



**Erie County Industrial Development Agency  
Meeting of the Membership  
October 25, 2023  
At 12:00 p.m.**

**\*\*\*REVISED PACKAGE\*\*\***

**701 Ellicott Street, Center of Excellence in Bioinformatics and Life Sciences (CBLS)  
The Event Space/Conference Room B2-205, located on the 2nd floor, Buffalo, New York 14203**

**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 the September 27, 2023 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 Finance & Audit Committee Update

a) 2024 Budget Timetable (Informational) (Page 11)

b) Approval of 2024 Proposed Budget (Action Item) (Pages 12-21)

3.3 2023 Tax Incentive Induced/Closing Schedule (Informational) (Pages 22-23)

3.4 Approval of Resolution Authorizing the ECIDA to Hire a Consultant for Design & Engineering Services Related to the Industrial Rail (WYE Yard) Relocation Project (Action Item) (Pages 24-27)

3.5 Policy Committee Update (Informational)

**4.0 Inducement Resolutions:**

**ECIDA**

**Private**

**Incentives**

**Investment**

**Municipality**

4.1 Westchester Park Preservation, LP (Pages 28-75)

\$694,500

\$35,000,000

Tonawanda

**5.0 ECIDA Bond:**

5.1 Refinancing of the Agency's School Facility Refunding Revenue Bond (City School District of the City of Buffalo Project), Series 2013A (Action Item) (Pages 76-111)

5.2 Approval of Resolution for replacement of remarketing agent for Canisius High School - Series 2008 Bonds (Action Item) (Pages 112-122)

**6.0 Management Team Reports:**

6.1

**7.0 Adjournment- Next Meeting November 29, 2023**

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

**DATE AND PLACE:** September 27, 2023, at the Center of Excellence in Bioinformatics and Life Sciences (CBLS), 701 Ellicott Street, The Event Space/Conference Room B2-205, located on the 2nd floor, Buffalo, New York 14203.

**PRESENT:** Denise Abbott, Hon. Diane Benczkowski, Rev. Mark Blue, Hon. Joseph Emminger, Hon. Howard Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Brenda McDuffie, Denise McGowan, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz and Kenneth A. Schoetz

**EXCUSED:** Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, Michael P. Hughes, Tyra Johnson, Darius G. Pridgen and Paul Vukelic

**OTHERS PRESENT:** John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Atiqah Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer; Grant Lesswing, Director of Business Development; Andrew Federick, Business Development Officer; Soma Hawramee, Compliance Portfolio Manager; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Laurie Hendrix, Administrative Coordinator; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

**GUESTS:** Alex Carducci on behalf of the City of Buffalo; Zachary Evans on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Dale Shoemaker on behalf of Investigative Post; Jonathan Epstein on behalf of Buffalo News, Jacob Tierney on behalf of Business First, Quinn Bushen on behalf of Empire State Development; Marco Riccioni on behalf of IMA Life; Byron DeLuke on behalf of TM Montante and Mark Sadkowski on behalf of Life Technologies

There being a quorum present at 12:03 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by the Chair, Ms. McDuffie.

**MINUTES**

The minutes of the July 26, 2023, meeting of the members were presented. Mr. Lipsitz moved, and Mr. Nellis seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

## REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Abidi presented the August financial reports. The balance sheet shows that the IDA ended the month with total assets of \$33.0M and net assets of \$20.3M. Restricted cash increased by about \$105,000 from July to August as a result of PILOT Increment Financing receipts. Under liabilities, funds held on behalf of others had an increase that corresponds to the PIF receipts. The monthly income statement shows a net loss of \$281,000 for August. Operating revenue of \$217,000 was very close to our monthly budget of \$223,000. Operating expenses of \$384,000 were over our monthly budget by \$155,000. This is due to an administrative fee refund that was made in August. Under Special Project Grants, there was a net loss of \$88,000 in August mainly due to a grant made to ILDC for carrying costs, and depreciation/amortization of \$22,000. The year-to-date Income Statement revenues of \$1.99M, including administrative fee revenue of \$1.26M. We are at about 70% of our annual administrative fee budget through August. Expenses of \$1.9M are overall \$53,000 above budget mainly due to the administrative fee refund, while building operating costs are below budget as a result of GASB 87 lease accounting whereby our lease cost was capitalized and recorded as a liability, then amortized monthly. Special project grant revenue nets to \$78,000. Net income before strategic initiatives and depreciation is \$159,000. After strategic initiatives of \$314,000 and depreciation/amortization of \$178,000, there is currently net loss of \$333,000 for the year. Ms. McDuffie directed that the report be received and filed.

At this point in time, Mr. Poloncarz joined the meeting.

Finance and Audit Committee Update. Ms. Abidi reviewed the various processes of the ECIDA budget development and confirmed formal budget approval will be presented at the October Board meeting subject to changes of \$100,000 or more. Ms. McDuffie directed that the report be received and filed.

At this point in time, Mr. Emminger joined the meeting.

Review of 2024 Proposed Budget. Ms. Abidi reviewed the proposed/draft 2024 budget. Ms. McDuffie directed that the report be received and filed.

95 Perry Street Lease Renewal. Mr. Cappellino described the 95 Perry Street lease assignment and amendment, and sub-sublease amendment agreement with BUDC relating to the Agency's rental of office space at 95 Perry Street, Buffalo New York.

Mr Poloncarz moved to approve the related MOU by and between ESD and the Agency, the lease assignment/amendment by and between ESD, the Agency, and Michigan Street Development LLC, and the sub-sublease amendment by and between the Agency and BUDC and also stressed the benefits of having a "one-stop-shop" for economic development agencies, being ECIDA, BUDC, and ESD, all located at the same 95 Perry Street location. Mr. Johnson seconded the motion. Ms. McDuffie then called for the vote and the motion was unanimously approved.

Governance Committee Update. Ms. McDuffie confirmed the Governance Committee met earlier this month and approved the staff recommendation to authorize one-year extensions for all legal service providers, consistent with the Agency's professional services policy.

2023 Tax Incentive Induced/Closing Schedule. Mr. Manhard presented this report to the members. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz confirmed the Policy Committee reviewed the compliance issues and recommended that the Board approve of a local labor use waiver, as the company had an 88.3% local labor and did not reach the 90% requirements.

## INDUCEMENT RESOLUTION

IMA Life North America / IMA Life Colvin Woods, 700 Colvin Woods Parkway, Tonawanda, New York 14150. Ms. O'Keefe reviewed this proposed sales and use tax and real property tax abatement benefits project involving the construction of a new 80,000 sq. ft. facility which will include 50,000 sq. ft. of production space and 30,000 sq. ft. of office space, as well as exterior parking, truck court, and dumpster areas. The new facility will include a development laboratory, three production bays and warehouse space for the development, sale, assembly, testing and shipping of Freeze Dryers for the pharmaceutical sector. It will also include corporate office space and be positioned to service as the North America headquarters for IMA Group.

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it 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 \$23,422,752 (which represents the product of 85% multiplied by \$27,556,179, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 120 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
  - the number of current FTE employees in the then current year at the Facility; and
  - that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 145 FTE employees [representing the sum of (x) 120 Baseline FTE and (y) 25 FTE employees, being the product of 85% multiplied by 30 (being the 30 new FTE employee positions proposed to be created by the Company as stated in its Application)]. 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. Emminger spoke in favor of the project. Ms. Abbott also spoke in favor of the project.

Mr. Emminger then moved to approve the Project and Mr. Kulpa seconded to approve of the Project.

Mr. Poloncarz spoke in favor of the Project.

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 IMA LIFE NORTH AMERICA, INC., 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) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

## COMPLIANCE MATTERS

Life Technologies Corporation – Local Labor Waiver. Mr. Cappellino reviewed the Life Technologies local labor waiver request, to approve of the 88.3% local labor usage, as Life Technologies was unable to meet the 90% local labor usage requirement due to COVID-19 labor challenges in 2020 and 2021 and because its required use of certified labor that did not reside locally.

Mr. Cappellino confirmed the ECIDA Local Labor Policy does allow the Board to grant waivers based on the foregoing reasons cited by Life Technologies. It was noted that the Policy Committee recommended to the Board approval of the waiver request. Mr. Lipsitz described the rationale behind granting the waiver. Mr. Poloncarz moved, and Mr. Blue seconded to approve the Local Labor Policy waiver for Life Technologies. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION AUTHORIZING A WAIVER OF THE LOCAL LABOR  
WORKFORCE CERTIFICATION POLICY AS APPLICABLE TO THE LIFE  
TECHNOLOGIES CORPORATION

## MANAGEMENT TEAM REPORTS

Mr. Cappellino provided the report to members.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:43 p.m.

Dated: September 27, 2023

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Elizabeth A. O'Keefe, Secretary

**Erie County Industrial Development Agency**  
**Financial Statements**  
As of September 30, 2023

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")**

**Balance Sheet**  
September 30, 2023

	<b>September 2023</b>	<b>August 2023</b>	<b>December 2022</b>
<b>ASSETS:</b>			
Cash *	\$ 7,255,087	\$ 7,570,251	\$ 7,475,718
Restricted Cash & Investments *	17,765,738	17,713,883	20,449,260
Due from Affiliates	3,089,859	3,193,346	471,011
Due from Buffalo Urban Development Corp.	89,340	77,323	106,016
Other Receivables	105,265	107,949	94,679
<b>Total Current Assets</b>	<u>28,305,289</u>	<u>28,662,752</u>	<u>28,596,683</u>
Grants Receivable	2,591,378	2,347,736	644,183
Lease Receivable	479,112	497,424	643,927
Venture Capital Investments, net of reserves	506,886	506,886	506,886
Capital Assets	975,788	998,078	1,166,361
<b>Total Long-Term Assets</b>	<u>4,553,164</u>	<u>4,350,124</u>	<u>2,961,357</u>
<b>TOTAL ASSETS</b>	<u>\$ 32,858,453</u>	<u>\$ 33,012,876</u>	<u>\$ 31,558,040</u>
<b>LIABILITIES &amp; NET ASSETS</b>			
Accounts Payable & Accrued Exp.	\$ 203,759	\$ 185,348	\$ 188,859
Lease Payable	-	14,021	126,166
Deferred Revenues	2,390,478	2,241,114	643,647
Funds Held on Behalf of Others	9,443,897	9,770,348	9,317,525
<b>Total Liabilities</b>	<u>12,038,134</u>	<u>12,210,831</u>	<u>10,276,196</u>
Deferred Inflows of Resources Related to Leases	479,112	497,424	643,927
Net Assets	<u>20,341,207</u>	<u>20,304,621</u>	<u>20,637,917</u>
<b>TOTAL LIABILITIES &amp; NET ASSETS</b>	<u>\$ 32,858,453</u>	<u>\$ 33,012,876</u>	<u>\$ 31,558,040</u>

\* Cash and restricted cash is invested in checking accounts at M&T Bank. The maximum FDIC insured amount = \$250,000 with the remainder of the cash balance collateralized with government obligations by the financial institution.



**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")**

**Income Statement**

Month of September 2023

	<b>Actual vs. Budget</b>		
	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
<b>REVENUES:</b>			
Administrative Fees	\$ 64,554	\$ 150,000	\$ (85,446)
Management Fees - Affiliates and Others	37,008	50,392	(13,383)
Interest Income - Cash & Investments	38,473	500	37,973
Interest Income - Leases	2,704	-	2,704
Rental Income	122,330	128,967	(6,637)
Other Income	11,028	6,500	4,528
<b>Total Revenues</b>	<b>276,097</b>	<b>336,358</b>	<b>(60,262)</b>
<b>EXPENSES:</b>			
Salaries & Benefits	\$ 163,039	\$ 169,800	\$ (6,760)
General Office Expenses	29,525	23,267	6,259
Building Operating Costs	4,916	21,170	(16,254)
Professional Services	7,122	5,833	1,289
Public Hearings & Marketing	7,434	5,417	2,017
Travel, Mileage & Meeting Expenses	2,322	3,083	(761)
Other Expenses	1,811	729	1,082
<b>Total Expenses</b>	<b>216,170</b>	<b>229,299</b>	<b>(13,129)</b>
<b>SPECIAL PROJECT GRANTS:</b>			
Revenues	\$ 98,882	\$ 48,209	\$ 50,673
Expenses	(99,932)	(42,526)	(57,406)
	(1,050)	5,683	(6,733)
<b>NET INCOME/(LOSS) BEFORE OTHER STRATEGIC INVESTMENTS &amp; DEPRECIATION:</b>			
	<b>58,877</b>	<b>112,742</b>	<b>(53,866)</b>
<b>OTHER STRATEGIC INVESTMENTS AND INITIATIVES:</b>			
Bethlehem Steel Industrial Park Grant	-	-	-
Angola Ag Park Grant	-	(8,333)	8,333
Other Strategic Initiatives	-	-	-
	-	(8,333)	8,333
<b>NET INCOME/(LOSS) BEFORE DEPRECIATION:</b>			
	<b>58,877</b>	<b>104,409</b>	<b>(45,532)</b>
Depreciation and amortization	(22,290)	(10,000)	(12,290)
<b>NET INCOME/(LOSS):</b>	<b>\$ 36,587</b>	<b>\$ 94,409</b>	<b>\$ (57,822)</b>

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")**

**Income Statement**

Year to Date: September 30, 2023

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
<b>REVENUES:</b>						
Administrative Fees	\$ 1,327,893	\$ 1,350,000	\$ (22,107)	\$ 1,327,893	\$ 1,110,244	\$ 217,648
Affiliate Management Fees	354,925	453,525	(98,600)	354,925	402,825	(47,900)
Interest Income - Cash & Investments	261,825	4,500	257,325	261,825	7,695	254,131
Interest Income - Leases	24,338	-	24,338	24,338	-	24,338
Rental Income	271,633	300,700	(29,067)	271,633	283,839	(12,206)
Other Income	32,376	27,000	5,376	32,376	22,268	10,109
<b>Total Revenues</b>	<b>2,272,990</b>	<b>2,135,725</b>	<b>137,265</b>	<b>2,272,990</b>	<b>1,826,870</b>	<b>446,120</b>
<b>EXPENSES:</b>						
Salaries & Benefits	1,534,101	1,528,197	5,904	1,534,101	1,483,536	50,565
General Office Expenses	224,369	209,400	14,969	224,369	210,004	14,365
Building Operating Costs	37,319	190,534	(153,215)	37,319	166,543	(129,225)
Professional Services	73,282	81,500	(8,218)	73,282	162,808	(89,526)
Public Hearings & Marketing	54,400	48,750	5,650	54,400	48,494	5,906
Travel, Mileage & Meeting Expenses	16,211	27,750	(11,539)	16,211	10,898	5,313
Other Expenses	192,545	6,563	185,982	192,545	7,516	185,028
<b>Total Expenses</b>	<b>2,132,227</b>	<b>2,092,693</b>	<b>39,534</b>	<b>2,132,227</b>	<b>2,089,800</b>	<b>42,427</b>
<b>SPECIAL PROJECT GRANTS:</b>						
Revenues	424,740	433,881	(9,142)	424,740	762,907	(338,167)
Expenses	(347,294)	(382,731)	35,437	(347,294)	(572,738)	225,444
	<b>77,445</b>	<b>51,150</b>	<b>26,295</b>	<b>77,445</b>	<b>190,168</b>	<b>(112,723)</b>
<b>NET INCOME/(LOSS) BEFORE OTHER STRATEGIC INVESTMENTS &amp; DEPRECIATION:</b>	<b>\$ 218,208</b>	<b>\$ 94,182</b>	<b>\$ 124,027</b>	<b>\$ 218,208</b>	<b>\$ (72,761)</b>	<b>\$ 290,969</b>
<b>OTHER STRATEGIC INVESTMENTS AND INITIATIVES:</b>						
Zero Net Energy costs (Z7+)	\$ -	\$ (469,437)	\$ 469,437	\$ -	\$ -	\$ -
Bethlehem Steel Industrial Park Grant	(164,061)	-	(164,061)	(164,061)	(8,055)	(156,007)
Angola Ag Park Grant	(46,270)	(100,000)	53,730	(46,270)	(49,183)	2,913
Bethlehem Steel Industrial Park Grant Reimb	-	150,000	(150,000)	-	103,625	(103,625)
Buffalo Urban Development Corporation	-	(100,000)	100,000	-	-	-
Other Strategic Initiatives	(103,975)	(125,000)	21,025	(103,975)	(75,000)	(28,975)
	<b>(314,306)</b>	<b>(644,437)</b>	<b>330,131</b>	<b>(314,306)</b>	<b>(28,613)</b>	<b>(285,694)</b>
<b>NET INCOME/(LOSS) BEFORE DEPRECIATION:</b>	<b>(96,098)</b>	<b>(550,256)</b>	<b>454,158</b>	<b>(96,098)</b>	<b>(101,374)</b>	<b>5,276</b>
Depreciation and amortization	(200,611)	(90,000)	(110,611)	(200,611)	(90,000)	(110,611)
<b>NET INCOME/(LOSS):</b>	<b>\$ (296,709)</b>	<b>\$ (640,256)</b>	<b>\$ 343,547</b>	<b>\$ (296,709)</b>	<b>\$ (191,374)</b>	<b>\$ (105,335)</b>

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)  
 BUFFALO & ERIE COUNTY REGIONAL DEVELOPMENT CORP (RDC)  
 BUFFALO & ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORP (ILDC)**

**2024 Budget Review Process**

<b>Date</b>	<b>Description</b>	
July-August	Review of draft 2024 budgets by ECIDA management. (a) Prioritize any proposed budget requests for initiatives. (b) Formal budget requests compiled.	✓
August 17	Finance & Audit Committee meeting – initial review and discussion of proposed budgets.	✓
September 21	Finance & Audit Committee meeting to discuss any updates/recommend proposed budgets to Boards.	✓
September 27	Review of 2024 proposed budgets at Board meetings.	✓
October 4 10:00 am	Board Q&A budget session #1 <u>in person</u> (voluntary).	✓
October 10 9:00 am	Board Q&A budget session #2 <u>via Zoom</u> (voluntary).	✓
October 25	Board meetings – action to approve final 2024 budgets.	
November 1	Deadline for final approved budgets to be submitted to the ABO.	

**Erie County Industrial Development Agency**  
**Proposed 2024 Budget**

***Erie County Industrial Development Agency (ECIDA)***  
**2024 Budget + 3 Year Forecast**

**A. Overview of Changes in 2024 Budget**

Presented herein is the projected operating budget for the Erie County Industrial Development Agency's ("ECIDA") year ending December 31, 2024 and a three-year forecast for 2025–2027.

The ECIDA is a not-for-profit, public benefit corporation that provides tax incentives, financing programs and economic development services to Buffalo and Erie County. In accomplishing its mission, ECIDA does not receive any operational funding from Federal, State, County or local sources. Instead, the key source of revenue for the ECIDA is the administrative fees charged to those companies that utilize its various products and services. The income that the ECIDA generates is utilized to provide salaries to its professional staff for managing various economic development programs, as well as payments for professional fees, general office expenses, public notices/marketing, building costs and other miscellaneous expenses.

For the year ending December 31, 2024, the Agency is projecting a net loss from operations of \$103,900. Depreciation and amortization, noncash expenses, are estimated at \$270,000 and brings the budgeted operating loss to \$373,900. There is also a net of \$25,000 budgeted for external projects, most of which will be funded with existing UDAG funds, rather than operating cash. After reserving \$1,000,000 for future projects the potential net loss for 2024 is \$1,398,900. Most of the budgeted loss would come from existing UDAG funds that have accumulated over several years.

The following significant risk factors may impact the 2024 results:

1. A significant portion of the ECIDA's administrative fee income is derived from a few large tax incentives and/or tax-exempt bond projects. The Agency does not collect a fee until the project (usually construction) is started, since many factors affect project timing. Depending on the timing of these projects, the Agency's fee income can fluctuate significantly from year to year.
2. Changes in the overall national and/or regional economy could result in a decrease in local investment projects that are assisted by the Agency, resulting in a corresponding decrease in administrative fee income.

The following information details the key changes in the 2024 budget compared to the 2023 projected revenues and expenses:

## *Erie County Industrial Development Agency (ECIDA)* 2024 Budget + 3 Year Forecast

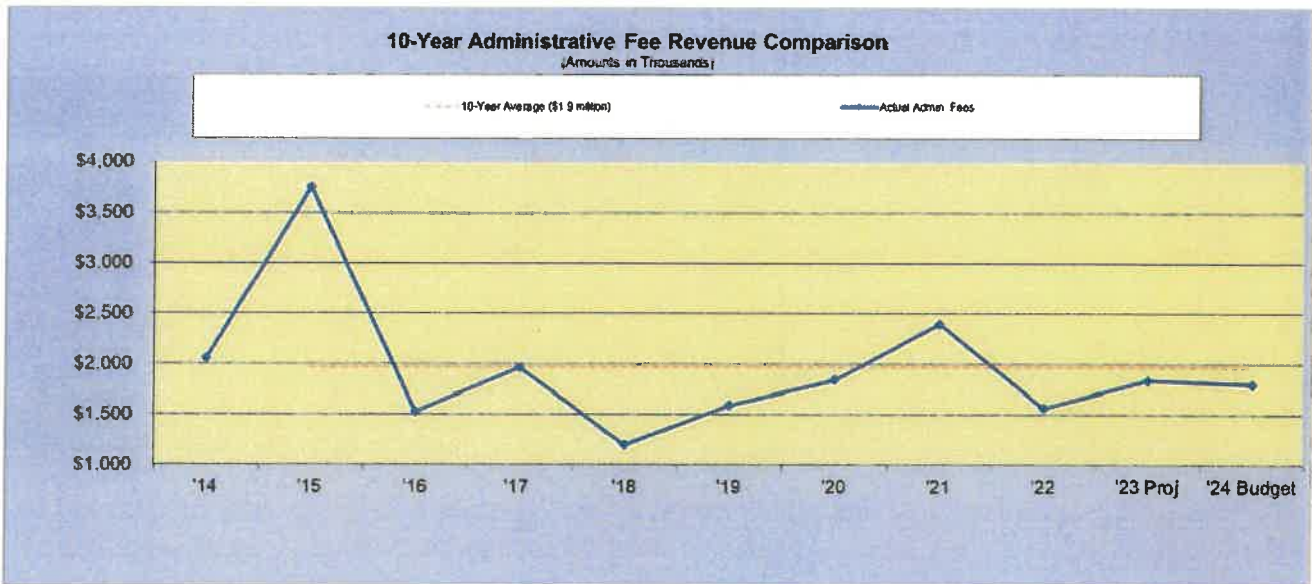
### A. Overview of Changes in 2024 Budget (continued)

#### Revenues:

##### *Administrative Fees (2024 Budget - \$1.8 million):*

Administrative fees primarily consist of fees earned by the ECIDA through the provision of tax abatements. During 2023, administrative fees included projects such as Moog in Elma and Renaissance 6 LLC for the construction of industrial space at Renaissance Commerce Park in Lackawanna. Additionally, the Agency has closed on one bond issuance in 2023, which resulted in fees collected of \$330,000. Two additional bonds are expected to close before the end of 2023 with estimated fees totaling \$300,000. Since some fees are recognized over multiple years (in accordance with the terms of the related fee agreements), the Agency expects to recognize approximately \$840,000 of fees in 2024 related to prior year project approvals. The budgeted figure of \$1.8 million was derived using the 2014-2023 10-year average.

