Visit:</b>	At Closing
<b>Purpose:</b>	Furnishings, fixtures, equipment, inventory and working capital	<b>Jobs Existing:</b>	65 FT; 25 PT	<b>Jobs to be created:</b>	32

#### SOURCES AND USES

Sources:	Amount	% of Project
RDC Loan	\$1,000,000	50%
Bank Loan (draw from approved KB LOC)	\$500,000	25%
Equity	\$500,000	25%
<b>Total Sources</b>	<b>\$2,000,000</b>	<b>100%</b>
Uses: *	Amount	
Furnishings, Fixtures & Equipment	\$500,000	25%
Inventory	\$500,000	25%
Working Capital	\$1,000,000	50%
<b>Total Uses</b>	<b>\$2,000,000</b>	<b>100%</b>
Dollars Leveraged:	\$1,000,000	50%

\* See attached listing of Uses of Funds detail

#### COLLATERAL AND SECURITY

<b>Collateral:</b>	Subordinate lien on all business assets. 1 <sup>st</sup> purchase money lien on the FF&E to be purchased with RDC funds.
<b>Guarantors:</b>	Kevin Lawson, Lakshmanan Suresh, and Long Shen. Corporate guaranty of KSL BioMedical

#### SUPPLEMENTAL INFORMATION

<b>Fund Criteria:</b>	<b>Job Creation:</b> <input checked="" type="checkbox"/> <b>Target Area:</b> <input type="checkbox"/> <b>Target Industry:</b> <input checked="" type="checkbox"/> <b>MWBE:</b> <input type="checkbox"/>
<b>Eligibility:</b>	<b>Bank Declination:</b> <input type="checkbox"/> <b>Financing Gap:</b> <input checked="" type="checkbox"/>
<b>Recommended By:</b>	Gerald Manhard, Chief Lending Officer and Daryl Spulecki, Credit Analyst
<b>Loan Committee Vote:</b>	<b>Approved:</b> <input type="checkbox"/> <b>Declined:</b> <input type="checkbox"/>
<b>Date:</b>	<b>Signatures:</b>



## **I. Background:**

KSL Diagnostics, Inc. (“KSL”) is a Delaware C-corporation formed in July 2018 and has been verified that it is authorized to do business in New York State. KSL is majority-owned by three individuals: Kevin Lawson, Long Shen and Lakshmanan Suresh, 20.33% each; the remaining ownership (39%) is spread equally among three private investors who have non-voting shares. KSL is headquartered in Erie County and focused on translational medicine impacting diagnosis and treatment of specific immunological and oncological disorders. KSL Biomedical, Inc. (also a Delaware C-corporation and verified that it is authorized to do business in NYS) was formed in March 2017 by the same three individuals to deliver innovative diagnostic and therapeutic consulting. The principal owners-initiated development of proprietary technologies targeting biomarkers to diagnose and treat specific immunological and oncological disorders. As these technologies progressed through phases of research, development, and regulatory clearance, KSL Biomedical began strategic acquisition of laboratories to establish a foundation for launch of novel diagnostics while deriving revenue from current testing services (i.e., COVID and others). Those initiatives include the formation in 2018 of KSL Diagnostics, a clinical laboratory concentrating on genetics, oncology, and infectious disease. In 2019, KSL acquired Beutner Laboratories which is now a wholly-owned subsidiary of KSL, specializing in autoimmunity and immunodermatology. In 2020, KSL acquired Robert Guthrie Laboratory, specializing in biochemical genetics. KSL’s manufacturing operations were initiated under an FDA establishment license in July 2020.

The company leases space at three locations, comprising a total of ~30,000 sf of administrative, laboratory, manufacturing and warehousing space as follows: (1) 1000 Youngs Road in Williamsville (the largest location of the three at ~10,000 sf); (2) 3580 Harlem Road in Cheektowaga (Beutner Labs) and (3) 28 Best Street, Buffalo, NY (manufacturing facility). See attached lease schedule/summary.