The following chart summarizes the actual administrative fee revenue over the past 10 years compared to the average administrative fee for the 10-year period from 2014-2023:



***Erie County Industrial Development Agency (ECIDA)***  
**2024 Budget + 3 Year Forecast**

**A. Overview of Changes in 2024 Budget (continued)**

***Affiliate Management Fees (increasing 2.1% from \$334,700 to \$341,700):***

Affiliate Management Fees represent salary, benefit, and facilities costs charged to ECIDA's affiliated companies (RDC & ILDC) for office space and services that ECIDA employees provide to these organizations, since they have no employees of their own. Charges to ILDC relate to the Erie County Business Development Fund (BDF) microloan fund only. Time related to land development is supported by ECIDA, although property is owned by ILDC. Affiliate management fees are expected to increase in 2024 due to increases in employee salaries and benefit costs.

***Management Fees – BUDC (increasing 1.6% from \$128,000 to \$130,000):***

Management Fees – BUDC are salaries and benefit costs charged to Buffalo Urban Development Corporation (“BUDC”) and its affiliates for services that ECIDA employees provide. ECIDA provides financial reporting, facilities management, and administrative services to BUDC as part of a shared services agreement. Management fees are expected to increase slightly in 2024 due to increased salaries and benefits costs for employees who charge hours to BUDC and its affiliates.

***Rental Income (increasing 0.3% from \$327,300 to \$328,200):***

Rental Income represents rent received by ECIDA from BUDC for office space, two facilities owned by ECIDA and other smaller agreements. Rent for leased space at 143 Genesee Street is recognized as a combination of rent revenue and interest income related to the lease, with the lease agreement in place through July 2027. Rent received from the Port Terminal management agreement of \$103,987 in 2023 is budgeted at \$107,000 in 2024 based on projections from the management company.

**Expenses:**

***Salaries & Benefits (increasing 13.0% from \$2.06 million to \$2.33 million):***

The increase in the 2024 budgeted salaries and benefits compared to the projected 2023 figures is due to several factors. ECIDA plans to hire an additional employee to assist with the compliance function. Salary increases and a potential performance incentive pool calculated at 4% of total salaries are also included in the budget. Compensation increases are based on an independent compensation study of ECIDA employees, comparing Agency employee salaries with other individuals in the local labor market who have similar titles and responsibilities. These adjustments, if any, will also be reviewed and approved by the ECIDA Board Compensation Committee for Executive Management and by the CEO for other staff. Annual rate increases for health care also contributes to higher employee benefit costs. Professional development and training costs are also included in this category. As an organization of specialized professionals, salaries and benefits account for 80% of 2024 budgeted operating expenses.

***General Office Expenses (decreasing 13.4% from \$159,500 to \$138,100):***

The decrease in 2024 budgeted general office expenses compared to the projected 2023 figures is due mainly to a decrease in budgeted telephone and internet costs. Telephone and internet expense for 2023 is projected to be \$57,370, while we are budgeting \$39,100 for 2024. This is due to a change in providers for both telephone and internet during 2023, resulting in a cost savings. Other expenses included in this line item are information technology expenses, membership dues and subscriptions, office supplies and copier expense.

***Erie County Industrial Development Agency (ECIDA)***  
**2024 Budget + 3 Year Forecast**

**A. Overview of Changes in 2024 Budget (continued)**

***Building Operating Costs (increasing 9.1% from \$63,600 to \$69,400):***

Building operating costs include costs related to ECIDA’s office at 95 Perry Street (rent and interest expense associated with the lease, parking) and the ECIDA-owned building at 143 Genesee Street (property taxes, maintenance, etc.). Costs associated with ECIDA’s office lease are recognized as a liability and intangible right-to-use asset in accordance with GASB Statement No. 87, *Leases*. As a result, cash outflows will differ from expense recorded. ECIDA’s current office sublease expires in 2023, and management is budgeting for a higher per square foot cost.

***Professional Services (increasing 6.6% from \$94,200 to \$100,400):***

Professional Services consist of the following:

	<b>2024 Budget</b>	<b>2023 Budget</b>	<b>2023 Projection</b>
Legal	\$45,000	\$45,000	\$35,500
Consultants	\$25,000	\$25,000	\$29,700
Auditing	\$30,400	\$29,000	\$29,000
<b>Total</b>	<b>\$100,400</b>	<b>\$99,000</b>	<b>\$94,200</b>

In 2024, legal expenses are budgeted at \$45,000, consistent with the 2023 budget. Consultant expenses are budgeted at \$25,000. 2023 consultant costs are projected higher than budget due to services related to a railroad grant application that were unbudgeted. Audit costs are in accordance with current proposals.



***Erie County Industrial Development Agency (ECIDA)***  
**2024 Budget + 3 Year Forecast**

**B. External Special Projects & Reserves for Future Projects**

The ECIDA’s 2024 budget currently includes \$175,000 for external projects and \$1 million allocated for potential future projects that are consistent with the ECIDA’s strategic plan and the restrictions on the UDAG and/or General Funds as follows:

Project	2024 Budget	2023 Budget	2023 Projection
<b>External Special Projects</b>	\$ 175,000	\$ 225,000	\$ 175,000
<b>Industrial Land Park Grant</b>	100,000	-	200,000
<b>Angola Ag Park Grant</b>	50,000	100,000	50,000
<b>Other Special projects</b>	-	671,319	69,500
<b>Reserves for Future Projects:</b>			
Venture Capital Co-Investment	-	1,000,000	-
Forgivable Attraction Loan	1,000,000	1,000,000	-
<b>Total</b>	<b>\$ 1,325,000</b>	<b>\$ 2,946,319</b>	<b>\$ 494,500</b>

External Special Project allocations of \$175,000 include organizations that have received funding in the past, such as Buffalo’s Race for Place spearheaded by BUDC (\$100,000) and the Agency’s annual membership expenditure with Invest Buffalo Niagara (\$75,000). These items will not require specific Board action to be expended.

\$100,000 is budgeted for Industrial Land Park, representing anticipated carrying costs related to Renaissance Commerce Park in 2024. \$50,000 is budgeted for Angola Ag Park, representing one-sixth of the estimated carrying costs approved by the Board. The Reserves for Future Projects of \$1 million are discussed on the following pages and would also require Board approval prior to funding.

***Erie County Industrial Development Agency (ECIDA)***  
**2024 Budget + 3 Year Forecast**

**B. Special Projects & ECIDA Program Allocations (continued)**

**Forgivable Attraction Loan(s)** **\$1,000,000**

**Qualification** – Businesses must be relocating to a HUD-defined distressed area or meet other HUD qualifications and provide a significant regional impact in terms of investment and/or job creation.

**The Issue** – Currently a number of communities across the nation are aggressively pursuing businesses to entice them to their region. One vehicle that communities have used to tip the relocation decision in their favor is the use of a high-impact project expenditure fund. Until 2013, the Buffalo region did not have such a program, while neighboring states were offering these programs with positive results, to Erie County’s detriment.

**The Proposal** – The ECIDA would continue to fund a forgivable attraction loan fund that could aid in the attraction of key new businesses that would have a regional employment or investment impact. The attraction incentive would be structured in the form of a loan, with a portion or all of it forgiven if the company establishes their business in Erie County and meets specified investment and/or job goals. The ECIDA would work with Invest Buffalo Niagara to offer this incentive to those businesses that are the most promising and/or target the attraction loan to specific industries or regions (such as Southern Ontario). By providing this incentive, the Buffalo region would be perceived as demonstrating the community’s support for the business relocation and could be the tipping point that leads to the relocation of the business as well as related “follow on” investments.

**Use of Funds** – To make project expenditures to companies located outside of Western New York to offset a portion of their investment costs in relocating. Companies assisted would be in one of the regional targeted industry sectors and have a regional employment or investment impact. The program would have a targeted maximum incentive of \$25,000 per job created.

**Partners** – Invest Buffalo Niagara

**Approval** – The ECIDA Board would approve all awards under this program.

**Consistency with Community Plans** – This strategy is consistent with the County Executive’s “Initiatives for a Smart Economy 2.0” which states: *“Projects assisted by the ECIDA will be those that bring outside investment and self-sustaining jobs to Erie County while strengthening the regional economic base, helping to create a more inclusive economy and leading to population stabilization throughout the area”*.

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")**  
**Proposed Budget for 2024**

	Proposed Budget 2024	Approved Budget 2023	Projected 2023	Actual 2022
<b>REVENUES:</b>				
Administrative Fees	\$ 1,800,000	\$ 1,800,000	\$ 1,840,000	\$ 1,656,279
Affiliate Management Fees	341,700	499,700	334,700	468,192
Management Fees - BUDC	130,000	105,000	128,000	98,018
Rental Income	328,200	365,100	327,254	308,450
Other Income	34,000	34,000	42,028	29,125
Interest Income - Cash & Investments	125,000	6,000	335,029	59,598
Interest Income - Leases	33,500	-	32,450	42,673
Total Revenues	2,792,400	2,809,800	3,039,461	2,662,335
<b>EXPENSES:</b>				
Salaries & Benefits	2,327,850	2,095,500	2,060,680	1,999,345
General Office Expenses	138,100	179,200	159,458	140,514
Insurance Expense	110,000	100,000	104,458	96,611
Building Operating Costs	69,400	254,045	63,627	68,826
Professional Services	100,400	99,000	94,193	166,759
Marketing, Promotion & Public Hearings	95,000	65,000	98,849	115,421
Travel, Mileage & Meeting Expenses	37,000	37,000	20,833	14,782
Website Compliance & Design	10,000	-	-	-
Other Expenses	16,750	8,750	189,262	99,984
Total Expenses	2,904,500	2,838,495	2,791,360	2,702,242
<b>GRANT INCOME:</b>				
Revenues	2,439,804	831,893	327,858	862,085
Expenses	(2,431,604)	(823,693)	(279,496)	(663,042)
	8,200	8,200	48,362	199,042
<b>NET INCOME (LOSS) BEFORE DEPRECIATION, EXTERNAL SPECIAL PROJECTS AND OTHER RESERVES:</b>				
	<b>(103,900)</b>	<b>(20,495)</b>	<b>296,462</b>	<b>159,135</b>
Depreciation and amortization	(270,000)	(120,000)	(267,482)	(258,776)
<b>NET INCOME (LOSS) BEFORE EXTERNAL SPECIAL PROJECTS AND OTHER RESERVES:</b>				
	<b>(373,900)</b>	<b>(140,495)</b>	<b>28,981</b>	<b>(99,641)</b>
<b>External Special Projects:</b>				
Buffalo Race for Place (BUDC)	100,000	100,000	100,000	100,000
Annual Membership (IBN)	75,000	75,000	75,000	75,000
Industrial Land Park grant paid	100,000	-	200,000	8,055
ILDC Land Sale Proceeds (reimbursement)	(300,000)	(150,000)	(276,250)	(103,625)
Angola Ag Park grant paid	50,000	100,000	50,000	49,183
Other Special Projects	-	671,319	69,500	-
Total Special Projects	25,000	796,319	218,250	128,613
<b>NET INCOME (LOSS) BEFORE OTHER RESERVES:</b>				
	<b>(398,900)</b>	<b>(936,814)</b>	<b>(189,269)</b>	<b>(228,254)</b>
<b>Reserves for Future Projects:</b>				
Venture Capital Co-Investment	-	1,000,000	-	-
Forgivable Attraction Loan(s)	1,000,000	1,000,000	-	-
Total Other Reserves	1,000,000	2,000,000	-	-
<b>NET INCOME (LOSS):</b>				
	<b>\$ (1,398,900)</b>	<b>\$ (2,936,814)</b>	<b>\$ (189,269)</b>	<b>\$ (228,254)</b>

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")**  
**Proposed Budget and Three Year Forecast 2025-2027**

	Proposed Budget 2024	Forecast 2025	Forecast 2026	Forecast 2027
<b>REVENUES:</b>				
Administrative Fees	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000	\$ 1,800,000
Affiliate Management Fees	341,700	352,000	363,000	374,000
Management Fees - BUDC	130,000	134,000	138,000	142,000
Rental Income	328,200	328,200	328,200	328,200
Other Income	34,000	40,000	40,000	40,000
Interest Income - Cash & Investments	125,000	129,000	133,000	137,000
Interest Income - Leases	33,500	35,000	36,000	37,000
Total Revenues	2,792,400	2,818,200	2,838,200	2,858,200
<b>EXPENSES:</b>				
Salaries & Benefits	2,327,850	2,374,000	2,421,000	2,494,000
General Office Expenses	138,100	142,000	146,000	150,000
Insurance Expense	110,000	113,000	116,000	119,000
Building Operating Costs	69,400	71,000	73,000	75,000
Professional Services	100,400	103,000	106,000	109,000
Marketing, Promotion & Public Hearings	95,000	98,000	101,000	104,000
Travel, Mileage & Meeting Expenses	37,000	38,000	39,000	40,000
Website Compliance & Design	10,000	-	-	-
Other Expenses	16,750	17,000	18,000	19,000
Total Expenses	2,904,500	2,956,000	3,020,000	3,110,000
<b>GRANT INCOME:</b>				
Revenues	2,439,804	250,000	250,000	250,000
Expenses	(2,431,604)	(250,000)	(250,000)	(250,000)
	8,200	-	-	-
<b>NET INCOME (LOSS) BEFORE DEPRECIATION, EXTERNAL SPECIAL PROJECTS AND OTHER RESERVES:</b>				
	(103,900)	(137,800)	(181,800)	(251,800)
Depreciation and amortization	(270,000)	(260,000)	(260,000)	(260,000)
<b>NET INCOME (LOSS) BEFORE EXTERNAL SPECIAL PROJECTS AND OTHER RESERVES:</b>				
	(373,900)	(397,800)	(441,800)	(511,800)
<b><u>External Special Projects and Strategic Initiatives:</u></b>				
Buffalo Race for Place (BUDC)	100,000	100,000	100,000	100,000
Annual Membership (IBN)	75,000	75,000	75,000	75,000
Industrial Land Park grant paid	100,000	100,000	100,000	100,000
ILDC Land Sale Proceeds (reimbursement)	(300,000)	(150,000)	(150,000)	(150,000)
Angola Ag Park grant paid	50,000	50,000	50,000	50,000
Total Special Projects	25,000	175,000	175,000	175,000
<b>NET INCOME (LOSS) BEFORE OTHER RESERVES:</b>				
	(398,900)	(572,800)	(616,800)	(686,800)
<b><u>Reserves for Future Projects:</u></b>				
Forgivable Attraction Loan(s)	1,000,000	-	-	-
Total Other Reserves	1,000,000	-	-	-
<b>NET INCOME (LOSS):</b>				
	\$ (1,398,900)	\$ (572,800)	\$ (616,800)	\$ (686,800)

**Erie County Industrial Development Agency**  
**Five Year Capital Budget 2024-2028**

	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>Total</b>
<b>Facilities:</b>						
143 Genesee Street	\$ 20,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 80,000
95 Perry Street	180,000	5,000	5,000	5,000	5,000	200,000
<b>Total Facilities</b>	<b>200,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>	<b>20,000</b>	<b>280,000</b>
<b>Information Technology:</b>						
Servers	-	12,000	-	-	12,000	24,000
Infrastructure Upgrade	4,500	-	-	-	-	4,500
Misc.	3,000	3,000	3,000	3,000	3,000	15,000
<b>Total Information Technology</b>	<b>7,500</b>	<b>15,000</b>	<b>3,000</b>	<b>3,000</b>	<b>15,000</b>	<b>43,500</b>
<b>GRAND TOTAL</b>	<b>\$ 207,500</b>	<b>\$ 35,000</b>	<b>\$ 23,000</b>	<b>\$ 23,000</b>	<b>\$ 35,000</b>	<b>\$ 323,500</b>

**Tax Incentives Approved - 2023**

Approval Date	Project Name	Project City/Town	Private Investment/Project Amount	Minimum Investment Commitment	FT Jobs Retained	PT Jobs Retained	FT Jobs to be Created	PT Jobs to be Created	Job Creation	Const Jobs	Spillover Jobs	Length of Term	Incentive Amount	Cost Benefit Ratio
Feb-23	356 Hertel Ave, LLC <sup>1</sup>	Buffalo	\$32,067,800	85% threshold \$27,257,630	0	0	42	0	85% - New 35 Jobs	212	150	project completion date + 2 yrs Period of PILOT	\$612,500	1:47
Feb-23	Commitment 2000	Buffalo	\$8,623,800	85% threshold \$7,330,230	74	2	10	2	85% - New 35 Jobs	38	38	7 Years	\$420,215	1:89
Mar-23	Moog, Inc.	Elma	\$76,750,800	85% threshold \$65,237,500	180	0	0	0	0	335	320	Period of PILOT 10 Years	\$2,900,920	1:97
Apr-23	Wood and Brooks Properties, LLC <sup>1</sup>	Town of Tonawanda	\$23,127,638	85% threshold \$19,658,492	0	0	1	2	85% - New 1 Job	161	92	project completion date + 2 yrs	\$1,164,447	1:14
May-23	TM Montame/50 Gates Circle <sup>1</sup>	Buffalo	\$3,465,838	85% threshold \$2,945,962	4	0	0	0	0	14	14	project completion date + 2 yrs	\$108,500	1:29
Jun-23	Rosina Food Products, Inc.	West Seneca	\$16,000,000	85% threshold \$13,600,000	274	2	15	0	85% - New 15 Jobs	70	536	Period of PILOT 10 Years	\$919,525	1:446
Jun-23	Stark Real Estate Holdings	Tonawanda	\$16,250,000	85% threshold \$2,945,962	50	0	120	10	85% - New 106 Jobs	43	257	project completion date + 2 yrs	\$454,375	1:854
Jul-23	BPS Commissary Kitchen	Buffalo	\$33,067,799	85% threshold \$28,107,629	16	35	0	15	85% - New 12 Jobs	151	137	Period of PILOT 10 Years	\$3,212,686	1:15
Jul-23	Trautman Associates/130 Pearl, LLC <sup>1</sup>	Buffalo	\$5,477,047	85% threshold \$4,655,489	0	0	0	2	0	36	19	project completion date + 2 yrs	\$153,750	1:21
Sep-23	IIMA Life North America	Tonawanda	\$27,566,179	85% threshold \$23,422,752	120	0	30	0	85% - New 25 Jobs	110	356	Period of PILOT 10 Years	\$3,208,568	1:87

Totals:	Totals:	Private Investment/Project Amount	FT Jobs Retained	PT Jobs Retained	FT Jobs Created	PT Jobs Created	Const Jobs	Spillover Jobs	Incentive Amount
Adaptive Reuse Subtotal	4	\$64,138,323	4	0	43	4	423	275	\$2,039,197
2023 Total	9	\$242,396,901	718	39	218	31	1170	1919	\$19,155,486

<sup>1</sup> Adaptive Reuse

## Tax Incentives Closed - 2023

Closing Date	Project Name	Project City/Town	Project Amount at Closing	FT Jobs Retained	PT Jobs Retained	FT Jobs to be Created	PT Jobs to be Created	Inducement Date	Est. Project Completion Date
2/17/2023	Warehouse #2 @132 Dingens	Buffalo	\$8,951,635	0	0	18	0	12/21/2022	4/30/2023
3/1/2023	Great Point Studios Buffalo	Buffalo	\$15,318,753	0	0	17	0	8/26/2020	12/31/2023
3/28/2023	BLD VII, LLC/Renissance 8, LLC	Lackawanna	\$14,570,786	0	0	41	0	4/28/2021	10/31/2023
4/12/2023	Perry's Ice Cream Alden NY Shop/Highway Rehab	Akron	\$18,000,000	363	0	14	0	7/27/2022	12/31/2023
6/2/2023	Corporation	Alden	\$5,225,000	67	0	15	0	12/21/2022	12/31/2023
6/16/2023	950 Broadway	Buffalo	\$11,653,862	0	0	34	4	9/28/2022	9/16/2023
8/31/2023	10 Dona Street/Renaissance 6, LLC	Lackawanna	\$15,906,429	0	0	41	0	11/30/2022	1/31/2025

**Totals:**      **Total # of Projects Closed**      **Project Amount at closing**      **FT Jobs Retained**      **PT Jobs Retained**      **FT Jobs Created**      **PT Jobs Created**

	7		\$89,626,465	430	-	180	4		
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**MEMORANDUM**

**Date:** October 25, 2023

**To:** Erie County Industrial Development Agency Board of Directors

**From:** ECIDA Staff

**Re:** Engineering Services for the WYE Yard Rail Relocation Project at Renaissance Commerce Park

**Summary:**

The Erie County Industrial Development Agency (“ECIDA”) issued a Request for Qualifications (“RFQ”) on July 7, 2023, seeking a qualified Architectural and Engineering (“A/E”) firms to provide design and engineering services for the removal of existing rail adjacent to New York State Route 5 and the expansion of rail service and improvements on the Tecumseh Redevelopment Inc. (“Tecumseh”) property (AKA former Bethlehem Steel Site, AKA Renaissance Commerce Park). Removal of the rail encumbering the property on Renaissance Commerce Park will allow full redevelopment of the property through the Buffalo and Erie County Industrial Land Corporation (“ILDC”), part of the ECIDA group of entities. The new rail service will serve existing and potential new customers for Renaissance Commerce Park, Tecumseh, Port of Buffalo, Gateway Trade Center Inc. (“GTC”) and South Buffalo Railway (“SBR”) properties.