The company’s vision statement is to develop key biomarkers, biological therapeutic candidates and quality testing services for autoimmunity, infectious disease, and oncology. Its mission is to improve diagnosis and treatment of immunological disorders to benefit public health. Current goals and future benchmark goals are as follows:

1. Build and protect portfolio of intellectual property [Initiated Year 1 and on-going]
2. Validate biomarkers and therapeutics through rigorous clinical studies and collaborations [Initiated Year 2 and on-going]
3. Integrate acquisitions facing key markets (e.g. gastroenterology, ophthalmology, rheumatology) to complete a comprehensive portfolio of testing and launch pad for proprietary diagnostics [Initiated Year 2 and on-going]
4. Establish value of company intellectual property [Year 3+]
5. Position company for engagement by downstream diagnostic and pharmaceutical commercial partners [Years 5-7].

To date, funding for the company has largely been provided internally by the KSL owners. Funding has been supplemented with \$1.6M in capital equipment grants from SUNY at Buffalo (UB) Buffalo Institute for Genomics (BIG), an \$BOOK operational funding grant from the New York Economic Development Corporation supporting COVID-19 manufacturing activities in New York State

## **II. Project Description:**

Given the demand for product/services especially as it relates to the COVID-19 pandemic, there is a need for additional equipment and working capital to support the continued growth in 2021 and beyond.

In addition, KSL’s launch in early 2021 of its Rapid Test Product Distribution and Services initiative (for COVID-19 and variants) requires significant financing to support inventory, growth in accounts receivable, and equipment required for the project.

The RDC funds will be used for new testing and production equipment and working capital for marketing/advertising, professional fees (legal and accounting), training of new employees and general operating costs (A/R are growing with billing insurance companies, etc.)

While the COVID-19 pandemic has negatively affected many businesses throughout the country, KSL has been able to grow due to its patented technologies and rise in demand for rapid services as a result of the pandemic. The exponential growth, in turn, has resulted in increasing employment and costs. In order to maintain operations and meet demand as well as grow the company as stated in the goals set forth above, the company is required to increase its funding through investment and financing. The company expects that the requested funds will provide sufficient assistance to meet demand until conditions normalize and will enable the business to hire additional employees this year and in the near future.

To achieve all of these objectives, KSL will take a phased approach. KSL will retain and distribute an internally validated FDA approved rapid test. These will be sold to existing clients, utilized in KSL drive-thru facilities, and made available wholesale to targeted medical clients. AccessBio has been selected as the vendor. The distribution model provides a manageable profit margin, and the product offers lower sensitivity typical of current rapid tests. Distribution and utilization at KSL sites support access to market and testing diversification. KSL will build its customer base while working toward regulatory approval of lower cost diagnostics with superior performance. Once regulatory clearance is obtained, KSL will convert the product and service lines to the new distributed product.

### **III. Company Management:**

#### **Owners (voting members):**

**Kevin Lawson**, President & CEO. Mr. Lawson is a graduate of SUNY at Buffalo and received Certification Training for FDA Quality Systems Regulations (QSR), EU Medical Devices and IVD Directives among other certifications. He is a biotechnology executive with 25+ years of experience. His responsibilities include licensing, product development, and leading USA and international regulatory programs with multi-national companies. Under his leadership, companies he has worked for have obtained thousands of LDT and IVD regulatory approvals.

**Lakshmanan Suresh**, Chief Medical Officer. Dr. Suresh studied in India at Madras Dental College and is a DDS as well as receiving his medical license from the Royal College of Surgeons & Physicians in the UK in oral surgery. He has completed his master's degree at SUNY Buffalo in Oral Pathology and is currently a PhD student at UB in Health Sciences. Dr. Suresh oversees all laboratory medicine operations. He has broad experience in oral surgery, immunology, diagnostics, and pathology and is qualified as a Diplomate of the American Board of Oral & Maxillofacial Pathology and American Board of Medical Laboratory Immunology.

**Long Shen**, Chief Scientific Officer. Dr. Shen studied at Xiamen University in China and received a BSc in Biochemistry. He is also a graduate of SUNY at Buffalo in Biological Sciences (Masters, PhD and post-doctoral in immunology and autoimmune disease). Dr. Shen leads the China business unit and KSL research and development activities. He served as a translational research program leader for 15+ years. His primary research focused on development of novel biomarkers for the early diagnosis of autoimmune disease and associated B-cell lymphomas. Dr. Shen is responsible for 25+ peer-reviewed publications in high impact research journals.

#### **Key Employees**

**Daniel Lupica**, Operating Officer. The manufacturing team is managed by Mr. Lupica. This unit's expanding scope of activities to include vertically integrated products necessary for diagnostic laboratory activities, including specimen collection materials, proteomics, assay production and distribution of accessory products from key KSL partners. This facility is cGMP compliant.

**Beverly Sobilo**, Corporate Quality Officer. Ms. Sobilo manages the regulatory team operations. The team is engaged in establishing Quality Management Systems for KSL business units and affiliated organizations, as well as executing regulatory plans for clearance of lab developed test (LDT) services in the USA and IVD assays world-wide.

#### **IV. Market Analysis:**

KSL Core Technologies focus on improving diagnostics for immunological disorders impacting a high percentage of the population. The technology to diagnose and treat these disorders are described in KSL patents and licensed technologies. The technologies are proprietary.

COVID-19 Diagnostics – KSL has pivoted to address the demands of the COVID-19 pandemic. At an early stage, the company recognized the need to diagnose, trace and manage spread of coronavirus, focusing on testing for the COVID-19 virus, COVID-19 antibodies, and associated biomarkers. The national demand for testing has exceeded one million tests per day in the United States. Quick detection of active infections is needed for effective quarantine, treatment and prevention, and state and federal mandates require testing in particular industries (e.g., nursing homes, ambulatory surgery centers, etc.) to remain in operation. Therefore, quick turn-around of results is an essential differentiator in COVID-19 testing services. KSL has been able to provide results quickly, allowing it to compete effectively against its competitors. The durability of demand for these test services remains uncertain. Upon widespread distribution of safe and effective vaccines, the need for testing services like those offered by KSL will decline, with some erosion projected in the summer of 2021; however, it is likely that the types of testing required will change over time and needs will emerge for diagnostics related to COVID-19 variants, differentiation from other respiratory diseases, vaccine effectiveness, etc. The scientific and clinical teams at KSL have a proven record of delivering dynamic solutions for the pandemic and the plan includes a level of continuing revenues related to coronavirus.

There are other revenue streams which include diagnostic immunology, oncology, and pathology business, CRO contracts, manufacturing, and distribution.

Market differentiation: KSL services for COVID-19 testing are defined by comprehensive compliance, the highest sensitivity and specificity for coronavirus and associated antibodies and customer service standards that outperform regional and national competition. KSL proprietary technology is more significantly differentiated as it represents a range of completely novel diagnostics and therapeutics. KSL has patents on diagnostic biomarkers and methodologies with the associated therapeutic targets.

#### **V. Job Creation/New Employment:**

The proposed RDC loan will allow the business to retain the current employees (65 FT and 25 PT) and additionally hire at least 32 new full-time equivalent employees within the next 36 months. Additionally, KSL BioMedical has 2 employees and the wholly-owned subsidiary, Beutner Labs has 9 employees. The chart below shows KSL Diagnostic's plan for the next three years.

Position Description	Annual	#	NEW FTE			Total	Cumulative
	Wage		2021	2022	2023		New Wages
Research & development engineer	\$ 87,500	9	4	3	2	9	\$ 787,500
Manufacturing technician	\$ 58,125	10	5	4	1	10	\$ 581,250
Quality engineer	\$ 65,000	5	3	1	1	5	\$ 325,000
COO & CRO	\$ 150,000	2	2			2	\$ 300,000
Administrative personnel	\$ 50,000	2	2			2	\$ 100,000
Accounting manager	\$ 150,000	1	1			1	\$ 150,000
Sales personnel	\$ 83,300	3	2	1		3	\$ 249,900
<b>TOTAL</b>		<b>32</b>	<b>19</b>	<b>9</b>	<b>4</b>	<b>32</b>	<b>\$ 2,493,650</b>