In response to the RFQ, ECIDA received three (3) quality proposals from highly qualified A/E firms. The proposals were thoroughly evaluated on August 16, 2023, by the six-member Consultant Selection Committee, made up of ECIDA and Erie County staff as well as project stakeholders, including a representative of SBR. Following a review of the proposals, the ECIDA/Selection Committee selected C&S Companies as the top respondent to the RFQ. As a result of the selection process, the ECIDA recommends awarding C&S Companies the project and having the firm prepare the environmental reviews, development and design activities that represent Phase I of the WYE Yard Rail Line Relocation Project. Phase I (Design) will be followed by Phase II (Construction), which will be funded, in part, by the recently secured 2023 FAST NY grant award in the amount of \$4,750,000. The Phase I project breakdown is as follows:

<i><b>Description</b></i>	<i><b>Estimated Cost</b></i>
<b>PHASE I DESIGN &amp; ENGINEERING</b>	
Pre-Development: Task 1: Environmental Site Assessment, Brownfield Coordination, Environmental Permits, NEPA, Wye Yard Material Inventory, Surveys, Geotech, Engineering Design, and Easement/License	\$ 300,000
Final Design: 100% Design & bid advertisement award, Project Administration	\$300,000
<b>TOTAL PHASE I</b>	<b>\$600,000</b>

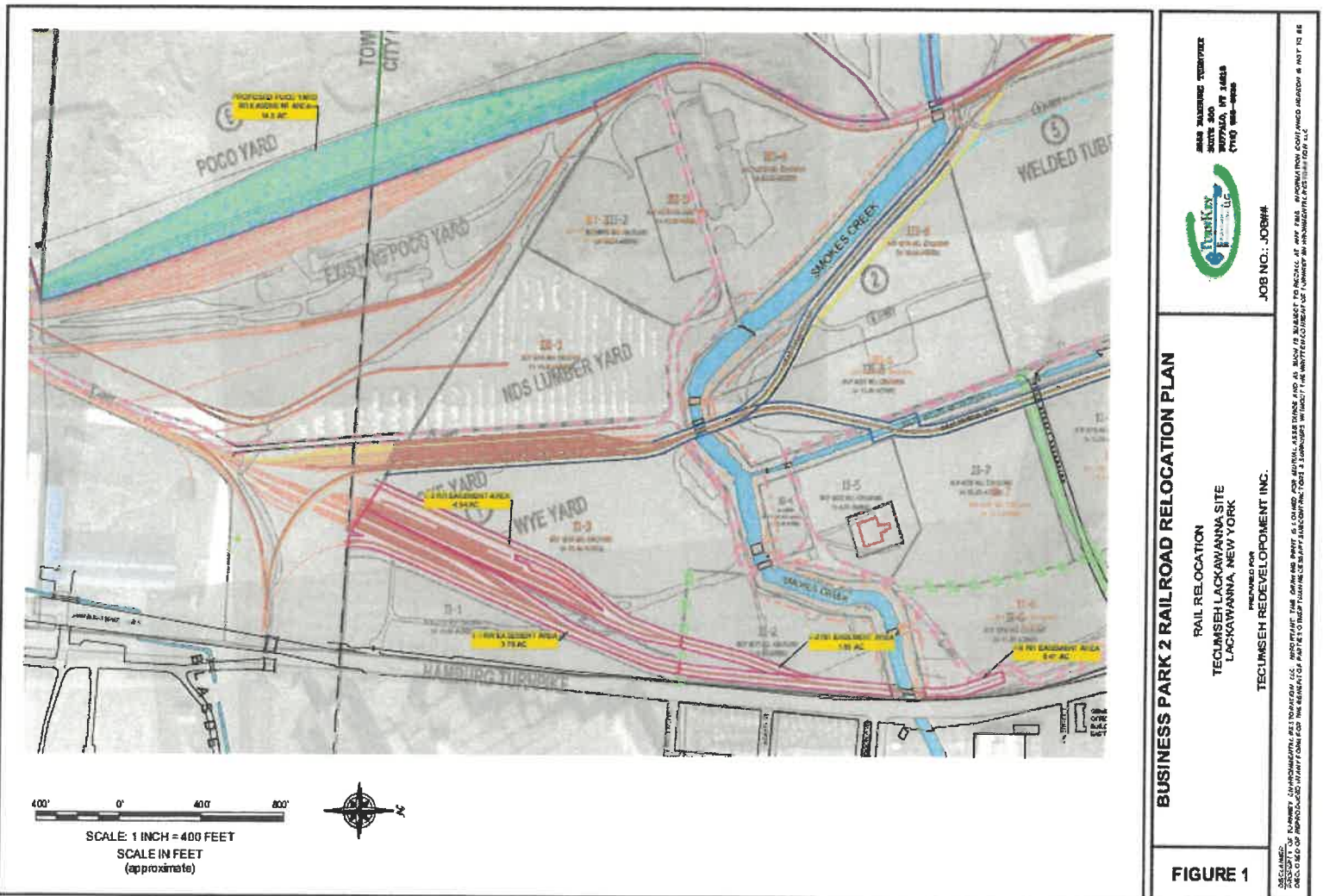


The total Phase I design and engineering costs will not exceed \$600,000, which will be provided by Erie County as specified in the Resolution of the Erie County Legislature dated March 24, 2023, being item Comm. 7E-18. A contract between Erie County and the ECIDA for Design of Railroad Infrastructure at the former Bethlehem Steel Site in the amount of \$600,000 was executed on June 2, 2023.

**Requested Action:**

Seeking approval from the ECIDA Board of Directors to contract with C&S Companies to provide design and engineering services for the removal of rail on the former WYE Yard and reconstruction of rail on the POCO Yard at Renaissance Commerce Park in Lackawanna and to take all actions necessary to implement the project as described.

**Map:**



**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**RESOLUTION**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, October 25, 2023 at 12:00 p.m.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) AUTHORIZING THE AGENCY TO ENTER INTO AN AGREEMENT WITH C&S COMPANIES (“C&S”) IN AN AMOUNT NOT TO EXCEED \$600,000 TO BE UTILIZED FOR DESIGN AND ENGINEERING SERVICES IN RELATION TO THE AGENCY’S CONTEMPLATED REMOVAL AND EXPANSION OF CERTAIN RAILWAY FACILITIES LOCATED IN THE RENAISSANCE COMMERCE PARK

**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 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**, in 2021, the Buffalo & Erie County Industrial Land Development Corporation (“ILDC”), an affiliate of the Agency, executed a Purchase Sale Agreement (the “PSA”) with Tecumseh Redevelopment, Inc. (“Tecumseh”) to acquire additional land within/adjacent to the Renaissance Commerce Park (“RCP”), which included a parcel (“Parcel No. 1”) that is partly encumbered by rail tracks (the “Railway Facilities”) owned by South Buffalo Railway Company (“SBR”); and

**WHEREAS**, to induce the ILDC’s acquisition and redevelopment of Parcel No. 1, and to preserve SBR’s continued business operations in and around the RCP, the Railroad Facilities and underlying easements need to be relocated off of Parcel No. 1 to an agreed upon site (the “Railway Facility Relocation Project”), which will facilitate the full redevelopment of Parcel No. 1 and allow the Railway Facilities to continue to serve existing and potential new customers for the RCP, Tecumseh, the Port of Buffalo, and Gateway Trade Center Inc. (“GTC”); and

**WHEREAS**, relative to same, the Agency requires design and engineering services to assist with the Railway Facility Relocation Project, including, but not limited to (i) certain site pre-development services such as an environmental site assessment, New York State Brownfield Cleanup Program (“BCP”) and National Environmental Policy Act (“NEPA”) coordination, a railway facility material inventory, surveys, engineering design, and ancillary advisement on easements, licenses, and environmental permits, as well as (ii) final design and advertisement services for Parcel No. 1 and project administration services (the “Phase I Engineering Services”); and

**WHEREAS**, the Agency issued a Request for Qualifications (“RFQ”) on July 7, 2023, seeking a qualified architectural and engineering firm (“A/E Firm”) to provide the Phase I Engineering Services; and

**WHEREAS**, in response to the RFQ, the Agency received three (3) quality responses from highly qualified A/E Firms, which were evaluated on August 16, 2023 by the Agency’s Consultant Selection Committee (the “Committee”), comprised of Agency and Erie County staff, as well as project stakeholders, including a representative of SBR; and

**WHEREAS**, following a review of the proposals, the Committee has recommended C&S as the top respondent to the RFQ, and the Agency desires to retain C&S for the Phase I Engineering Services; and

**WHEREAS**, in compliance with Article 8 of the New York Environmental Conservation Law and the regulations adopted thereto at 6 N.Y.C.R.R. Part 617 (collectively referred to as “SEQRA”), the ILDC acted as SEQRA Lead Agency and on May 27, 2020, the ILDC accepted a Draft Generic Environmental Impact Statement (the “DGEIS”) for the BSC Master Plan, on September 23, 2020, the ILDC accepted and issued a Final Generic Environmental Impact Statement (“FGEIS”) for the BSC Master Plan, and on October 28, 2020, the ILDC issued and adopted its Findings Statement for the RCP Master Plan, which, amongst other items, evaluated and authorized a conceptual master plan which contemplated the removal of the Railway Facilities (the “Findings Statement” and collectively, with the DGEIS, and the FGEIS, the “ILDC SEQRA Findings”).

**NOW THEREFORE BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:**

Section 1. Based upon a review of the Railway Facility Relocation Project and scope of Phase I Engineering Services, the Agency hereby determines that no further SEQR compliance is required pursuant to 6 N.Y.C.R.R. Section 617.10(d)(1) because the Phase I Engineering Services are merely planning services that will be carried out in conformance with the conditions and thresholds established in the ILDC SEQRA Findings.

Section 2. Subject to the terms of this Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, in consultation with Agency counsel, are hereby authorized, on behalf of the Agency, to negotiate and to enter into an agreement with C&S to provide the Phase I Engineering Services in an amount not to exceed \$600,000, along with any appropriate change orders or scope additions as approved by the President/Chief Executive Officer, in consultation with the Agency Chair, to complete the Phase I Engineering Services and to take all actions necessary to implement the Phase I Engineering Services.

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 execute and deliver all such checks, 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 so acting, desirable and proper to effect the purposes of the foregoing resolution 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. Any and all actions heretofore taken or authorized by the Agency and/or its officers, employees and agents with respect to this resolution are hereby ratified, approved and confirmed in all aspects.

Section 5. These resolutions shall take effect immediately.

Dated: October 25, 2023.

## **Westchester Park Preservation, LP**

### **Briefing Memo**

#### **ECIDA Tax-Exempt Bonding**

The property is currently owned by a joint venture between the Related Companies and MJ Peterson. The purchasers will be a limited partnership entity (to be created) with 99.99% ownership. See attached organizational chart.

#### **Project:**

Westchester Park Apartments is an existing 201 unit affordable property for seniors that consists of two buildings connected by a passageway on the ground floor. The first building is a five-story elevator serviced building built in 1980 with concrete foundation and brick exterior. The second building is a two-story split level low-rise building without elevator access that originally served as an elementary school built in the 1960s and was retrofitted into apartments in the 1980s at the same time that building one was constructed. Amenities include a lobby area, laundry room, lounge area, library and community room and an onsite leasing office.

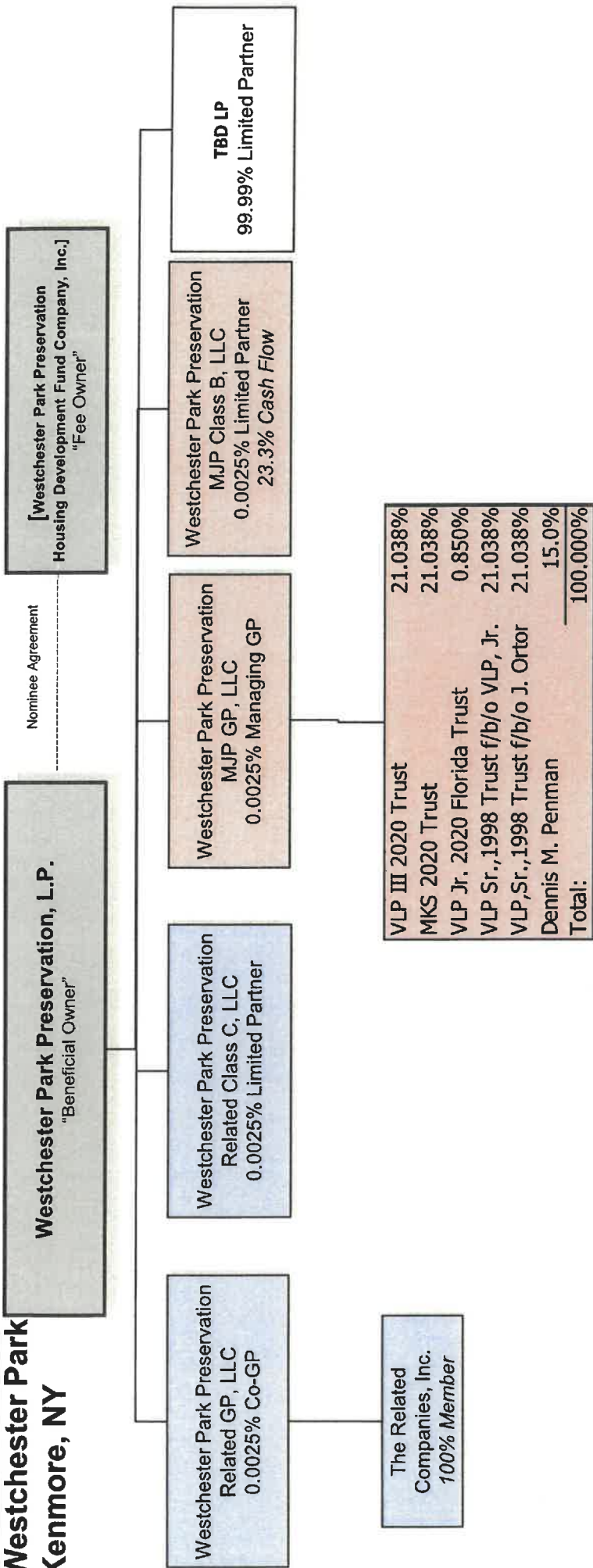
The purchasers of the property are planning major renovations costing approximately \$ 50,000 per unit. Rehabilitation of the property is expected to improve the property functionally and aesthetically. Modernization of 100% of units will include new bathrooms, kitchens, flooring and lighting, painting landscaping, improvements, modernization of community space and addition of new site wide free Wi-Fi. The scope will include bringing 5% of the units (11) to full ADA compliance. The property will remain livable throughout construction so it is not expected that any tenants will be displaced during the construction period.

#### **Project Financing:**

Empire State Development approved an additional allocation of private activity bond volume cap on July 26, 2023 as requested by the Erie County Industrial Development Corporation (ECIDA) for the Westchester Park Senior Apartment project. The tax-exempt bond issued is not to exceed \$25,000,000. The bond would not be an obligation of the ECIDA, Erie County or NYS.

Other financing contemplated within this proposal includes: 4% Low Income Housing Tax Credits (LIHTC) from NYSHCR as well as a Payment in Lieu of Taxes (PILOT) from the Town of Tonawanda. 200 of the 201 units are subsidized by a project-based Section 8 HAP contract – as part of the proposed transaction, the existing HAP contract will be extended for an additional 20 years.

**Purchaser Entity**  
**Westchester Park**  
**Kenmore, NY**



**Westchester Park Preservation, LP**  
**\$ 35,600,000**  
**INDUCEMENT RESOLUTION / TAX EXEMPT BOND**  
**ANTICIPATED BOND AMOUNT UP TO \$25,000,000**

<b>ELIGIBILITY</b>	Project Title: Westchester Park
• NAICS Section – 531110	
<b>COMPANY INCENTIVES</b>	Project Address: 55 Ralston Ave, Tonawanda, NY 14217 (Kenmore Town of Tonawanda UFSD)
• Anticipated Bond Amount – up to \$ 25,000,000	<b>Agency Request</b>
• Approximately \$ 525,000 in sales tax savings	Issuance of a federally tax-exempt bond, a sales tax and a mortgage recording tax exemption in connection with the acquisition and renovation of an existing 201 unit affordable property for seniors.
• Up to 3/4 of 1% of the final mortgage amount estimated at \$ 169,500	
<b>JOBS &amp; ANNUAL PAYROLL</b>	
• Current Jobs: 4 FT	Land / Building Acquisition \$ 16,600,000
• Annual Payroll: \$ 250,000	Reconstruction / Renovations \$ 10,000,000
• Projected new jobs: 1 FT	Soft Costs/Other \$ 9,000,000
• Est. salary/yr. of FT jobs created: \$ 33,000	Total Project Cost \$ 35,600,000
• Est. salary/yr. of jobs retained: \$ 45,000	
• Total jobs after project completion: 5 FTE	85% \$ 30,260,000
<b>PROJECTED COMMUNITY BENEFITS*</b>	<b>Company Description</b>
• NET Community Benefits: \$14,356,948	The property is currently owned by a joint venture between the Related Companies and MJ Peterson. The purchasers will be a limited partnership entity with 99.99% ownership (to be created).
• Construction Jobs: 162	<b>Project Description</b>
• Spillover Jobs: 79	Westchester Park Apartments is an existing 201 unit affordable property for seniors that consists of two buildings connected by a passageway on the ground floor. The first building is a five-story elevator serviced building built in 1980 with concrete foundation and brick exterior. The second building is a two-story split level low-rise building without elevator access that originally served as an elementary school built in the 1960s and was retrofitted into apartments in the 1980s at the same time that building one was constructed. Amenities include a lobby area, laundry room, lounge area, library and community room and an onsite leasing office.
• Total Payroll: \$13,534,970	The purchasers of the property are planning major renovations costing approximately \$ 50,000 per unit. Rehabilitation of the property is expected to improve the property functionally and aesthetically. Modernization of 100% of units will include new bathrooms, kitchens, flooring and lighting, painting landscaping, improvements, modernization of community space and addition of new site wide free Wi-Fi. The scope will include bringing 5% of the units (11) to full ADA compliance. The property will remain livable throughout construction so it is not expected that any tenants will be displaced during the construction period.
<b>INCENTIVE COST / COMMUNITY BENEFIT RATIO (discounted at 2%)*</b>	
Incentives: \$694,500	The proposal contemplates financing from tax exempt bonds from the ECIDA, 4% Low Income Housing Tax Credits (LIHTC) from NYSHCR as well as a Payment in Lieu of Taxes (PILOT) from the Town of Tonawanda. 200 of the 201 units are subsidized by a project-based Section 8 HAP contract – as part of the proposed transaction, the existing HAP contract will be extended for an additional 20 years.
Community Benefit: \$14,301,874	
Cost Benefit Ratio	
• 1:21	

\* Cost Benefit Analysis Tool powered by MRB Group



**Project Description (cont'd)**

Unit Type	Square Footage	HAP
Studio (9 units)	550 sf	\$ 980
One Bedroom (184 units)	640 – 650 sf	\$ 1,260
Two Bedroom (8 units)	800 sf	\$ 1,465

The Section 8 Housing Choice Voucher program is a form of government rent assistance through housing assistance payment contracts known as a HAP. On average, each household covered by a HAP contract will pay somewhere between 30% and 40% of its income on rent.

**Economic Impact: Inform Analytics Cost-Benefit Analysis**

The Erie County Industrial Development Agency uses the Cost Benefit Analysis Tool powered by MRB Group to assess the economic impact of a project applying for incentives. A Cost-Benefit Analysis is required by Section 859-a (5)(b) of General Municipal Law. For the complete Cost Benefit Analysis – please see the attached MRB Cost Benefit Calculator.

**Cost: Incentives**

COSTS	Tax Exemption	Amount
	Property Tax	\$0
	Sales Tax	\$ 525,000
	Mortgage Recording	169,500
	<b>Total</b>	<b>\$ 694,500</b>
	Discounted at 2%	\$694,500

**Benefit: Projected Community Benefit\***

BENEFITS	Region	Recipient	Revenue Type	\$ Amount **
	Erie County	Individuals	Payroll Construction	\$12,230,753
			Payroll Permanent	\$ 1,304,217
		Public	Property Taxes	\$ 0
			Sales Taxes	\$ 107,491
			Other Revenue (Muni)	\$ 5,650
	New York State	Public	Income Taxes	\$ 609,074
			Sales Taxes	\$ 94,745
			<b>Total Benefits to EC + NYS***</b>	<b>\$14,356,948</b>
			Discounted at 2%	\$14,301,874

\* Cost Benefit Analysis Tool powered by MRB Group \*\*Includes direct & indirect \$ over project period \*\*\*may not sum to total due to rounding

Discounted Cost        \$694,500  
 Discounted Benefit    \$14,301,874  
 Ratio                    1:21

**Conclusion:** The Cost Benefit for this project is: :1. For every \$1 in costs (incentives), this project provides \$21 in benefits (payroll & tax revenue). **Note: For Erie County, every \$1 in costs (incentives) provides \$40 in benefits to the community.**

### Draft Recapture Material Terms

Condition	Term	Recapture Provision
Total Investment	At project completion	Investment amount equal to or greater than 85% of project amount. Total project amount = \$ 35,600,000 85% = \$ 30,260,000
Employment	Coincides with Recapture Period	Maintain Base = 4 FT Create 85% of Projected Projected = 1 FT 85% of Projected = 0 FT Recapture Employment = 4 FTE
Local Labor	Construction period	Adherence to policy including quarterly reporting
Pay Equity	Coincides with Recapture Period	Adherence to Policy
Unpaid Tax	Coincides with Recapture Period	Adherence to Policy
<u>Recapture Period</u>	2 years after project completion	Recapture of Mortgage recording tax, state and local sales taxes

Recapture applies to:

State and Local Sales Taxes  
Mortgage Recording Tax

#### Recapture

Pursuant to New York State General Municipal Law, the agency shall modify, recover, recapture or terminate any financial assistance taken by the company that is in violation of the GML.

At completion of the project company must certify i) total investment amount is equal to or greater than 85% of the anticipated project amount; ii) company has maintained 4 FTE jobs, iii) confirm adherence to local labor policy during construction and iv) its adherence to unpaid tax/pay equity policies for recapture term.

#### Project ECIDA History

- 09/28/23: Public hearing held.
- 10/25/23: Type II Action not subject to SEQRA review
- 10/25/23: Inducement and Bond Sale Resolution presented to Board of Directors



## EVALUATIVE CRITERIA

### Westchester Park Preservation, LP

Distressed Census Tract	Located in Census Tract 82.02 which is adjacent to a highly distressed census tract.
Age of Structure must be at least 20 years old and present functional challenges to redevelopment	The age of buildings exceeds 20 years old. The project consists of 2 buildings, the first built in the 1960s for use as an elementary school, the second built in the 1980s.
Structure has been vacant or underutilized for a minimum of 3 years. Project promotes the elimination of slum and blight.	N/A
Structure is not generating significant rental income (defined as 50% or less than the market rate income average for that property class	N/A
Project is in compliance with the investment and growth criteria of the Framework for Regional Growth. The redevelopment supports or aligns with Regional or Local Development Plans	Project promotes investment and growth as outlined within the Framework for Regional Growth by investing in developed areas (Regional Center – Kenmore). Area currently served with sewer, water and public transportation. Aligns with concepts related to higher density housing.
Environmental/Safety Issues: Structure or site presents significant public safety hazard and or environmental remediation costs	N/A
LEED/Renewable Resources	The proposed renovation will include replacement of equipment in residential units including installation of energy efficient lighting and appliances. Upgrades to mechanical equipment are expected to meet certain efficiency standards.
Building or site has historic designation	N/A
Site or structure has delinquent property or other local taxes	Taxes are paid in full on this parcel as confirmed per inquiry with County personnel.
MBE/WBE Utilization	MWBE outreach is part of the contracting process with GC outreach process to contractors, subcontractors monitored by applicant. An internal goal of 20% of contract \$ to MBE / WBE entities has been set. See attached MBE / WBE Utilization form.
Transit Oriented Development	NFTA #20 bus stop is less than 1 block away (@ Westchester Blvd & Elmwood Ave).

DATE OF INDUCEMENT: October 25, 2023

# Erie County Industrial Development Agency

## MRB Cost Benefit Calculator



Date: August 16, 2023  
 Project Title: Westchester Park Preservation, LP  
 Project Location: 55 Ralston Ave, Tonawanda, NY 14217

### Economic Impacts

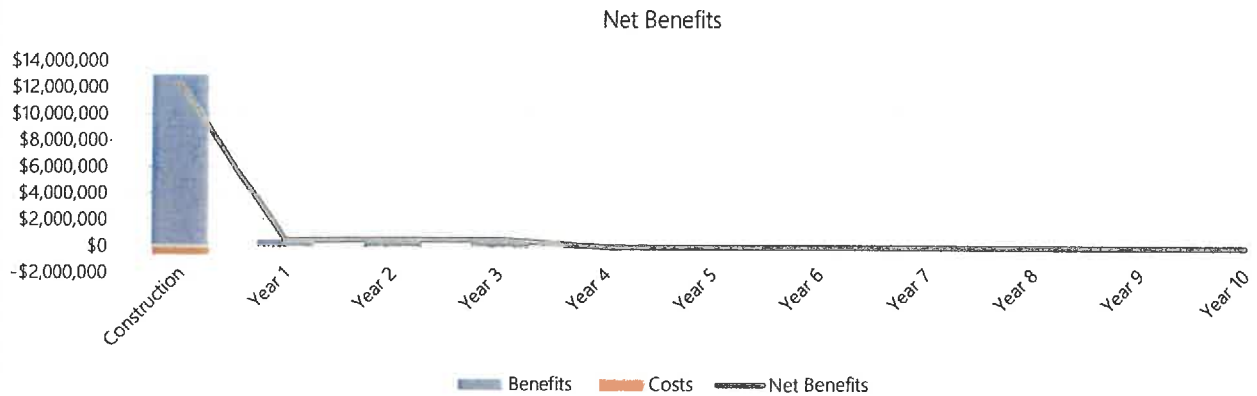
Summary of Economic Impacts over the Life of the PILOT  
 Project Total Investment: \$35,600,000

	Temporary (Construction)		
	Direct	Indirect	Total
Jobs	162	75	237
Earnings	\$7,918,651	\$4,312,102	\$12,230,753
Local Spend	\$18,868,000	\$13,350,467	\$32,218,467

	Ongoing (Operations)		
	Direct	Indirect	Total
Jobs	5	4	9
Earnings	\$606,000	\$698,217	\$1,304,217

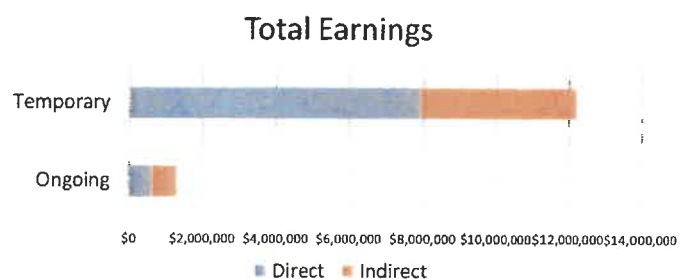
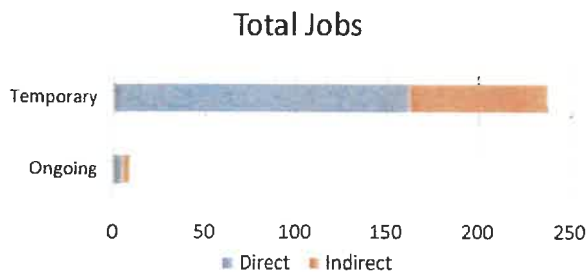
Figure 1



Net Benefits chart will always display construction through year 10, irrespective of the length of the PILOT.

Figure 2

Figure 3



# Fiscal Impacts

## Estimated Costs of Exemptions

	Nominal Value	Discounted Value*
Property Tax Exemption	\$0	\$0
Sales Tax Exemption	\$525,000	\$525,000
Local Sales Tax Exemption	\$285,000	\$285,000
State Sales Tax Exemption	\$240,000	\$240,000
Mortgage Recording Tax Exemption	\$169,500	\$169,500
Local Mortgage Recording Tax Exemption	\$56,500	\$56,500
State Mortgage Recording Tax Exemption	\$113,000	\$113,000
<b>Total Costs</b>	<b>\$694,500</b>	<b>\$694,500</b>

## State and Local Benefits

	Nominal Value	Discounted Value*
<b>Local Benefits</b>	<b>\$13,653,129</b>	<b>\$13,600,751</b>
To Private Individuals	\$13,534,970	\$13,483,133
Temporary Payroll	\$12,230,753	\$12,230,753
Ongoing Payroll	\$1,304,217	\$1,252,380
Other Payments to Private Individuals	\$0	\$0
To the Public	\$118,159	\$117,618
Increase in Property Tax Revenue	\$0	\$0
Temporary Jobs - Sales Tax Revenue	\$101,668	\$101,668
Ongoing Jobs - Sales Tax Revenue	\$10,841	\$10,410
Other Local Municipal Revenue	\$5,650	\$5,539
<b>State Benefits</b>	<b>\$703,818</b>	<b>\$701,123</b>
To the Public	\$703,818	\$701,123
Temporary Income Tax Revenue	\$550,384	\$550,384
Ongoing Income Tax Revenue	\$58,690	\$56,357
Temporary Jobs - Sales Tax Revenue	\$85,615	\$85,615
Ongoing Jobs - Sales Tax Revenue	\$9,130	\$8,767
<b>Total Benefits to State &amp; Region</b>	<b>\$14,356,948</b>	<b>\$14,301,874</b>

## Benefit to Cost Ratio

	Benefit*	Cost*	Ratio
Local	\$13,600,751	\$341,500	40:1
State	\$701,123	\$353,000	2:1
<b>Grand Total</b>	<b>\$14,301,874</b>	<b>\$694,500</b>	<b>21:1</b>

\*Discounted at 2%

## Additional Comments from IDA

Does the IDA believe that the project can be accomplished in a timely fashion? Yes

# MBE/WBE Utilization



ECIDA encourages applicants to utilize MBE/WBE contractors for their projects. Here are links to the NYS and combined Erie County / City of Buffalo – certified MWBE contractors that can assist you with your utilization goals:

<https://ny.newnycontracts.com/>

<https://www3.erie.gov/eo/mbe-wbe-resource-list>

Describe your company's internal practices that promote MBE/WBE hiring and utilization:

MBE/WBE outreach is a part of our contracting process. During the construction bidding process, our Construction Management team monitors the General Contractor's process of reaching out to MBE/WBE contractors and sub-contractors. Internally, we have a goal of 20% of contract dollars awarded to MBE/WBE. Externally, we ensure that our General Contractor is meeting any goals set by investors and/or lenders.

**PUBLIC HEARING SCRIPT**

**Westchester Park Preservation, L.P. Project**

Public Hearing to be held on September 28, 2023 at 9:00 a.m.  
in the Town Board Conference Room #20 located at  
2919 Delaware Avenue in the Town of Tonawanda, Erie County, New York

**ATTENDANCE**

Deep Katdare – Related Affordable  
Pete Peterson – MJ Peterson  
Eric Jefferson – MJ Peterson  
Hon. Joseph Eminger – Supervisor, Town of Tonawanda

**☒ 1. WELCOME: Call to Order and Identity of Hearing Officer.**

Hearing Officer: Welcome. This public hearing is now open; it is 9:00 a.m. My name is Grant Lesswing. I am the Director of Business Development of the Erie County Industrial Development Agency (the “Agency”), and I have been designated by the Agency to be the hearing officer to conduct this public hearing. This public hearing is being live-streamed and made accessible on the Agency’s website at [www.ecidany.com](http://www.ecidany.com).

**☒ 2. PURPOSE: Purpose of the Hearing.**

Hearing Officer: Pursuant to and in accordance with Section 859-a and 859-b of the General Municipal Law of the State of New York, as amended, the Agency is conducting this public hearing in connection with a certain proposed project, as more fully described below (the “Project”), to be undertaken by the Agency for the benefit of Westchester Park Preservation, L.P., a New York limited partnership, on behalf of itself and/or an entity or entities formed or to be formed on behalf of the foregoing (collectively, the “Company”).

The Agency published a Notice of Public Hearing with respect to the Project in The Buffalo News on September 13, 2023.

**☒ 3. PROJECT SUMMARY: Description of Project and Contemplated Agency Benefits.**

Hearing Officer: The Project shall consist of the following to be undertaken by the Agency for the benefit of the Company: (A) (1) the acquisition of an interest in a portion of approximately 4.5 acres of land located at 55 Ralston Avenue in the Town of Tonawanda, Erie County, New York (the “Land”), (2) the acquisition, reconstruction and renovation of two (2) interconnected buildings consisting of 201 apartment units and containing approximately 208,940 square feet in the aggregate known as the Westchester Park Apartments located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to

hereinafter as the “Project Facility”), all of the foregoing to constitute a low-income housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, in an aggregate principal amount not to exceed \$25,000,000 (the “Obligations”); (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes and mortgage recording taxes (collectively with the Obligations, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Issuer.

The Agency is considering whether (A) to undertake the Project, (B) to finance the Project by issuing, from time to time, the Obligations and (C) to use the proceeds of the Obligations to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith.

If the Agency determines to proceed with the Project and the issuance of the Obligations, (A) the Facility will be leased (with an obligation to purchase) or sold by the Agency to the Company or its designee pursuant to an installment sale agreement, as amended (the “Agreement”) requiring that the Company or its designee make payments equal to debt service on the Obligations and make certain other payments and (B) the Obligations will be a special obligation of the Agency payable solely out of certain of the proceeds of the Agreement and certain other assets of the Agency pledged to the repayment of the Obligations. THE OBLIGATIONS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR ERIE COUNTY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR ERIE COUNTY, NEW YORK SHALL BE LIABLE THEREON.

The Agency has not yet made a determination pursuant to Article 8 of the Environmental Conservation Law (the “SEQR Act”) regarding the potential environmental impact of the Project.

The Agency will at said time and place hear all persons with views on the location and nature of the Facility or the proposed plan of financing the proposed Project by the issuance from time to time of the Obligations. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the offices of the Agency. A transcript or summary report of the hearing will be made available to the members of the board of directors of the Agency.

It is anticipated that the members of the board of the Agency will approve of the issuance of the Obligations at its meeting on October 25, 2023.

**☒ 4. FORMAT OF HEARING: Review rules and manner in which the hearing will proceed.**

**Hearing Officer:** If you have a written statement or comment to submit for the record, please submit it on the Agency's website or mail to the Agency at 95 Perry Street, Suite 403, Buffalo, New York 14203. The comment period closes at 4:00 p.m. on October 24, 2023. There are no limitations on written statements or comments.

**☒ 5. PUBLIC COMMENT: Hearing Officer gives the public an opportunity to speak.**

**Hearing Officer:** Those interested in making a statement or comment will be called upon in the order that they registered for this meeting. Please begin by stating your name and address; if you are representing a company, please identify the company. I request that speakers keep statements and/or comments to no more than 5 minutes, and if possible, 3 minutes.

Deep Katdare – I am with the Related Companies, and I am joined by my colleagues Peter Peterson from MJ Peterson and Eric Jefferson from MJ Peterson. We are going to provide a brief statement about the project, the proposed renovation. Westchester Park, as previously mentioned, is a 201-unit project-based Section 8, elderly affordable property located in Tonawanda, New York. The property is currently owned by affiliates of MJ Peterson and The Related Companies and is managed by MJ Peterson. MJ Peterson and Related are looking to substantially renovate the property at a development cost of approximately \$39 million through the use of tax-exempt bonds and as-of-right 4% Low-Income Housing Tax Credits in order to ensure the property continues to be a safe and reliable community for low-income residents of Erie County. Specifically at this property seniors. Westchester Park has never undergone a substantial rehabilitation. The property has existed as a Section 8 affordable housing property since 1978 and has been managed by MJ Peterson as such and is an important part of the Tonawanda senior community. Given the lack of renovations since construction of the second building in 1980, the property is in need of a renovation to modernize unit interiors, upgrade major buildings systems, improve amenities, and enhance the site's overall appearance and energy efficiency. Without renovation, the property will quickly begin to age, and components will approach the end of their useful lives. In addition to in-unit renovation, the developers will be renovating property amenities which include a lobby area, laundry room, lounge, library, community room, and onsite leasing office, all vital elements of the senior community. The property will continue to be managed by the very capable MJ Peterson post-rehabilitation.

Hon. Joseph Emminger – Supervisor, Town of Tonawanda. I am here to offer the Town's support for the project. The project has been a good part of our community over the last 40+ years. We are an elderly population like most of Erie County. We certainly support the idea of providing affordable low-income housing in our community that has been provided there for many, many years and we certainly look forward to working with the owners and seeing the project down to completion and we support the project wholeheartedly.

**☒ 6. ADJOURNMENT.**

As there were no further statements and/or comments, the Hearing Officer closed the public hearing at 9:07 a.m.

**SIGN IN SHEET FOR PUBLIC HEARING**

Public Hearing to be held on September 28, 2023 at 9:00 a.m.  
in the Town Board Conference Room #20 located at  
2919 Delaware Avenue in the Town of Tonawanda, Erie County, New York

**Westchester Park Preservation, L.P. Project**

<b>Name</b>	<b>Company and/or Address</b>	<b>X box to speak/ comment</b>
Deep Katdare	Related Affordable 30 Hudson Yards, 72nd Floor New York, New York 10001	X
Pete Peterson	MJ Peterson 200 John James Audubon Parkway Amherst, New York 14228	
Eric Jefferson	MJ Peterson 200 John James Audubon Parkway Amherst, New York 14228	
Hon. Joseph Eminger	Supervisor, Town of Tonawanda 2919 Delaware Avenue Kenmore, New York 14217	X



**BOND RESOLUTION  
WESTCHESTER PARK PRESERVATION, L.P. PROJECT**

A regular meeting of Erie County Industrial Development Agency (the “Agency”) was convened in public session in the offices of the Agency located at 95 Perry Street – Suite 403, Buffalo, New York on October 25, 2023 at 12:00 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the members of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Brenda McDuffie	Chairperson
Richard Lipsitz	Vice Chairperson
Denise Abbott	Member
Hon. Diane Benczkowski	Member
Rev. Mark Blue	Member
Hon. Byron Brown	Member
James Doherty	Member
Hon. Joseph Emminger	Member
Dottie Gallagher	Member
Michael Hughes	Member
Hon. Howard Johnson	Member
Tyra Johnson	Member
Hon. Brian Kulpa	Member
Denise McCowan	Member
Glenn Nellis	Member
Hon. Mark Poloncarz	Member
Hon. Darius Pridgen	Member
Kenneth Schoetz	Member
Paul Vukelic	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

John Cappellino	President and Chief Executive Officer
Mollie Profic	Vice President and Treasurer
Jerry Manhard	Assistant Treasurer/Assistant Secretary
Atiqa Abidi	Assistant Treasurer
Elizabeth O’Keefe	Vice President of Operations and Secretary
Daryl Spulecki	Assistant Treasurer
Carrie Hocieniec	Assistant Secretary
Robert G. Murray, Esq.	Issuer Counsel
Christopher C. Canada, Esq.	Bond Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

RESOLUTION (A) AUTHORIZING THE ISSUANCE, AND SALE OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY MULTIFAMILY HOUSING REVENUE BONDS (WESTCHESTER PARK PRESERVATION, L.P. PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$25,000,000; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

WHEREAS, the Erie County Industrial Development Agency (the “Issuer”) is authorized and empowered by Article 18-A of the General Municipal Law of the State of New York (the “State”), as amended (the “Enabling Act”), together with Section 891-a of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, installation and equipping of one or more “projects” (as defined in the Act), to acquire, construct, equip and install said projects or to cause said projects to be acquired, constructed, equipped and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Westchester Park Preservation, L.P., a New York limited partnership, on behalf of itself and/or an entity or entities formed or to be formed on behalf of the foregoing (collectively, the “Company”), submitted an application (the “Application”) to the Issuer, a copy of which Application is on file at the office of the Issuer, requesting the Issuer to issue its Multifamily Housing Revenue Bonds (Westchester Park Preservation, L.P.), Series 2023, to be issued in one or more series (the “Series 2023 Bonds”), to assist in financing all or a portion of a certain project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in a portion of approximately five (5) acres of land located at 55 Ralston Avenue in the Town of Tonawanda, Erie County, New York (the “Land”), (2) the acquisition, reconstruction and renovation of two (2) interconnected buildings consisting of 201 apartment units and containing approximately 217,800 square feet in the aggregate known as the Westchester Park Apartments located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to hereinafter as the “Project Facility”), all of the foregoing to constitute an affordable senior housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2023 Bonds in an aggregate principal amount not to exceed \$25,000,000; (C) the payment of a portion of the costs incidental to the issuance of the Series 2023 Bonds, including issuance costs of the Series 2023 Bonds and any reserve funds as may be necessary to secure the Series 2023 Bonds; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes, deed transfer taxes and mortgage recording taxes (collectively with the Series 2023 Bonds, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to Westchester Park Preservation Housing Development Fund Company, Inc., a New York not-for-profit corporation (the “HDFC” and together with the Company, the “Owner”), as nominee for and on behalf of the Company, or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of the public hearing of the Issuer (the "Public Hearing") pursuant to Section 859-a(2) of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), to hear all persons interested in the Project and the financial assistance being contemplated by the Issuer with respect to the Project, to be published on September 13, 2023 in the Buffalo News, a newspaper of general circulation available to the residents of the Town of Tonawanda, Erie County, New York (the "Town"), (B) caused notice of the Public Hearing to be mailed on September 12, 2023 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is (or will be) located, (C) conducted the Public Hearing on September 28, 2023 at 9:00 a.m., local time, at the Community Room in Tonawanda Town Hall located at 200 Niagara Street in the Town of Tonawanda, Erie County, New York, and (D) prepared a report of the Public Hearing (the "Public Hearing Report") which fairly summarized the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Issuer and to the County Executive (the "County Executive") of Erie County, New York (the "County"); and

WHEREAS, the Issuer is contemplating providing financial assistance to the Company with respect to the Project in the form of (i) the issuance of the Series 2023 Bonds in an amount not to exceed \$25,000,000 and (ii) the Financial Assistance; and

WHEREAS, the Issuer now desires to authorize issuance of its Multifamily Housing Revenue Bonds (Westchester Park Preservation, L.P. Project), Series 2023 in an aggregate principal amount not to exceed \$25,000,000 (the "Series 2023 Bonds") for the purpose of financing a portion of the costs of the Project under this resolution, a trust indenture (the "Indenture") by and between the Issuer and US Bank National Association, as trustee for the holders of the Series 2023 Bonds (the "Trustee"); and