## IX. Strengths and Weaknesses:

### Strengths:

- Guarantors and leadership team have considerable education, background and industry experience in the biotech business, notably translational medicine, regulatory affairs, and clinical laboratory management. The team has strong networking ties with agencies such as FDA, NIH, NYSDOH and NMPA as well as with national businesses such as LabCorp, Quest, Medtronic and Bio-Rad—industry leaders.
- Guarantors have intellectual property and patents having developed and licensed a strong portfolio of effective proprietary technologies and experience in how to monetize the technology.
- The company has a competitive advantage as they are entrepreneurial and nimble. Competitors in this space are often large institutions that may not be capable of responding effectively to new opportunities.
- The company has instituted a comprehensive regulatory compliance program (CLIA, NYSDOH, etc.) with international quality standards in the clinical laboratory and medical manufacturing industries.
- Good marketing and advertising strategies on print, radio, and television media along with a strong presence on social media.
- Growth in revenues and profitability YOY with forecasted exponential growth leveraging its past success.
- Owners financial and time commitment to the success of the business, having injected over \$5 million into the company.
- Cash flow is satisfactory to service current and projected debt, with excess. Important to note that the RDC loan will have an interest only period for the first year, giving the company time to further ramp up production and cash flow.
- Guarantors have a good personal credit history
- Job retention and creation, with a plan to hire at least 25 full-time equivalent employees in the next three years.

### Weaknesses:

- Success for the business has a strong reliance on marketing for repeat and new clientele to continue to grow the business and cover expenses in addition to maintaining considerable internal cash flow to fuel its substantial growth.
- Medical billing systems. In a period of rapid growth, billing needs are rapidly changing. This will be exacerbated by ongoing acquisition and integration. The company is currently reliant on outsourced billing resources as an internal billing department is trained and billing systems are put in place.
- Sales force. While KSL has retained experienced marketing and sales leadership, their representatives remain limited and relatively inexperienced. Recruitment of sales resources is a significant initiative as KSL evaluates acquisitions and moves into a post-COVID phase.
- Financial resources: Since the company is largely funded by the principal owners, there are financial limitations. Despite the track record of success in industry, the company is still considered a start-up which limits the availability of traditional institutional/bank financing.

**X. Recommendation:**

Based on the above case analysis, it is recommended the \$1,000,000 RDC Term Loan be approved with the following terms and conditions:

**Loan Amount:** \$1,000,000  
**Interest Rate:** 4%  
**Loan Amortization:** 108 months (9 years, due to first year interest only)  
**Loan Term:** 10-year term/amortization. First 12 months will be interest only during the take down of funds, followed by 108 monthly principal and interest payments.  
**Monthly P&I payment:** \$11,040.97 (after one year of interest only)

**Security/Collateral:**

- UCC Filing on any and all business assets.
- 1<sup>st</sup> purchase money lien on the FF&E to be purchased with RDC funds.
- The unlimited personal guaranty of three principal owners: Kevin Lawson, Lakshmanan Suresh and Long Shen.
- Corporate guaranty of KSL BioMedical, Inc. (affiliated company owned by the three principal owners of KSL Diagnostics Inc.).

**Loan Conditions:**

- Annually, receipt of CPA prepared financial statements and/or Federal Tax Returns containing all schedules within 120 days of Year End.
- Annually, receipt of personal Federal Tax Returns with all schedules for each guarantor(s) within 120 days of Year End.
- Receipt of annual Personal Financial Statements for all guarantor(s) within 120 days of year end.
- Annual receipt of employment survey.
- Annual site visits by RDC staff.
- Closing costs to be paid by the borrower.

**SUPPLEMENTAL INFORMATION**

**RDC Loan Eligibility:**

- The business is an eligible NAICS sector 541380 under the RDC Loan Administration Plan.
- The loan will assist the business' equipment, furnishings, fixtures and working capital needs and enable it to grow and expand, and to hire the necessary employees to support the growth and demand.
- The loan will enable the business to retain ~80 full time equivalent employees and create an additional 25 full time employees in the next three years.