WHEREAS, prior to or simultaneously with the issuance of the Series 2023 Bonds, (A) the Owner and the Issuer will execute and deliver a lease agreement (the "Lease to Issuer"), pursuant to which the Owner will agree to lease the Land to the Issuer, (B) the Company will execute and deliver a bill of sale (the "Bill of Sale") from the Company to the Issuer, pursuant to which the Company will convey to the Issuer the Company's interest in the portion of the Project Facility constituting fixtures and other personal property, (C) the Issuer will execute and deliver an installment sale agreement (the "Installment Sale Agreement") by and among the Issuer, as seller, and the Owner, as purchaser, pursuant to which (1) the Owner any will agree (a) to cause the Project to be undertaken and completed, (b) as agent of the Issuer, to undertake and complete the Project, (c) to purchase the Project Facility from the Issuer, and (d) to make certain installment purchase payments (or cause such payments to be made) to or upon the order of the Issuer as the purchase price for the Project Facility, which installment purchase payments shall include amounts equal to the debt service payments due on the Series 2023 Bonds, and (2) the Issuer will agree to (a) undertake the Project, (b) appoint the Company as agent of the Issuer to undertake and complete the Project, and (c) sell the Project Facility to the Owner and (D) the Company will execute and deliver a certain project agreement (the "Project Agreement") by and between the Issuer and the Company regarding the granting of the Financial Assistance by the Issuer to the Company; and

WHEREAS, in connection with the issuance of the Series 2023 Bonds, (A) Wells Fargo (the "Lender") will make a loan pursuant to a multifamily loan and security agreement (the "Mortgage"), as evidenced by a mortgage note and as secured by the Mortgage, which Mortgage will be assigned by the Lender to Fannie Mae pursuant to a mortgage assignment and (B) the Issuer and the Owner will execute certain mortgage joinders in connection with the execution of the Mortgage; and

WHEREAS, the Issuer and the Company will enter into a certain Tax Regulatory Agreement dated the date of delivery of the Series 2023 Bonds (the "Tax Regulatory Agreement"), in which the Issuer and the Company will make certain representations and covenants, establish certain conditions and limitations

and create certain expectations, relating to compliance with the requirements imposed by the Code and the Issuer will execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Series 2023 Bonds (“Form 8038”), pursuant to Section 149(e) of the Code and will cause the Form 8038 to be filed with the IRS; and

WHEREAS, the Company reasonably expects that it will (i) pay or incur certain capital expenditures in connection with the Project prior to the issuance of the Series 2023 Bonds (as defined herein), (ii) use funds from sources other than proceeds of the Series 2023 Bonds which are or will be available on a short-term basis to pay for such capital expenditures, and (iii) reimburse itself for the use of such funds with proceeds of the Series 2023 Bonds; and

WHEREAS, it is contemplated that the Series 2023 Bonds will be issued as multifamily housing revenue bonds and, as such, pursuant to Section 142(d) of the Code, at least ninety-five percent (95%) of the net proceeds of the Series 2023 Bonds must be used to provide a “qualified residential rental project,” as defined in Section 142 of the Code to include a project for residential rental property where, for a period of at least as long as such bonds remain outstanding, at least twenty percent (20%) of such units are occupied by individuals whose income is fifty percent (50%) or less of Area Median Gross Income as determined by the United States Department of Housing and Urban Development (“HUD”) or at least forty percent (40%) of such units are occupied by individuals whose income is sixty percent (60%) or less of Area Median Gross Income as determined by HUD; and

WHEREAS, it is further contemplated that the Issuer will (i) designate the Owner as its agent for the purpose of undertaking the Project pursuant to the Project Agreement, (ii) negotiate and enter into the Lease to Issuer and the Installment Sale Agreement, pursuant to which the Issuer will retain a leasehold interest in the Project Facility; and (iii) provide (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility and (b) a mortgage recording tax exemption benefit for the financing related to the Project; and

WHEREAS, approval of the County Executive, being the applicable elected representative (as such term is defined in Section 147(f) of the Code) of the County, and an allocation of sufficient Volume Cap (as defined herein) are required as conditions to the issuance of the Series 2023 Bonds pursuant to the Code; and

WHEREAS, pursuant to Section 146 of the Code, in order for interest on the Series 2023 Bonds to be excludable from gross income of the holder thereof the Issuer must allocate the private activity volume cap (“Volume Cap”) to the Series 2023 Bonds in an amount equal the face amount of the Series 2023 Bonds; and

WHEREAS, pursuant to a letter dated July 26, 2023 from the New York State Department of Economic Development, the Issuer received an allocation of Volume Cap for 2023 from the State in an amount equal to the maximum amount of Series 2023 Bonds expected to be issued; and

WHEREAS, the Issuer has given due consideration to the Application and the representations by the Company that undertaking the Project and issuing the Series 2023 Bonds (a) will be an inducement to the Company to acquire, renovate, reconstruct, equip and operate the Project Facility in the Town; and (b) will not result in the removal of any commercial, industrial, fabricating or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State; and

WHEREAS, the Issuer has considered the policy, purposes and requirements of the Enabling Act in making its determinations with respect to taking official action regarding the Project; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Issuer must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, the Issuer has examined the Application in order to make a determination as to the potential environmental significance of the Project; and

WHEREAS, the Project appears to constitute a “Type II action” (as said quoted term is defined in the Regulations), and therefore it appears that no further determination or procedure under SEQRA is required with respect to the Project;

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

Section 1. The Issuer has received copies of, and has reviewed, the Application and, based upon said Application and the representations made by the Company to the Issue with respect to the Project, and based further upon the Issuer’s knowledge of the area surrounding the Project Facility and such further investigation of the Project and its environmental effects as the Issuer has deemed appropriate, the Issuer makes the following findings and determinations with respect to the Project: The Project consists of the rehabilitation or reconstruction of a structure or facility, in kind, on the same site.

Section 2. Based upon the foregoing, the Issuer makes the following findings and determinations with respect to the Project:

(A) Pursuant to Section 617.5(c)(2) of the Regulations, the Project is a “Type II action” (as said quoted term is defined in the Regulations); and

(B) Therefore, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations.

Section 3. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 4. It is among the purposes of the Issuer to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 5. Based upon representations made by the Company to the Issuer in the Application and any other correspondence submitted by the Company to the Issuer, public hearing comments, if any, the Issuer’s review of and recommendations related to the Project, Issuer board member review, discussion, and consideration of same, and such other information and investigation as the Issuer has deemed

appropriate, the Issuer makes the following findings and determinations and hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Company as described herein:

(a) The Project constitutes a “project” within the meaning of the Act.

(b) The issuance of the Series 2023 Bonds and the grant of the other Financial Assistance will be an inducement to the Company to acquire, renovate, construct, equip and operate the Project Facility in the Town, thereby advancing job opportunities, general prosperity and economic welfare of the people of the State and the Town in furtherance of the Act.

(c) It is desirable and in the public interest for the Issuer to appoint the Owner as its agent for purposes of acquiring, reconstructing and/or renovating and equipping the Project.

(d) The Issuer has the authority to take the actions contemplated herein under the Act.

(e) (i) The Project does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (ii) accordingly the Issuer is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act.

(f) The Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York.

(g) The Issuer has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Issuer to provide Financial Assistance for the Project as described herein.

(h) The Issuer has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project.

(i) It is desirable and in the public interest for the Issuer to issue the Series 2023 Bonds to finance the costs of the Project, together with certain related costs, reserves and other amounts, in an aggregate principal amount not to exceed \$25,000,000.

(j) The Issuer reasonably expects to reimburse the Company for expenses made for the Project from the Series 2023 Bonds.

(k) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(l) The issuance of the Series 2023 Bonds by the Issuer with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town and the State and improve their standard of living, and thereby serve the public purposes of the Act.

(m) The Project qualifies for the Financial Assistance as it meets and is consistent with the Issuer's evaluative criteria for projects, said criteria established by the Issuer as required under General Municipal Law Section 859-a(5), as evidenced by the following:

(i) *Distressed Census Tract*: Located in Census Tract 82.02 which is adjacent to a highly distressed census tract.

(ii) *Age of Structure (must be at least 20 years old and present functional challenges to redevelopment)*: The age of buildings exceeds 20 years old. The project consists of 2 buildings, the first built in the 1960s for use as an elementary school, the second built in the 1980s.

(iii) *Structure has been vacant or underutilized for a minimum of 3 years (defined as a minimum of 50% of the rentable square footage of the structure being utilized for a use for which the structure was not designed or intended). Project promotes the elimination of slum and blight*: Not Applicable.

(iv) *Structure is not generating significant rental income (defined as 50% or less than the market rate income average for that property class)*: Not Applicable.

(v) *Project is in compliance with the investment and growth criteria of the Framework for Regional Growth. The redevelopment supports or aligns with Regional or Local Development Plans*: Project promotes investment and growth as outlined within the Framework for Regional Growth by investing in developed areas (Regional Center – Kenmore). Area currently served with sewer, water and public transportation. Aligns with concepts related to higher density housing.

(vi) *Environmental/Safety Issues: Structure or site presents significant public safety hazard and/or environmental remediation costs*: Not Applicable.

(vii) *LEED/Renewable Resources*: The proposed renovation will include replacement of equipment in residential units including installation of energy efficient lighting and appliances. Upgrades to mechanical equipment are expected to meet certain efficiency standards.

(viii) *Building or site has historic designation*: Not Applicable.

(ix) *Site or structure has delinquent property or other local taxes*: Taxes are paid in full on this parcel as confirmed per inquiry with County personnel.

(x) *MBE/WBE Utilization*: MWBE outreach is part of the contracting process with GC outreach process to contractors, subcontractors monitored by applicant. An internal goal of 20% of contract \$ to MBE / WBE entities has been set. See attached MBE / WBE Utilization form.

(xi) *Transit Oriented Development*: NFTA #20 bus stop is less than 1 block away (@ Westchester Blvd & Elmwood Ave).

**Section 6.** The Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer are hereby appointed as authorized officers of the Issuer (the "Authorized Officer") for purposes of the Project, including (a) negotiating and approving the form and substance of the various documents and (b) executing and delivering such documents; and, where appropriate, the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in the forms thereof as the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant

Treasurer of the Issuer, as Authorized Officer, shall approve, the execution thereof by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer to constitute conclusive evidence of such approval.

Section 7. The Issuer hereby authorizes the Authorized Officer to approve the Lease to Issuer, the Indenture, the Installment Sale Agreement, the Pledge and Assignment, the Mortgage Assignment, the Project Agreement, the Bond Purchase Agreement, the Arbitrage Certificate, the Form 8038 and any other documents necessary and incidental thereto including, but not limited to, any documents approved by counsel to the Issuer (collectively, the “Financing Documents”) in forms consistent with the intent and substance of this resolution, such approval to be conclusively evidenced by the execution of such documents by the Authorized Officer in accordance with Section 9 hereof.

Section 8. Subject to receipt by the Issuer of a certificate of the County Executive approving issuance of the Series 2023 Bonds for purposes of Section 147(f) of the Code, the Issuer is hereby authorized to issue, execute, sell and deliver to the Trustee for authentication the Series 2023 Bonds in the aggregate principal amount of not to exceed \$25,000,000 or so much thereof as shall have been approved for purchase pursuant to the terms of the final Bond Purchase Agreement, in the form heretofore approved in Section 7 of this resolution, and upon authentication thereof the Trustee is hereby authorized to deliver the Series 2023 Bonds to the purchasers thereof against receipt of the purchase price thereof, all pursuant to the Act and in accordance with the provisions of the Indenture, this resolution and the Bond Purchase Agreement, provided that:

(A) The Series 2023 Bonds authorized to be issued, executed, sold and delivered pursuant to this Section 8 shall (i) be issued, executed and delivered at such time as the Authorized Officer shall determine, and (ii) bear interest at the rate or rates, be issued in such form, be subject to redemption prior to maturity and have such other terms and provisions and be issued in such manner and on such conditions as are set forth in the Series 2023 Bonds and the Indenture or as are hereinafter approved by the Authorized Officer in accordance with Section 7 hereof, which terms are specifically incorporated herein by reference with the same force and effect as if fully set forth in this resolution.

(B) The Series 2023 Bonds shall be issued solely for the purpose of providing funds to finance (1) the costs of the Project as described in the Financing Documents, and (2) all or a portion of the administrative, legal, financial and other expenses of the Issuer in connection with the Project and the Project Facility and incidental to the issuance of the Series 2023 Bonds.

(C) Neither the members nor officers of the Issuer, nor any person executing the Series 2023 Bonds or any of the Financing Documents on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Series 2023 Bonds and the interest thereon are not and shall never be a debt of the State of New York, or Erie County, New York or any political subdivision thereof (other than the Issuer), and neither the State of New York, or Erie County, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(D) The Series 2023 Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from certain of the revenues and receipts derived from the leasing or other disposition of the Project Facility or from the enforcement of the security provided by the Financing Documents (as hereinafter defined) and the other security pledged to the payment thereof.



(E) Notwithstanding any other provision of this resolution, the Issuer covenants that it will make no use of the proceeds of the Series 2023 Bonds or of any other funds of the Issuer (other than the Issuer's administrative fees) which, if said use had been reasonably expected on the date of issuance of the Series 2023 Bonds, would have caused any of the Series 2023 Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code.

Section 9. (a) The Authorized Officer is hereby authorized, on behalf of the Issuer, to negotiate, execute and deliver the Financing Documents, and the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto where appropriate and to attest the same, in forms consistent with the intent and substance of this resolution. The execution of the Financing Documents by the Authorized Officer shall constitute conclusive evidence of such approval.

(b) The Authorized Officer is hereby further authorized and directed, on behalf of the Issuer, to approve, without further action of the Issuer, any variations in the terms of the Series 2023 Bonds, including, without limitation, the aggregate principal amounts of the Series 2023 Bonds (not in excess of the maximum aggregate principal amount authorized in Section 3(h) of this resolution), the interest rates, maturities, redemption premiums, optional redemption dates and sinking fund redemption dates and amounts.

(c) The Authorized Officer is further hereby authorized, on behalf of the Issuer, to designate any additional authorized representatives of the Issuer.

Section 10. The officers, employees, and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents, and to do all such further acts 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 resolution and to cause compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 11 (a) Subject to the conditions set forth herein and the Company executing the Project Agreement and the delivery to the Issuer of a binder, certificate or other evidence of insurance for the Project satisfactory to the Issuer, the Issuer hereby authorizes the Company to proceed with the acquisition, renovation, construction, upgrading and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Issuer: (i) to acquire, renovate, construct, upgrade and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Issuer with the authority to delegate such Issuer, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Issuer could do if acting in its own behalf, provided, however, the appointment of the Owner as agent of the Issuer, if utilized, shall expire one year from the date of this resolution (unless extended for good cause by the Authorized Officer).

With respect to the foregoing, and based upon the representations and warranties made by the Company in the Application, the Issuer hereby:

(i) authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount estimated up to \$6,000,000 and, therefore, the value of the sales and use tax exemption benefits (the "sales and use tax exemption benefits") authorized and approved by the Issuer cannot exceed \$525,000, however, the Issuer may consider any requests by the

Company for increases to the amount of sales and use tax exemption benefits authorized by the Issuer upon being provided with appropriate documentation detailing the additional purchases of property or services; and

(ii) authorizes and approves that the value of the mortgage recording tax exemption benefit (“mortgage recording tax exemption benefits”) shall not exceed \$169,500.

(b) Pursuant to Section 875(3) of the General Municipal Law, and per the policies of the Issuer, the Issuer may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits taken or purported to be taken by the Company if it is determined that: the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the State and local sales and use tax exemption benefits; the State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; the State and local sales and use tax exemption benefits are for property or services not authorized by the Issuer as part of the Project; the Company has made a material false statement on its application for Financial Assistance; the State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Issuer in connection with the Project; and/or the State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits are taken in cases where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Issuer in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Issuer in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Issuer that the Issuer demands.

As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Issuer in connection with the Project, the Company covenants and agrees and understands that it 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 conclusion of the later of two (2) years following either the construction completion date or the termination of the Project Agreement, a certification, as so required by the Issuer, confirming:

(i) Investment Commitment – the total investment made with respect to the Project at the time of Project completion equals or exceeds \$30,260,000 (which represents the product of 85% multiplied by \$35,600,000, being the total project cost as stated in the Application).

(ii) Employment Commitment – that there are at least four (4) 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

- the number of current FTE employees in the then current year at the Facility; and

- that within two years of Project Completion, the Company has maintained employment at the Facility equal to four (4) FTE employees, being the Baseline FTE employee position as stated in the Company's Application. To confirm and verify the Company's employment numbers, the Issuer requires that, at a minimum, the Company provide employment data to the Issuer on a quarterly basis, said information to be provided on the Issuer's "Quarterly Employment Survey" form to be made available to the Company by the Issuer.

(iii) Local Labor Commitment – that the Company adheres to and complies with the Issuer'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 Issuer's Pay Equity Policy.

(v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Issuer's Unpaid Real Property Tax Policy.

Section 12. Subject to the conditions set forth herein and in the last sentence of this Section 12, the Issuer will (a) issue the Series 2023 Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as may be determined by the Issuer; (b) acquire a leasehold interest in the Project Facility and acquire, renovate, reconstruct, equip and install the Project Facility; (c) lease with an obligation to purchase or sell the Project Facility to the Company or its designee pursuant to the Installment Sale Agreement, whereby the Company will be obligated, among other things, to make payments to the Issuer in amounts and at a time so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Series 2023 Bonds; (d) secure the Series 2023 Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Series 2023 Bonds mutually deem appropriate and (e) grant the other Financial Assistance. The Issuance of the Series 2023 Bonds and the grant of the other Financial Assistance contemplated by this resolution are subject to (i) obtaining all necessary governmental approvals; (ii) agreement by the Issuer, the Company and the purchaser(s) of the Series 2023 Bonds upon mutually satisfactory terms for the Series 2023 Bonds (and any such additional bonds) and for the sale and delivery thereof; (iii) the condition that there are no changes in the Code and State law, including regulations thereunder, which prohibit or limit the Issuer from fulfilling its obligations hereunder; and (iv) payment by the Company of the Issuer's administrative fee, the State Bond Issuance Charge and all costs and expenses of the Issuer with respect to the Series 2023 Bonds transaction and the granting of the other Financial Assistance.

Section 13. Subject to the conditions contained within this resolution and the acceptance by the Company of this resolution, the Company is appointed the true and lawful agent of the Issuer (1) to acquire, renovate, reconstruct equip and install the Project Facility, and (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Issuer, and in general to do all things which may be requisite or proper for acquiring, renovating, reconstructing, equipping and installing the Project Facility, all with the same powers and same validity as if the Issuer were acting on its own behalf.

Section 14 The law firm of Hodgson Russ LLP is hereby appointed bond counsel to the Issuer in relation to the proposed issuance of the Series 2023 Bonds contemplated by the Application.

Section 15. The Issuer hereby declares that this resolution shall represent its declaration of "official intention" in accordance with Treasury Regulation Section 1.150-2. The Issuer reasonably expects

to reimburse the Company for its expenditures incurred in connection with the Project Facility with the proceeds of the Series 2023 Bonds.

Section 16. Bond counsel for the Issuer are hereby authorized to work with the Company, the purchaser(s) of the Series 2023 Bonds and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, issuance, sale and delivery of the Series 2023 Bonds.

Section 17. The Authorized Officer is hereby authorized and directed to distribute copies of this resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 18. No covenant, stipulation, obligation or agreement contained in this resolution shall be deemed to be the covenant, stipulation, obligation or agreement of any member, agent or employee of the Issuer in his or her individual capacity and neither the members of the Issuer nor any officer executing the Series 2023 Bonds shall be liable personally on the Series 2023 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the members or officers of the Issuer, nor any person executing the Series 2023 Bonds or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Series 2023 Bonds and the interest therein shall not be a debt of the State or the Town or any political subdivision thereof (other than the Issuer), and none of the State, the Town nor any political subdivision thereof (other than the Issuer) shall be liable thereon. The Series 2023 Bonds shall be issued solely for the purposes set forth in this resolution. The Series 2023 Bonds and the interest thereon shall constitute a special, limited obligation of the Issuer payable solely from the revenues derived or to be derived from the lease or sale of the Project Facility and from the enforcement of the security pledged to the payment of the Series 2023 Bonds.

Section 19. Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Series 2023 Bonds or another source in the transaction or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Series 2023 Bonds are not issued by the Issuer for any reason whatsoever, shall be paid by the Company. By acceptance hereof, the Company hereby agrees to pay such expenses and further agrees to indemnify the Issuer, its members, employees and agents and hold the Issuer and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Issuer with respect to the Project and the financing thereof.

Section 20. The provision by the Issuer of the Financial Assistance with respect to the Project as described herein is subject to the execution and delivery of the Administrative Fee Agreement of the Issuer (the "Fee Agreement") and payment by the Company of an administrative fee calculated in accordance with the Fee Agreement, all within sixty (60) days of the date of this resolution. In the event the Issuer has not received the executed Fee Agreement and the appropriate fee within such sixty (60) day period, this resolution shall become automatically null and void and of no further effect and the Issuer shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Authorized Officer for good cause shown.

Section 21. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Brenda McDuffie	VOTING	_____
Richard Lipsitz	VOTING	_____

Denise Abbott	VOTING	_____
Hon. Diane Benczkowski	VOTING	_____
Rev. Mark Blue	VOTING	_____
Hon. Byron Brown	VOTING	_____
James Doherty	VOTING	_____
Hon. Joseph Emminger	VOTING	_____
Dottie Gallagher	VOTING	_____
Michael Hughes	VOTING	_____
Hon. Howard Johnson	VOTING	_____
Tyra Johnson	VOTING	_____
Hon. Brian Kulpa	VOTING	_____
Denise McCowan	VOTING	_____
Glenn Nellis	VOTING	_____
Hon. Mark Poloncarz	VOTING	_____
Hon. Darius Pridgen	VOTING	_____
Kenneth Schoetz	VOTING	_____
Paul Vukelic	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned Secretary of the Erie County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the “Agency”), including the resolution contained therein, held on October 25, 2023, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 25<sup>th</sup> day of October, 2023.

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Elizabeth A. O’Keefe  
Secretary





## Westchester Park Tax-Exempt Bonds

[Instructions and Insurance Requirements Document](#)

### Section I: Applicant Background Information

Please answer all questions. Use "None" or "Not Applicable" where necessary. Information in this application may be subject to public review under New York State Law.

#### Applicant Information- Company Receiving Benefit

<b>Project Name</b>	Westchester Park
<b>Project Summary</b>	Westchester Park Apartments (the "Property" or "Westchester") is an existing 201-unit affordable property for seniors located north of Buffalo in Kenmore. We are seeking to finance an acquisition and renovation of the Property with local tax-exempt bonds from ECIDA, along with as-of-right 4% tax credits from NYSHCR. The Property is situated at 55 Ralston Ave, Kenmore, NY 14217. It consists of two buildings connected by a passageway on the ground floor. The first building is a five-story elevator-serviced building built in 1980 with concrete foundation and brick exterior. The second is a two-story split-level low-rise building without elevator access that was originally built in the 1960's as an elementary school and was retrofitted into apartments in 1980 at the same time that building one was newly constructed. The Property's 201 units are comprised of 9 studios, 184 one-bedroom units, and 8 two-bedroom units. 200 of the 201 units are subsidized by a project-based Section 8 HAP contract. As part of our proposed transaction, we will extend the existing HAP contract for an additional 20 years, the maximum term allowed by HUD. Property amenities include a lobby area, laundry room, lounge area, library, and community room, as well as an onsite leasing office. It is managed by MJ Peterson and will continue to be post-rehab. Our proposal contemplates renovation costs of approximately \$10m (50K/unit).
<b>Applicant Name</b>	Westchester Park Preservation, L.P.
<b>Applicant Address</b>	30 Hudson Yards
<b>Applicant Address 2</b>	72nd Floor
<b>Applicant City</b>	New York
<b>Applicant State</b>	New York
<b>Applicant Zip</b>	10001
<b>Phone</b>	(646) 582-2276
<b>Fax</b>	
<b>E-mail</b>	brian.samson@related.com
<b>Website</b>	<a href="https://www.related.com/affordable-housing">https://www.related.com/affordable-housing</a>
<b>NAICS Code</b>	531110

#### Business Organization

**Type of Business**

Partnership

**Year Established**

2023

**State**

New York

**Indicate if your business is 51% or more (Check all boxes that apply)**

[No] Minority Owned

[No] Woman Owned

**Indicate Minority and/or Woman Owned Business Certification if applicable (Check all boxes that apply)**

[No] NYS Certified

[No] Erie Country Certified

Individual Completing Application

**Name** Brian Samson  
**Title**  
**Address** 30 Hudson Yards  
**Address 2** 72nd Floor  
**City** New York  
**State** New York  
**Zip** 10001  
**Phone** (646) 582-2276  
**Fax**  
**E-Mail** brian.samson@related.com

Company Contact- Authorized Signer for Applicant

**Contact is same as individual completing application** No  
**Name** Victor L. Peterson III  
**Title** President  
**Address** 200 John James Audubon Parkway  
**Address 2** Suite 300  
**City** Amherst  
**State** New York  
**Zip** 14228  
**Phone** (716) 929-4106  
**Fax**  
**E-Mail** ppeterson@mjpetererson.com

Company Counsel

**Name of Attorney** David Boccio  
**Firm Name** Levitt & Boccio  
**Address** 423 West 55th Street  
**Address 2** 8th Floor  
**City** New York  
**State** New York



**Zip** 10019  
**Phone** (212) 801-3769  
**Fax**  
**E-Mail** dboccio@levittboccio.com

Benefits Requested (select all that apply.)

**Exemption from Sales Tax** Yes  
**Exemption from Mortgage Tax** Yes  
**Exemption from Real Property Tax** No  
**Tax Exempt Financing\*** Yes

\* (typically for not-for-profits & small qualified manufacturers)

Applicant Business Description

**Describe in detail company background, history, products and customers. Description is critical in determining eligibility. Also list all stockholders, members, or partners with % ownership greater than 20%.**

Westchester Park Apartments (the "Property" or "Westchester") is an existing 201-unit affordable property for seniors located north of Buffalo in Kenmore. We are seeking to finance an acquisition and renovation of the Property with local tax-exempt bonds from ECIDA, along with as-of-right 4% tax credits from NYSHCR. The Property is situated at 55 Ralston Ave, Kenmore, NY 14217. It consists of two buildings connected by a passageway on the ground floor. The first building is a five-story elevator-serviced building built in 1980 with concrete foundation and brick exterior. The second is a two-story split-level low-rise building without elevator access that was originally built in the 1960's as an elementary school and was retrofitted into apartments in 1980 at the same time that building one was newly constructed. The Property is currently owned by a joint venture between The Related Companies and MJ Peterson. The purchasers will be an entity affiliated with the current owners, but note that all related party rules will be followed upon acquisition. The Property's 201 units are comprised of 9 studios, 184 one-bedroom units, and 8 two-bedroom units. 200 of the 201 units are subsidized by a project-based Section 8 HAP contract. As part of our proposed transaction, we will extend the existing HAP contract for an additional 20 years, the maximum term allowed by HUD. Property amenities include a lobby area, laundry room, lounge area, library, and community room, as well as an onsite leasing office. It is managed by MJ Peterson and will continue to be post-rehab. Our proposal contemplates renovation costs of approximately \$10m (50K/unit). Please see org chart attached for ownership.

**Estimated % of sales within Erie County** 100 %  
**Estimated % of sales outside Erie County but within New York State** 0 %  
**Estimated % of sales outside New York State but within the U.S.** 0 %  
**Estimated % of sales outside the U.S.** 0 %

(\*Percentage to equal 100%)

**For your operations, company and proposed project what percentage of your total annual supplies, raw materials and vendor services are purchased from firms in Erie County?**

20

**Describe vendors within Erie County for major purchases**

For the proposed rehabilitation, it is expected that approximately 20% of materials will be sourced from firms in Erie County and approximately 50% of the cost for goods and services will be subject to State and local sales and use tax. The vendors and suppliers that will likely be local are plumbing, electrical, HVAC, roofing, masonry, and concrete. For the management of the property, it is expected that approximately 90% of supplies and vendor services will be purchased from firms in Erie County.

**Section II: Eligibility Questionnaire - Project Description & Details**

Project Location

**Address of Proposed Project Facility**

55 Ralston Ave

**Town/City/Village of Project Site**

Tonawanda

**School District of Project Site**

Ken-Ton

**Current Address (if different)**

**Current Town/City/Village of Project Site (if different)**

**SBL Number(s) for proposed Project**

66.45-6-1

**What are the current real estate taxes on the proposed Project Site**

281,022

**If amount of current taxes is not available, provide assessed value for each.**

Land

\$ 0

Building(s)

\$ 0

If available include a copy of current tax receipt.

**Are Real Property Taxes current at project location?**

Yes

**If no please explain**

\*The ECIDA has an unpaid tax policy and you will be required to certify all taxes and PILOTS are current.

**Does the Applicant or any related entity currently hold fee title or have an option/contract to purchase the Project site?**

Yes

**If No, indicate name of present owner of the Project Site**

**Does Applicant or related entity have an option/contract to purchase the Project site?**

Yes

**Describe the present use of the proposed Project site (vacant land, existing building, etc.)**

The Proposed Project site is currently being used as low-income affordable multi-family rental housing.

**Provide narrative and purpose of the proposed project (new build, renovations) square footage of existing and new construction contemplated and/or equipment purchases. Identify specific uses occurring within the project. Describe any and all tenants and any/all end users: (This information is critical in determining project eligibility)**

The Proposed Project is the acquisition and renovation of Westchester Park Apartments, a 201-unit affordable, Section 8 site for persons 62 or older, handicapped or disabled that was built in 1980. The purpose of the acquisition and renovation is to preserve and improve an important affordable housing resource in the Town of Tonawanda. The property is situated on 4.5 acres with two inter-connected buildings containing 9 studios, 184 one-bedroom units, and 8 two-bedroom. The studios contain 505 square feet, the one-bedroom units contain 650 square feet, and two-bedroom units contain 800 square feet. The total rentable square feet is 130,300. The property contains a management office, community room, laundry room, library, and multiple lounge areas. In the years since the property was built, it has never undergone a substantial rehabilitation. Westchester Park has been well-maintained, but now has physical needs that require significant capital investment. The Applicant is working with New York State Housing Finance Agency ("HFA") to obtain an allocation of 4% LIHTCs and ECIDA on an allocation of tax-exempt bonds to finance the acquisition and rehabilitation of the property. The acquisition closing and start of renovation is expected to occur in the 4th quarter of 2023 with renovation to be completed over a twelve-month period. The Applicant proposes to invest approximately \$44,000 per unit in direct hard costs (approximately \$50,000 per unit in total construction costs) to complete a comprehensive rehabilitation that will improve the property functionally and aesthetically. The owner is planning a rehabilitation of the property that is expected to include: modernization of 100% of units including new bathrooms, kitchens, flooring, lighting, painting; landscaping improvements; modernization of community spaces; and addition of new site-wide free wifi. In addition, the scope will include bringing 5% of the units (11) up to full ADA compliance. The property will remain livable throughout construction so it is not expected that any tenants will be displaced during the construction period. In addition to the physical upgrades, the owner is planning to enter into regulatory agreements in connection with the LIHTCs and tax exempt bonds to ensure that 100% of the units remain affordable for residents with incomes at or below 60% AMI for at least another 30 years. The ultimate objective is to preserve and improve existing affordable housing in the Town of Tonawanda for current and future residents.

**Municipality or Municipalities of current operations**

Town of Tonawanda

**Will the Proposed Project be located within a Municipality identified above?**

Yes

**Will the completion of the Project result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state OR in the abandonment of one or more plants or facilities of the project occupant located within the state?**

No

**If the Proposed Project is located in a different Municipality within New York State than that Municipality in which current operations are being undertaken, is it expected that any of the facilities in any other Municipality will be closed or be subject to reduced activity?**

No

(If yes, you will need to complete the Intermunicipal Move Determination section of this application)

**Is the project reasonably necessary to prevent the project occupant from moving out of New York State?**

No

**If yes, please explain and identify out-of-state locations investigated, type of assistance offered and provide supporting documentation available**

**Have you contacted or been contacted by other Local, State and/or Federal Economic Development Agencies?**

No

**If yes, please indicate the Agency and nature of inquiry below**

ECIDA. We are seeking approximately \$25,000,000 in tax-exempt bonds

**If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:**

**Describe the reasons why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc... Your eligibility determination will be based in part on your answer (attach additional pages if necessary)**

The project proposal contemplates financing from tax-exempt bonds from ECIDA and 4% LIHTCs from NYSHCR. In addition, it is anticipated that the Project will receive a PILOT from the Town of Tonawanda and a sales tax exemption from ECIDA. Given the extent of the proposed rehabilitation, without the tax-exempt bonds and sales tax exemption assistance from the Agency, the Project could not be undertaken. For a 4% LIHTC Rehabilitation project, it is a requirement to utilize tax-exempt bonds. The Developer was advised by NYSHCR to work with ECIDA on the issuance of tax-exempt bonds. Without the ECIDA's bond issuance, the project would not be feasible. In addition to the tax-exempt bonds, the project will also need tax incentives in the form of a sales tax exemption from ECIDA in order to keep project costs at a level that make the substantial rehabilitation that is planned viable. That is to say that without the sales tax exemption, our total costs of goods and services (COGS) would exceed the financing sources available to us for this Project. Therefore, the sales tax exemption is critical for the Applicant to undertake the Project. For this Project, we are anticipating COGS of \$6,000,000. The resulting Sales Tax Exemption would mean a \$525,000 benefit to the property which would be directly re-invested in the proposed renovation of the property. The renovation of the property will enable an investment of approximately \$9 million in direct hard costs (an average of \$44,000 per unit) and over \$10 million in total construction costs to address physical needs at the property. Built over 40 years ago and never substantially renovated, the property has been maintained but now has significant capital needs. The proposed renovation includes: modernization of 100% of units including new baths, kitchens, flooring, lighting, painting; landscaping improvements; modernization of community spaces; and addition of new site-wide free wifi. In addition, the scope will include bringing 5% of the units (11) up to full ADA compliance. The proposed renovation will allow the Applicant to preserve and improve an important affordable housing resource in Tonawanda which continues to have a need for affordable housing. Through this renovation, the Applicant will protect the affordability of 100% of the 201 units with new extended regulatory agreements. The project is also expected to generate approximately 25 construction jobs through the rehabilitation, with an expected average salary of \$80,000/year for full-time roles and \$40K/year for part-time roles, in addition to enabling the retention of four positions on the property management team.

**Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency**

Yes

**If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and Erie County?**

If the Applicant is unable to obtain Financial Assistance for the Project, the Applicant will need to seek other resources to enable the acquisition and rehabilitation, however it is unclear at this time whether other resources will be available for the Project. If other resources are not available, then the Applicant will not be able to acquire the property and complete a much needed rehabilitation. The current owner will continue to work with management to operate the property given available resources, however the property will undoubtedly experience increasing physical needs and declining conditions.

**Will project include leasing any equipment?**

Yes

If yes, please describe equipment and lease terms.

The site leases laundry machines, Printer/copier machine, and postage machine

### Site Characteristics

**Is your project located near public transportation?**

Yes

**If yes describe if site is accessible by either metro or bus line (provide route number for bus lines)**

The closest bus stop is on the corner of Westchester Blvd. and Elmwood Ave., which is less than a block from the property. The Bus is number 20 and the Stop ID is 16030.

**Has your local municipality and/or its planning board made a determination regarding the State Environmental Quality Review (SEQR) for your project?**

No

**If YES indicate in the box below the date the SEQR determination was made. Also, please provide us with a copy of the approval resolution and the related Environmental Assessment Form (EAF) if applicable.**

**If NO indicate in the box below the date you anticipate receiving a SEQR determination for your project. Also, please insure that the ECIDA has been listed as an "involved agency" on the related EAF submitted to the appropriate municipality and/or planning department.**

9/1/23

**Will the Project meet zoning/land use requirements at the proposed location?**

Yes

**Describe the present zoning/land use**

The zoning district is M-F, Multifamily Dwelling

**Describe required zoning/land use, if different**

N/A

**If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements**

N/A

**Is the proposed Project located on a site where the known or potential presence of contaminants is complicating the development/use of the property?**

No

**If yes, please explain**

**Has a Phase I Environmental Assessment been prepared, or will one be prepared with respect to the proposed Project Site?**

Yes

If yes, please provide a copy.

**Have any other studies, or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?**

No

If yes, please provide copies of the study.

**If you are purchasing new machinery and equipment, does it provide demonstrable energy efficiency benefits?**

Yes

**If yes, describe the efficiencies achieved**

Yes, new equipment purchased as part of the Project will provide energy efficiency benefits. The proposed renovation will include the replacement of equipment in residential units, including energy-efficient lighting and appliances. The renovation will also include mechanical equipment upgrades which are expected to meet certain efficiency standards.

You may also attach additional information about the machinery and equipment at the end of the application.

**Does or will the company or project occupant perform research and development activities on new products/services at the project location?**

No

If yes, include percentage of operating expenses attributed to R&D activities and provide details.

Select Project Type for all end users at project site (you may check more than one)

For purposes of the following, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

Will customers personally visit the Project site for either of the following economic activities? If yes with respect to either economic activity indicated below, you will need to complete the Retail section of this application.

<b>Retail Sales</b>	No	<b>Services</b>	No
---------------------	----	-----------------	----

Please check any and all end uses as identified below.

- |   |                           |                                     |
|---|---------------------------|-------------------------------------|
| <b>Yes Acquisition of Existing Facility</b> | <b>No Assisted Living</b> | <b>No Back Office</b>               |
| <b>No Civic Facility (not for profit)</b>   | <b>No Commercial</b>      | <b>Yes Equipment Purchase</b>       |
| <b>No Facility for the Aging</b>            | <b>No Industrial</b>      | <b>No Life Care Facility (CCRC)</b> |
| <b>No Market Rate Housing</b>               | <b>No Mixed Use</b>       | <b>Yes Multi-Tenant</b>             |
| <b>No Retail</b>                            | <b>Yes Senior Housing</b> | <b>No Manufacturing</b>             |

No Renewable Energy

Yes Other

Leasing Office, resident amenities (e.g. laundry rooms, community room)

For proposed facility, please include the square footage for each of the uses outlined below

If applicant is paying for FFE for tenants, include in cost breakdown.

		Cost	% of Total Cost
Manufacturing/Processing	square feet	\$ 0	0%
Warehouse	square feet	\$ 0	0%
Research & Development	square feet	\$ 0	0%
Commercial	square feet	\$ 0	0%
Retail	square feet	\$ 0	0%
Office	square feet	\$ 0	0%
Specify Other	208,940 square feet	\$ 5,694,140	100%

If you are undertaking new construction or renovations, are you seeking LEED certification from the US Green Building Council?

No

If you answered yes to question above, what level of LEED certification do you anticipate receiving? (Check applicable box)

<BLANK>

Provide estimate of additional construction cost as a result of LEED certification you are seeking < BLANK >

Will project result in significant utility infrastructure cost or uses Yes

What is the estimated project timetable (provide dates).

Start date : acquisition of equipment or construction of facilities

11/1/2023

End date : Estimated completion date of project

10/31/2024

Project occupancy : estimated starting date of occupancy

11/1/2023

Capital Project Plan / Budget

Estimated costs in connection with Project

1.) Land and/or Building Acquisition

\$ 16,600,000 217,800 square feet 5 acres

2.) New Building Construction

\$ 0 square feet

3.) New Building addition(s)

\$ 0 square feet

4.) Reconstruction/Renovation

\$ 10,000,000

130,430 square feet

**5.) Manufacturing Equipment**

\$ 0

**6.) Infrastructure Work**

\$ 0

**7.) Non-Manufacturing Equipment: (furniture, fixtures, etc.)**

\$ 0

**8.) Soft Costs: (Legal, architect, engineering, etc.)**

\$ 5,000,000

**9.) Other Cost**

\$ 4,000,000

**Explain Other Costs**      The other costs is the developer fee

**Total Cost**      \$ 35,600,000

Construction Cost Breakdown:

<b>Total Cost of Construction</b>	\$ 10,000,000 (sum of 2, 3, 4 and 6 in Project Information, above)
<b>Cost of materials</b>	\$ 0
<b>% sourced in Erie County</b>	20%

Sales and Use Tax:

**Gross amount of costs for goods and services that are subject to State and local sales and use tax- said amount to benefit from the Agency's sales and use tax exemption benefit**      \$ 6,000,000

**Estimated State and local Sales and Use Tax Benefit (product of 8.75% multiplied by the figure, above):**      \$ 525,000

\*\* Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate, above, represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate, above, as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.

**Project refinancing estimated amount, if applicable (for refinancing of existing debt only)**      \$ 0

**Have any of the above costs been paid or incurred as of the date of this Application?**      No

**If Yes, describe particulars:**

Sources of Funds for Project Costs:

<b>Equity (excluding equity that is attributed to grants/tax credits):</b>	\$
<b>Bank Financing:</b>	\$ 0
<b>Tax Exempt Bond Issuance (if applicable):</b>	\$ 22,600,000
<b>Taxable Bond Issuance (if applicable):</b>	\$ 0
<b>Public Sources (Include sum total of all state and federal grants and tax credits):</b>	\$ 13,000,000
<b>Identify each state and federal grant/credit: (ie Historic Tax Credit, New Market Tax Credit, Brownfield, Cleanup Program, ESD, other public sources)</b>	4% tax credits

**Total Sources of Funds for Project Costs:** \$35,600,000  
**Have you secured financing for the project?** No

Mortgage Recording Tax Exemption Benefit:

Amount of mortgage, if any that would be subject to mortgage recording tax:

**Mortgage Amount (include sum total of construction/permanent/bridge financing).** 22,600,000  
**Lender Name, if Known**  
**Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above multiplied by 3/4 of 1%):** \$169,500

Real Property Tax Benefit:

**Identify and describe if the Project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit (485-a, 485-b, other):** Yes, the project is working with the Town of Tonawanda on an Article XI PILOT

IDA PILOT Benefit: Agency staff will indicate the estimated amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in the PILOT worksheet in the additional document section.

Percentage of Project Costs financed from Public Sector sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon the Sources of Funds for Project Costs as depicted above. The percentage of Project Costs financed from public sector sources will be depicted in the PILOT worksheet in the additional document section.

**Is project necessary to expand project employment?**

Yes

**Is project necessary to retain existing employment?**

Yes

**Will project include leasing any equipment?**

Yes

If yes, please describe equipment and lease terms. The site leases laundry machines, Printer/copier machine, and postage machine

Employment Plan (Specific to the proposed project location)

The Labor Market Area consists of the following six counties: Erie, Niagara, Chautauqua, Cattaraugus, Wyoming and Genesee.

By statute, Agency staff must project the number of FTE jobs that would be retained and created if the request for Financial Assistance is granted. Agency staff will project such jobs over the TWO Year time period following Project completion. Agency staff converts PT jobs into FTE jobs by dividing the number of PT jobs by two (2).

	<b>Current # of jobs at proposed project location or to be relocated at project location</b>	<b>If financial assistance is granted – project the number of FT and PT jobs to be retained</b>	<b>If financial assistance is granted – project the number of FT and PT jobs to be created upon 24 months (2 years) after Project completion</b>	<b>Estimate number of residents of the Labor Market Area in which the project is located that will fill the FT and PT jobs to be created upon 24 months (2 years) after project completion **</b>
<b>Full time</b>	4	4	1	1
<b>Part time</b>	0	0	0	0
<b>Total</b>	4	4	1	



Salary and Fringe Benefits for Jobs to be Retained and Created

Job Categories	# of Full Time Employees retained and created	Average Salary for Full Time	Average Fringe Benefits for Full Time	# of Part Time Employees retained and created	Average Salary for Part Time	Average Fringe Benefits for Part Time
Management	2	\$ 48,650	\$ 4,000	0	\$ 0	\$ 0
Professional	3	\$ 39,000	\$ 4,000	0	\$ 0	\$ 0
Administrative	0	\$ 0	\$ 0	0	\$ 0	\$ 0
Production	0	\$ 0	\$ 0	0	\$ 0	\$ 0
Independent Contractor	0	\$ 0	\$ 0	0	\$ 0	\$ 0
Other	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Total</b>	<b>5</b>			<b>0</b>		

\*\* Note that the Agency may utilize the foregoing employment projections, among other items, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.

Yes **By checking this box, I certify that the above information concerning the current number of jobs at the proposed project location or to be relocated to the proposed project location is true and correct.**

Employment at other locations in Erie County: (provide address and number of employees at each location):

Address	Full time	Part time	Total
	0	0	0
	0	0	0
	0	0	0

Payroll Information

**Annual Payroll at Proposed Project Site upon completion**

250,000

**Estimated average annual salary of jobs to be retained (Full Time)**

45,000

**Estimated average annual salary of jobs to be retained (Part Time)**

0

**Estimated average annual salary of jobs to be created (Full Time)**

33,000

**Estimated average annual salary of jobs to be created (Part Time)**

0

**Estimated salary range of jobs to be created**

<b>From (Full Time)</b>	33,000	<b>To (Full Time)</b>	33,000
<b>From (Part Time)</b>	0	<b>To (Part Time)</b>	0

### Section III: Environmental Questionnaire

INSTRUCTIONS: Please complete the following questionnaire as completely as possible. If you need additional space to fully answer any question, please attach additional page(s).

#### General Background Information

##### **Address of Premises**

55 Ralston Ave., Kenmore, NY 14217

##### **Name and Address of Owner of Premises**

Westchester Park Preservation, L.P. 30 Hudson Yards, 72nd Floor, New York, NY 10001

##### **Describe the general features of the Premises (include terrain, location of wetlands, coastlines, rivers, streams, lakes, etc.)**

The immediately surrounding properties consist of single-family residences to the north across Westchester Avenue; apartment buildings, single-family residences, and Thurston Park to the south across Ralston Avenue; an apartment building and a retail strip plaza to the east; and single-family residences to the west across Wilber Avenue. There are no rivers or wetlands nearby and the site is in flood zone X.

##### **Describe the Premises (including the age and date of construction of any improvements) and each of the operations or processes carried out on or intended to be carried on at the Premises**

The property was improved with the Horace Mann Public School in 1956/1957 and was utilized as a public school until approximately 1974. In 1980/1981, the Horace Mann Public School was converted into Westchester Park Apartments and the five-story connected addition was also constructed. The site will continue to be utilized as affordable housing post-renovation.

##### **Describe all known former uses of the Premises**

The site was an elementary school prior to apartments.

##### **Does any person, firm or corporation other than the owner occupy the Premises or any part of it?**

No

##### **If yes, please identify them and describe their use of the property**

##### **Have there been any spills, releases or unpermitted discharges of petroleum, hazardous substances, chemicals or hazardous wastes at or near the Premises?**

No

##### **If yes, describe and attach any incident reports and the results of any investigations**

##### **Has the Premises or any part of it ever been the subject of any enforcement action by any federal, state or local government entity, or does the preparer of this questionnaire have knowledge of: a) any current federal, state or local enforcement actions; b) any areas of non-compliance with any federal, state or local laws, ordinances, rules or regulations associated with operations over the past 12 months?**

No

##### **If yes, please state the results of the enforcement action (consent order, penalties, no action, etc.) and describe the circumstances**

##### **Has there been any filing of a notice of citizen suit, or a civil complaint or other administrative or criminal procedure involving the Premises?**

No

##### **If yes, describe in full detail**

#### Solid And Hazardous Wastes And Hazardous Substances

**Does any activity conducted or contemplated to be conducted at the premises generate, treat or dispose of any petroleum, petroleum-related products, solid and hazardous wastes or hazardous substances?**

No

**If yes, provide the Premises' applicable EPA (or State) identification number**

**Have any federal, state or local permits been issued to the Premises for the use, generation and/or storage of solid and hazardous wastes?**

No

**If yes, please provide copies of the permits.**

**Identify the transporter of any hazardous and/or solid wastes to or from the Premises**

Solid waste generated at the subject property is disposed in commercial dumpsters located on the northern portion of the subject property. An independent solid waste disposal contractor, Modern Disposal, removes solid waste from the subject property. Only household trash is collected in the on-site solid waste dumpsters.

**Identify the solid and hazardous waste disposal or treatment facilities which have received wastes from the Premises for the past two (2) years**

**Does or is it contemplated that there will occur at the Premises any accumulation or storage of any hazardous wastes on-site for disposal for longer than 90 days?**

No

**If yes, please identify the substance, the quantity and describe how it is stored**

Discharge Into Waterbodies

**Briefly describe any current or contemplated industrial process discharges (including the approximate volume, source, type and number of discharge points). Please provide copies of all permits for such discharges**

None

**Identify all sources of discharges of water, including discharges of waste water, process water, contact or noncontact cooling water, and stormwater. Attach all permits relating to the same. Also identify any septic tanks on site**

Sanitary discharges on the subject property are directed into the municipal sanitary sewer system. The Erie County Sewer District services the subject property vicinity. No wastewater treatment facilities or septic systems were observed or reported on the subject property.

**Is any waste discharged into or near surface water or groundwaters?**

No

**If yes, please describe in detail the discharge including not only the receiving water's classification, but a description of the type and quantity of the waste**

Air Pollution

**Are there or is it contemplated that there will be any air emission sources that emit contaminants from the Premises?**

No

**If yes, describe each such source, including whether it is a stationary combustion installation, process source, exhaust or ventilation system, incinerator or other source**

**Are any of the air emission sources permitted?**

<BLANK>

**If yes, attach a copy of each permit.**

Storage Tanks

List and describe all above and under ground storage tanks at the Premises used to store petroleum or gasoline products, or other chemicals or wastes, including the contents and capacity of each tank. Please also provide copies of any registrations/permits for the tanks

None

Have there been any leaks, spills, releases or other discharges (including loss of inventory) associated with any of these tanks?

<BLANK>

If yes, please provide all details regarding the event, including the response taken, all analytical results or reports developed through investigation (whether internal or external), and the agencies which were involved

Polychlorinated Biphenyls ("PCB" or "PCBs") And Asbestos

Provide any records in your possession or known to you to exist concerning any on-site PCBs or PCB equipment, whether used or stored, and whether produced as a byproduct of the manufacturing process or otherwise.

Have there been any PCB spills, discharges or other accidents at the Premises?

No

If yes, relate all the circumstances

Do the Premises have any asbestos containing materials?

Yes

If yes, please identify the materials

Please see section 8.16.3 of the attached Phase 1

**Section IV: Facility Type - Single or Multi Tenant**

**Is this a Single Use Facility or a Multi-Tenant Facility?**

Multi-Tenant Facility

Multi-Tenant Facility (to be filled out by developer)

**Please explain what market conditions support the construction of this multi-tenant facility**

This is an existing property

**Have any tenant leases been entered into for this project?**

Yes

If yes, please list below and provide square footage (and percent of total square footage) to be leased to tenant and NAICS Code for tenant and nature of business

<b>Tenant Name</b>	<b>Current Address (city, state, # of sq ft and % of total to be zip)</b>	<b>SIC or NAICS-also briefly describe type of business, products services, % of sales in Erie Co.</b>
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\*fill out table for each tenant and known future tenants

## **Section VI: Retail Determination**

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

**Will any portion of the project (including that portion of the costs to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?**

No

If yes, complete the Retail Questionnaire Supplement below. **If no, proceed to the next section.**

## **Section VII: Adaptive Reuse Projects**

Adaptive Reuse is the process of adapting old structures or sites for new purposes.

**Are you applying for tax incentives under the Adaptive Reuse Program?**

No

### Section VIII: Inter-Municipal Move Determination

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, Agency financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

**Current Address**

55 Ralston Ave.

**City/Town**

Kenmore

**State**

New York

**Zip Code**

14217

**Will the project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state?**

No

**Will the project result in the abandonment of one or more plants or facilities of the Project occupant located within the state?**

No

**If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:**

**Does this project involve relocation or consolidation of a project occupant from another municipality?**

**Within New York State**

No

**Within Erie County**

No

**If Yes to either question, please, explain**

**Will the project result in a relocation of an existing business operation from the City of Buffalo?**

No

**If yes, please explain the factors which require the project occupant to relocate out of the City of Buffalo (For example, present site is not large enough, or owner will not renew leases etc.)**

**What are some of the key requirements the project occupant is looking for in a new site? (For example, minimum sq. ft., 12 foot ceilings, truck loading docs etc.)**

**If the project occupant is currently located in Erie County and will be moving to a different municipality within Erie County, has the project occupant attempted to find a suitable location within the municipality in which it is currently located?**

<BLANK>

**What factors have lead the project occupant to consider remaining or locating in Erie County?**

**If the current facility is to be abandoned, what is going to happen to the current facility that project occupant is located in?**

**Please provide a list of properties considered, and the reason they were not adequate. (Some examples include: site not large enough, layout was not appropriate, did not have adequate utility service, etc.) Please include full address for locations.**





## **Section IX: Senior Housing**

IDA tax incentives may be granted to projects under the Agency's Senior Citizen Rental Housing policy when the project consists of a multi-family housing structure where at least 90% of the units are (or are intended to be) rented to and occupied by a person who is 60 years of age or older.

**Are you applying for tax incentives under the Senior Rental Housing policy?**

No

## Section X: Tax Exempt Bonds

In order to receive the benefits of a tax-exempt interest rate bond, private borrowers and their projects must be eligible under one of the federally recognized private active bond categories (Fed Internal Rev Code IRC sections 142-144, and 1394).

### Are you applying for tax exempt bonds / refinancing of bonds related to a residential rental facility project?

Yes

### What is the anticipated closing date of the bond transaction:

10/15/23

### Please describe the total # of residential units broken down by # bedrooms, including rental rates and sq ft.

9 Studios with 550 SF at \$980 per month; 132 one-bedroom units with 650 SF at \$1,260 per month; 52 one-bedroom units with 640 SF at \$1,260 per month; and 8 two-bedroom units with 800 SF at \$1,465 per month

### What affordability programs are you seeking and/or are you currently utilizing for this project? Please describe in detail including how many units per program.

100% of the units are under a Section 8 Contract. We are also applying for 4% tax credits for 100% of the units, which will limit incomes to 60% of AMI for 30 years.

### Are there any outstanding code enforcement actions or housing court cases for this project?

No

### If yes, please provide details of these items and describe the current disposition.

### Will the project include unit renovations?

Yes

### If yes, please provide details of the tenant impact due to this renovation, including but not limited to: # of units affected, will tenants be displaced during renovations? If so, for how long? What accommodations will be made for displaced tenants?

All 201 units will receive a renovation. It's expected that the majority of residents will be out of their unit for 2 weeks while it is renovated. 5% of the units, or 11 total, will receive full ADA upgrades. Residents in those units will be displaced for approximately 8 weeks due to the substantial nature of the upgrades. The expected plan for accommodations is to hold a handful of units at the site vacant to be used as on-site "hotel" units. These units would be rehabbed first and then outfitted with furniture and the like for residents to live in while their unit is renovated. The resident would then return to their original unit once it's complete. To the extent that we are renovating more units at a time than we have available "hotel" units, we would utilize a nearby extended-stay hotel for relocation.

### Please describe in detail, your outreach efforts to local community leaders and to tenants regarding your project. Include a tenant communication plan if applicable.

We have met with Town of Tonawanda Supervisor Emminger, as well as the ECIDA, to discuss the project. In connection with tenant outreach, as we get closer to closing, we will hold at least two on-site tenant meetings to discuss the renovation and relocation. In addition, there will be multiple memos sent around to ensure the residents receive all the necessary information.



2023 Tax-Exempt Current Refunding of Series 2013A Bonds  
 City School District of the City of Buffalo  
 Briefing Memo  
 ECIDA Tax-Exempt Financing

Pursuant to resolutions adopted from 2002 through 2022, the ECIDA authorized the issuance of its School Facility Revenue Bonds (City School District of the City of Buffalo Project) in the aggregate principal amount of \$2,239,385,000 on behalf of the City of Buffalo (the “City”) and the City School District of the City of Buffalo (the “District”) and (as the case may be) the Joint Schools Construction Board, as their agent, in order to finance various public school facilities and to assist in the acquisition, renovation construction, reconstruction, improvement, equipping and furnishing of such public school facilities within the City in order to implement the comprehensive redevelopment of the City’s public schools.

Since 2003, the following bonds have been issued by the ECIDA:

<u>Issue Date</u>	<u>Series Name</u>	<u>Principal Amount</u>	<u>Purpose</u>	<u>Construction Phase</u>
September 16, 2003	Series 2003	\$180,335,000	New Money	I
December 22, 2004	Series 2004	\$310,125,000	New Money	II
August 23, 2007	Series 2007A	\$180,000,000	New Money	III-A
February 28, 2008	Series 2008A	\$173,225,000	New Money	III-B
November 19, 2009	Series 2009A	\$294,905,000	New Money	IV
June 15, 2011	Series 2011A	\$165,315,000	New Money	V
July 1, 2011	Series 2011B	\$112,560,000	Refunding	I
April 13, 2012	Series 2012A	\$209,540,000	Refunding	II
April 14, 2013	Series 2013A	\$62,540,000	Refunding	IV
June 24, 2015	Series 2015A	\$236,975,000	Refunding	III
October 12, 2016	Series 2016A	\$133,580,000	Refunding	IV
May 19, 2021	Series 2021A	\$80,320,000	Refunding	V
May 19, 2021	Series 2021B	\$28,815,000	Refunding	I
May 18, 2022	Series 2022A	\$71,150,000	Refunding	II
<b>TOTAL</b>		<b>\$2,239,385,000</b>		

The Series 2013A School Facilities Revenue Bonds (the “Series 2013A Bonds”) can be refunded in the current market to provide debt service savings to the District. Based on the market conditions as of the close of business on September 19, 2023, the present value savings resulting from a refunding of up to \$59,935,000 outstanding Series 2013A Bonds exceeds \$2.76 million or approximately 4.6% of the principal amount of the refunded Series 2013A Bonds.



Pursuant to Chapter 403 of the Laws of 2008 of the State of New York, the refunding savings must be applied to qualified capital projects. The debt service savings are made possible as a result of the relatively lower level of interest in the current market, compared to the higher interest rates on the Series 2013A Bonds. The pricing of the refunding bonds is currently scheduled for November 8, 2023 and changes in the market conditions prior to pricing could impact the refunding results. As such, the amount of savings and the amounts of bonds are necessarily preliminary and subject to change.

Tax Exempt Bond Refinancing Proposed:

Refunding of Series 2013A Bonds in amount presently expected to be \$57,375,000 (with a not to exceed amount of \$65,000,000) through issuance of Series 2023A School Facilities Revenue Bonds (the “Series 2023A Bonds”).

Anticipated financial savings is approximately \$2.94 million over three (3) years.

Closing of the transaction is expected to occur on November 15, 2023.

As is the case with all ECIDA-issued bonds, the Series 2023A Bonds would not be an obligation of the ECIDA or of Erie County.

## PUBLIC HEARING SCRIPT

<b>City School District of the City of Buffalo Project</b>
--

Public Hearing to be held on October 10, 2023 at 9:00 a.m.  
at the offices of the Erie County Industrial Development Agency located at  
95 Perry Street – Suite 403 in the City of Buffalo, Erie County, New York

### ATTENDANCE

Rick Ganci – Capital Markets Advisors, LLC

Beth O’Keefe – ECIDA

Brian Krygier – ECIDA

### 1. WELCOME: Call to Order and Identity of Hearing Officer.

Hearing Officer: Welcome. This public hearing is now open; it is 9:00 a.m. My name is Grant Lesswing. I am the Director of Business Development of the Erie County Industrial Development Agency (the “Agency”), and I have been designated by the Agency to be the hearing officer to conduct this public hearing. This public hearing is being live-streamed and made accessible on the Agency’s website at [www.ecidany.com](http://www.ecidany.com).

### 2. PURPOSE: Purpose of the Hearing.

Hearing Officer: Pursuant to and in accordance with Section 859-a and 859-b of the General Municipal Law of the State of New York, as amended, the Agency is conducting this public hearing in connection with a certain proposed project, as more fully described below (the “Project”), to be undertaken by the Agency for the benefit of the City School District of the City of Buffalo (the “District”).

The Agency published a Notice of Public Hearing with respect to the Project in [The Buffalo News](#) on September 28, 2023.

### 3. PROJECT SUMMARY: Description of Project and Contemplated Agency Benefits.

Hearing Officer: The Project shall consist of following to be undertaken by the Agency for the benefit of the District: (A) the refinancing of the Agency’s School Facility Refunding Revenue Bonds (City School District of the City of Buffalo Project), Series 2013A (the “Series 2013A Bonds”), which Series 2013A Bonds were issued on April 25, 2013 in the aggregate principal amount of \$62,540,000 to refund a portion of the Agency’s School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2009A (the “Series 2009A Bonds”), which Series 2009A Bonds were issued on November 19, 2009 in the aggregate principal amount of \$294,905,000 to finance a project consisting of the acquisition, construction, renovation, reconstruction, improvements, equipping and furnishing of certain facilities of the District (collectively, the “Facilities”) as

the fourth phase of the Buffalo Schools Reconstruction Project; (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt revenue bonds of the Agency in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, in an aggregate principal amount not to exceed \$65,000,000 (the "Obligations"); and (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations.

The Agency is considering whether (A) to undertake the Project, (B) to finance the Project by issuing, from time to time, the Obligations and (C) to use the proceeds of the Obligations to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith.

If the Agency determines to proceed with the Project and the issuance of the Obligations, (A) the Facilities will be leased or subleased (with an obligation to purchase) or sold by the Agency to the District or its designee pursuant to an installment sale agreement, as amended (the "Agreement") requiring that the District or its designee make payments equal to debt service on the Obligations and make certain other payments and (B) the Obligations will be a special obligation of the Agency payable solely out of certain of the proceeds of the Agreement and certain other assets of the Agency pledged to the repayment of the Obligations. THE OBLIGATIONS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR ERIE COUNTY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR ERIE COUNTY, NEW YORK SHALL BE LIABLE THEREON.

The Agency has not yet made a determination pursuant to Article 8 of the Environmental Conservation Law (the "SEQR Act") regarding the potential environmental impact of the Project.

The Agency will at said time and place hear all persons with views on the location and nature of the Facilities or the proposed plan of financing the proposed Project by the issuance from time to time of the Obligations. A copy of the application filed by the District with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the offices of the Agency. A transcript or summary report of the hearing will be made available to the members of the board of directors of the Agency.

It is anticipated that the members of the board of the Agency will approve of the issuance of the Obligations at its meeting on October 25, 2023.

**4. FORMAT OF HEARING:** Review rules and manner in which the hearing will proceed.

Hearing Officer: If you have a written statement or comment to submit for the record, please submit it on the Agency's website or mail to the Agency at 95 Perry Street, Suite 403, Buffalo, New York 14203. The comment period closes at 4:00 p.m. on October 24, 2023. There are no limitations on written statements or comments.

**5. PUBLIC COMMENT:** Hearing Officer gives the public an opportunity to speak.

Hearing Officer: Those interested in making a statement or comment will be called upon in the order that they registered for this meeting. Please begin by stating your name and address; if you are representing a company, please identify the company. I request that speakers keep statements and/or comments to no more than 5 minutes, and if possible, 3 minutes.

**The Hearing Moderator introduces each participant in the order they registered for this meeting.**

Rick Ganci – Capital Markets Advisors, LLC. We are the financial advisor to the City of Buffalo and the Buffalo City School District. The transaction before the IDA is a refunding of the Joint School Construction Board 2013 bonds which were originally issued to refund the existing 2009 bonds which funded the original construction of the Joint Schools Program. The savings that would be generated by the refunding under special State Legislation shall be used for additional capital projects for the school district. So, that's certainly a provision that is under state law. We expect to price the transaction in early November depending on market conditions and close thereafter towards the end of November.

**6. ADJOURNMENT.**

As there were no further statements and/or comments, the Hearing Officer closed the public hearing at 9:07 a.m.



**SIGN IN SHEET FOR PUBLIC HEARING**

Public Hearing to be held on October 10, 2023 at 9:00 a.m.  
 at the offices of the Erie County Industrial Development Agency  
 located at 95 Perry Street – Suite 403 in the City of Buffalo, Erie County, New York

**City School District of the City of Buffalo Project**

Project Location: See Exhibit A attached hereto.

<b>Name</b>	<b>Company and/or Address</b>	<b>X box to speak/ comment</b>
Rick Ganci	Capital Markets Advisors, LLC 4211 North Buffalo Road, Sute #19 Orchard Park, New York 14127	X
Beth O’Keefe	ECIDA 95 Perry Street, Suite 403 Buffalo, New York 14203	
Brian Krygier	ECIDA 95 Perry Street, Suite 403 Buffalo, New York 14203	

EXHIBIT A TO SIGN IN SHEET FOR PUBLIC HEARING

PROJECT LOCATION

D'Youville Porter #3, 255 Porter Ave.  
School #4, 425 S. Park Ave.  
BEST #6, 414 S. Division St.  
School #212, 167 E. Utica St.  
School #11, 100 Poplar Ave.  
School #12, 33 Ash St.  
Early Childhood Center #17, 1045 W. Delavan Ave.  
Dr. A. Pantoja Community School #18, 750 West Ave.  
#18 Annex, 179 Albany St.  
Native American #19, 97 W. Delavan Ave.  
Hillery Park Academy #27, 73 Pawnee Pkwy.

School #28, 1515 S. Park Ave.  
Harriet Ross Tubman School #31, 212 Stanton St.  
Montessori #32, 342 Clinton St.  
Bilingual Center #33, 157 Elk St.  
Futures Academy #37, 295 Carlton St.  
Frank A. Sedita Academy #30, 21 Lowell St.  
MLK #48, 487 High St.  
School #40, 89 Clare St.  
Lovejoy Discovery #43 Academy, 161 Benzinger St.  
Academy School #44, 1369 Broadway  
International School #45, 141 Hoyt St.  
Adult Learning Center #46, 389 Virginia St.  
Community School #53, 329 Roehrer Ave.  
Dr. G. Blackman School #54, 2358 Main St.  
School #56, 716 W. Delavan Ave.  
Drew Science Magnet #59, One MLK Park  
Early Childhood Center #61, 453 Leroy Ave.  
School #63, 120 Minnesota Ave.  
F. L. Olmsted #64, 874 Amherst St.  
Roosevelt E.C.C. #65, 249 Skillen St.  
North Park Middle School #50, 780 Parkside St.

Discovery School #67, 911 Abbott Rd.  
Westminster #68, 24 Westminster Ave.  
Houghton Academy #69, 1725 Clinton St.  
School #70, 76 Buffum St.

School #71, 156 Newburgh St.  
Lorraine Elementary #72, 71 Lorraine Ave.  
Hamlin Park #74, 126 Donaldson Rd.  
H. Badillo Academy #76, 315 Carolina St.  
School #77, 370 Normal Ave.  
School #78, 345 Olympic Ave.  
Grabiarz School #79, 225 Lawn Ave.  
Highgate Heights #80, 600 Highgate Ave.  
School #81, 140 Tacoma Ave.  
Early Childhood Center #82, 230 Easton Ave.  
Erie County Health Care Ctr. for Children #84, 462  
Grider St.  
School #131@86, 756 St. Lawrence Ave.  
Dr. L. Wright School #89, 106 Appenheimer St.  
Drew Science Magnet E.C.C. #92, 50 A St.  
BUILD Academy #91, 340 Fougeron St.  
Southside Elementary #93, 430 Southside Parkway  
West Hertel Academy #94, 489 Hertel Ave.  
Waterfront #95, 95 Fourth St.  
Harvey Austin School #97, 1405 Sycamore St.  
Makowski E.C.C. #99, 1095 Jefferson Ave.  
School #187, 333 Clinton St.  
BAVPA #192, 450 Masten Ave.  
City Honors #195, 186 E. North St.  
Bennett HS #363, 2885 Main St.  
Grover Cleveland HS #198, 110 Fourteenth St.  
Olmsted @ Kensington HS #156, 319 Suffolk Ave.  
Lafayette HS #207, 370 Lafayette Ave.  
Riverside HS #208, 51 Ontario St.  
South Park HS #206, 150 Southside Highway  
Academy School #213, 1409 East Delavan Ave.  
Burgard HS #301, 400 Kensington Ave.  
Hutchinson Central Technical HS #304, 256 S.  
Elmwood Ave.  
McKinley HS #305, 1500 Elmwood Ave.  
MST @ Seneca HS #3197, 646 E. Delavan Ave.  
East HS #309, 820 Northhampton St.

**BOND RESOLUTION  
CITY SCHOOL DISTRICT OF THE  
CITY OF BUFFALO PROJECT**

A regular meeting of Erie County Industrial Development Agency (the “Agency”) was convened in public session in the offices of the Agency located at 95 Perry Street – Suite 403, Buffalo, New York on October 25, 2023 at 12:00 o’clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the members of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Brenda McDuffie	Chairperson
Richard Lipsitz	Vice Chairperson
Denise Abbott	Member
Hon. Diane Benczkowski	Member
Rev. Mark Blue	Member
Hon. Byron Brown	Member
James Doherty	Member
Hon. Joseph Emminger	Member
Dottie Gallagher	Member
Michael Hughes	Member
Hon. Howard Johnson	Member
Tyra Johnson	Member
Hon. Brian Kulpa	Member
Denise McCowan	Member
Glenn Nellis	Member
Hon. Mark Poloncarz	Member
Hon. Darius Pridgen	Member
Kenneth Schoetz	Member
Paul Vukelic	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

John Cappellino	President and Chief Executive Officer
Mollie Profic	Vice President and Treasurer
Jerry Manhard	Assistant Treasurer/Assistant Secretary
Atiqa Abidi	Assistant Treasurer
Elizabeth O’Keefe	Vice President of Operations and Secretary
Daryl Spulecki	Assistant Treasurer
Carrie Hocieniec	Assistant Secretary
Robert G. Murray, Esq.	Issuer Counsel
Christopher C. Canada, Esq.	Bond Counsel

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ISSUANCE OF REFUNDING BONDS TO REFUND ALL OR A PORTION OF THE SERIES 2013A BONDS WITH RESPECT TO ITS PROJECT FOR THE CITY SCHOOL DISTRICT OF THE CITY OF BUFFALO AND AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, the Erie County Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 293 of the 1970 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York (the “State”) and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to resolutions adopted on August 14, 2002, on September 11, 2002, as amended on October 16, 2002 and on June 11, 2003, and as amended and restated on November 10, 2004, and as further amended on April 11, 2005, June 11, 2007, July 9, 2007, January 17, 2008, October 19, 2009, May 16, 2011, March 26, 2012, March 25, 2013, May 20, 2015, August 24, 2016, April 28, 2021 and April 27, 2022, the Agency authorized the issuance from time to time of its School Facility Revenue Bonds (City School District of the City of Buffalo Project) (the “Bonds”) in the aggregate principal amount not to exceed \$1,450,000,000 on behalf of the City of Buffalo (the “City”) and the City School District of the City of Buffalo (the “District”), and their agent, the Joint Schools Construction Board (the “Joint Board”), in order to finance various public school facilities and to assist in the acquisition, renovation, construction, reconstruction, improvement, equipping and furnishing of such public school facilities (collectively, the “Facilities”) within the City in order to implement the comprehensive redevelopment of the City’s public schools (collectively, the “Project”); and

**WHEREAS**, on September 16, 2003, the Agency issued its \$180,335,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2003 (the “Series 2003 Bonds”) pursuant to a resolution of the Agency adopted on September 11, 2002, as amended on October 16, 2002 and on June 11, 2003, to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of certain “educational facilities” (including personalty and fixtures within certain “educational facilities”) of the City and the District, as the first phase of the Project); and

**WHEREAS**, on December 22, 2004, the Agency issued its \$310,125,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2004 (the “Series 2004 Bonds”) pursuant to a resolution of the Agency adopted on November 10, 2004, as amended on March 26, 2012, to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of certain facilities (collectively, the “Phase II Facilities”), as the second phase of the Project; and

**WHEREAS**, on August 3, 2007, the Agency issued its \$180,000,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2007A (the “Series 2007A Bonds”) pursuant to a resolution of the Agency adopted on June 11, 2007, as amended on May 20, 2015, to finance the acquisition, construction, renovation, reconstruction, improvement,

equipping and furnishing of the Phase II Facilities not financed from the proceeds of the Series 2004 Bonds, and a portion of certain facilities, as the first part of the third phase of the Project; and

**WHEREAS**, on February 28, 2008, the Agency issued its \$173,225,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2008A (the “Series 2008A Bonds”) pursuant to a resolution of the Agency adopted on January 17, 2008, as amended on May 20, 2015, to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of a portion of certain facilities, as the second part of the third phase of the Project; and

**WHEREAS**, on November 19, 2009, the Agency issued its \$294,905,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2009A (the “Series 2009A Bonds”) pursuant to a resolution of the Agency adopted on October 19, 2009 and an Indenture of Trust (Series 2009 Project) dated as of November 1, 2009 (the “Original Indenture”) by and between the Agency and Manufacturers and Traders Trust Company, as trustee, to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of certain facilities (collectively, the “Phase IV Facilities”), as the fourth phase of the Project; and

**WHEREAS**, one of the Phase IV Facilities, being the Erie County Health Care Center for Children #84 (“School #84”), is the subject of a certain Lease Agreement dated as of June 1, 2007, as extended by a First Lease Extension Agreement dated as of November 1, 2009, each by and between the County of Erie, New York, as landlord, and the District, as tenant, and entered into in connection with the issuance of the Series 2009A Bonds; and

**WHEREAS**, the District subleased School #84 to the Agency pursuant to a Ground Sublease (Series 2009 Project) dated as of November 1, 2009 by and between the District, as sublessor, and the Agency, as sublessee (the “Ground Sublease”) and entered into in connection with the issuance of the Series 2009A Bonds; and

**WHEREAS**, (i) the City and the District leased the Phase IV Facilities (other than School #84) to the Agency pursuant to a Ground Lease (Series 2009 Project) dated as of November 1, 2009 (the “Ground Lease”) by and between the City and the District, as lessors, and the Agency, as lessee, and entered into in connection with the issuance of the Series 2009A Bonds; and

**WHEREAS**, the Agency sold its leasehold interest in the Phase IV Facilities (other than School #84) under the Ground Lease and its subleasehold interest in School #84 under the Ground Sublease, respectively, to the District pursuant to an Installment Sale Agreement (Series 2009 Project) dated as of November 1, 2009 (the “Original Installment Sale Agreement”) by and between the Agency and the District and entered into in connection with the issuance of the Series 2009A Bonds; and

**WHEREAS**, on June 15, 2011, the Agency issued its \$165,315,000 aggregate principal amount of School Facility Revenue Bonds (City School District of the City of Buffalo Project), Series 2011A (“Series 2011A Bonds”) pursuant to a resolution of the Agency adopted on May 16, 2011 to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of certain facilities, as the fifth phase of the Project; and

**WHEREAS**, on July 1, 2011, the Agency issued its \$112,560,000 aggregate principal amount of School Facility Refunding Revenue Bonds (City School District of the City of Buffalo Project), Series 2011B (the “Series 2011B Bonds”) pursuant to a resolution of the Agency adopted on May 16, 2011 to finance the acquisition, construction, renovation, reconstruction, improvement, equipping and furnishing of certain facilities, as the fifth phase of the Project; and

**WHEREAS**, on April 19, 2012, the Agency issued its \$209,540,000 aggregate principal amount of School Facility Refunding Revenue Bonds (City School District of the City of Buffalo Project), Series 2012A pursuant to a resolution of the Agency adopted on March 26, 2012 and an Amended and Restated Indenture of Trust (Series 2004 Project) dated as of April 1, 2012 by and between the Agency and Manufacturers and Traders Trust Company, as trustee, to refund in whole the Series 2004 Bonds; and

**WHEREAS**, on April 25, 2013, the Agency issued its \$62,540,000 aggregate principal amount of School Facility Refunding Revenue Bonds (City School District of the City of Buffalo Project), Series 2013A (the “Series 2013A Bonds”) pursuant to a resolution adopted on March 25, 2013 and the Original Indenture, as amended and supplemented by a First Supplemental Indenture of Trust (Series 2009 Project) dated as of April 1, 2013 (the “First Supplemental Indenture”) (the Original Indenture, as amended and supplemented by the First Supplemental Indenture, being referred to hereinafter as the “Supplemented Indenture”) by and between the Agency and Manufacturers and Traders Trust Company, as trustee, to refund in part the Series 2009A Bonds; and

**WHEREAS**, in connection with the issuance of the Series 2013A Bonds, the Agency and the District entered into a First Amendment to Installment Sale Agreement (Series 2009 Project) dated as of April 1, 2013 (the “First Amendment to Installment Sale Agreement”) by and between the Agency and the District; and

**WHEREAS**, on June 24, 2015, the Agency issued its \$236,975,000 School Facility Revenue Refunding Bonds (City School District of the City of Buffalo Project), Series 2015A (the “Series 2015A Bonds”) pursuant to a resolution adopted on May 20, 2015, to refund in whole the Series 2007A Bonds and Series 2008A Bonds; and

**WHEREAS**, on October 12, 2016, the Agency issued its \$133,580,000 School Facility Revenue Refunding Bonds (City School District of the City of Buffalo Project), Series 2016A (the “Series 2016A Bonds”) pursuant to a resolution adopted on August 24, 2016 and the Supplemented Indenture, as amended and supplemented by a Second Supplemental Indenture of Trust dated as of October 1, 2016 (the “Second Supplemental Indenture”) (the Supplemented Indenture, as amended and supplemented by the Second Supplemental Indenture, being referred to hereinafter as the “Indenture”) by and between the Agency and Manufacturers and Traders Trust Company, as trustee, to refund in whole the remaining Series 2009A Bonds; and

**WHEREAS**, in connection with the issuance of the Series 2016A Bonds, the Agency and the District entered into a Second Amendment to Installment Sale Agreement (Series 2009 Project) dated as of October 1, 2016 (the “Second Amendment to Installment Sale Agreement”) (the Original Installment Sale Agreement, as amended and supplemented by the First Amendment to Installment Sale Agreement and the Second Amendment to Installment Sale Agreement, being referred to hereinafter as the “Installment Sale Agreement”) by and between the Agency and the District; and

**WHEREAS**, on May 19, 2021, the Agency issued its \$80,320,000 School Facility Revenue Refunding Bonds (City School District of the City of Buffalo Project), Series 2021A (the “Series 2021A Bonds”) and its \$28,815,000 School Facility Revenue Refunding Bonds (City School District of the City of Buffalo Project), Series 2021B (the “Series 2021B Bonds”) pursuant to a resolution adopted on April 28, 2021, to refund in whole the Series 2011A Bonds and the Series 2011B Bonds; and

**WHEREAS**, on May 18, 2022, the Agency issued its \$71,150,000 School Facility Revenue Refunding Bonds (City School District of the City of Buffalo Project), Series 2022A (the “Series 2022A Bonds”) pursuant to a resolution adopted on April 27, 2022, to refund in whole the Series 2012A Bonds; and

**WHEREAS**, the District has requested that the Agency issue a series of refunding bonds as additional bonds pursuant to the Indenture to refund in whole or in part the Series 2013A Bonds (the “Refunding Project”); and

**WHEREAS**, a notice of public hearing with respect to the Refunding Project, pursuant to Section 859-a of the Act, was printed in The Buffalo News on September 28, 2023; and

**WHEREAS**, pursuant to Section 859-a of the Act, the Agency conducted a public hearing with respect to the Refunding Project on October 10, 2023, a transcript of which is on file at the offices of the Agency; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Initial Project; and

**WHEREAS**, the Refunding Project appears to constitute a “Type II action” (as said quoted term is defined in the Regulations), and therefore it appears that no further determination or procedure under SEQRA is required with respect to the Refunding Project;

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

Section 1. Based upon the Agency’s review of the information provided by the District and other information as the Agency has deemed necessary and appropriate, the Agency hereby makes the following followings and determinations with respect to the Refunding Project:

(a) Pursuant to Section 617.5(c)(29) of the Regulations, the Refunding Project is a “Type II action” (as said quoted term is defined in the Regulations); and

(b) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Refunding Project.

Section 2. The Agency hereby authorizes the issuance of refunding bonds (the “Refunding Bonds”) in an aggregate principal amount not to exceed \$65,000,000 to refund all of a portion of the Series 2013A Bonds. The principal amounts and maturities of the Refunding Bonds shall be as set forth in the Indenture.

Section 3. The execution and delivery, as applicable, of a third amendment to installment sale agreement (amending and supplementing the Installment Sale Agreement), a third supplemental indenture (amending and supplementing the Indenture), a tax regulatory agreement, an arbitrage certificate, a final offering document, a bond purchase agreement and a refunding escrow trust agreement, each relating to the Refunding Bonds, and any other amendment or termination document which may be required or desirable to refund the Series 2013A Bonds in whole or in part (collectively, the “Agency Documents”), to effect the purposes set forth in this resolution are hereby authorized. The Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Agency are hereby authorized to execute, acknowledge and deliver each such Agency Document and to affix the seal of the Agency on each such Agency Document, as applicable, and

attest the same. The execution and delivery of each such Agency Document by said officer shall be conclusive evidence of due authorization and approval.

Section 4. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 5. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties. No covenant, stipulation, obligation or agreement herein contained or contained in any of the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his individual capacity, and neither the members of the Agency, nor any officer executing the Refunding Bonds shall be liable personally on the Refunding Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 6. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, the Agency Documents and the issuance from time to time of the Refunding Bonds.

Section 7. The Agency recognizes that due to the unusual complexities of the financings it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Agency to approve modifications to the terms approved hereby which do not affect the intent and substance of this resolution.

Section 8. The Agency hereby determines that the Refunding Project and the financing thereof by the Agency pursuant to the Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in the Act. The Agency further determines that:

- (a) the Refunding Project shall not result in the removal of any facility or plant of the District or any other occupant or user of the Refunding Project from outside of Erie County (but within the State of New York) to within Erie County or in the abandonment of one or more facilities or plants of the District or any other occupant or user of the Phase IV Facilities located within the State of New York (but outside of Erie County);



(b) the Refunding Project does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Refunding Project, and accordingly the Refunding Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and accordingly the Agency is authorized to provide financial assistance in respect of the Refunding Project pursuant to Section 862(2)(a) of the Act.

(c) no funds of the Agency shall be used in connection with the Refunding Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Refunding Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York;

(d) the Refunding Project constitutes a qualified "project" under the Act; and

(e) the Refunding Project will serve the public purposes of the Act by preventing economic deterioration and promoting employment opportunities in the State.

Section 9. No covenant, stipulation, obligation or agreement contained in this resolution shall be deemed to be the covenant, stipulation, obligation or agreement of any member, director, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing the Refunding Bonds shall be liable personally on the Refunding Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the members or officers of the Agency, nor any person executing the Refunding Bonds or other documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof.

Section 10. The Refunding Bonds and the interest therein shall not be a debt of the State or Erie County or any political subdivision thereof (other than the Agency), and none of the State, Erie County nor any political subdivision thereof (other than the Agency) shall be liable thereon. The Refunding Bonds shall be issued solely for the purposes set forth in this resolution. The Refunding Bonds and the interest thereon shall constitute a special, limited obligation of the Agency payable solely from the revenues derived or to be derived from the lease or sale of the Phase IV Facilities and from the enforcement of the security pledged to the payment of the Refunding Bonds.

Section 11. This resolution shall take effect immediately.

The question of the adoption of the foregoing bond resolution was duly put to a vote on roll call, which resulted as follows:

Brenda McDuffie	VOTING	_____
Richard Lipsitz	VOTING	_____
Denise Abbott	VOTING	_____
Hon. Diane Benczkowski	VOTING	_____
Rev. Mark Blue	VOTING	_____
Hon. Byron Brown	VOTING	_____
James Doherty	VOTING	_____
Hon. Joseph Emminger	VOTING	_____
Dottie Gallagher	VOTING	_____
Michael Hughes	VOTING	_____

Hon. Howard Johnson	VOTING	_____
Tyra Johnson	VOTING	_____
Hon. Brian Kulpa	VOTING	_____
Denise McCowan	VOTING	_____
Glenn Nellis	VOTING	_____
Hon. Mark Poloncarz	VOTING	_____
Hon. Darius Pridgen	VOTING	_____
Kenneth Schoetz	VOTING	_____
Paul Vukelic	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

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

I, the undersigned Secretary of Erie County Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on October 25, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_ day of October, 2023.

\_\_\_\_\_  
Elizabeth A. O’Keefe  
Secretary





### JSCB Series 2023A Refunding Bonds

Instructions and Insurance Requirements Document

#### **Section I: Applicant Background Information**

Please answer all questions. Use "None" or "Not Applicable" where necessary. Information in this application may be subject to public review under New York State Law.

#### Applicant Information- Company Receiving Benefit

**Project Name** School Facility Refunding Revenue Bonds (City School District of the City of Buffalo Project) Series 2023A

**Project Summary** Current refunding of the remaining Series 2013A School Facility Revenue Bonds (City School District of the City of Buffalo Project) which were originally issued by the ECIDA April 25, 2013.

**Applicant Name** James Barnes

**Applicant Address** 406 City Hall

**Applicant Address 2**

**Applicant City** Buffalo

**Applicant State** New York

**Applicant Zip** 14202

**Phone** (716) 816-3522

**Fax**

**E-mail** JRBarnes@buffaloschools.org

**Website**

**NAICS Code**

#### Business Organization

**Type of Business**  
 Joint School Construction Board created by joint resolution of the City of Buffalo Common Council and the City of Buffalo School District pursuant to a provision of the City Charter and the Buffalo Schools Act

**Year Established**

1998

**State**

New York

**Indicate if your business is 51% or more (Check all boxes that apply)**

- [No] Minority Owned
- [No] Woman Owned

**Indicate Minority and/or Woman Owned Business Certification if applicable (Check all boxes that apply)**

- [No] NYS Certified
- [No] Erie Country Certified

Individual Completing Application

**Name** James Barnes  
**Title** CFO  
**Address** Buffalo Board of Education  
**Address 2** 406 City Hall  
**City** Buffalo  
**State** New York  
**Zip** 14202  
**Phone** (716) 816-3522  
**Fax**  
**E-Mail** JRBarnes@buffaloschools.org

Company Contact- Authorized Signer for Applicant

**Contact is same as individual completing application** No

**Name**  
**Title**  
**Address**  
**Address 2**  
**City**  
**State**  
**Zip**  
**Phone**  
**Fax**  
**E-Mail**

Company Counsel

**Name of Attorney**  
**Firm Name**  
**Address**  
**Address 2**  
**City**  
**State**  
**Zip**  
**Phone**  
**Fax**  
**E-Mail**

Benefits Requested (select all that apply).

**Exemption from Sales Tax** No  
**Exemption from Mortgage Tax** Yes

**Exemption from Real Property Tax** No

**Tax Exempt Financing\*** Yes

\* (typically for not-for-profits & small qualified manufacturers)

Applicant Business Description

**Describe in detail company background, history, products and customers. Description is critical in determining eligibility. Also list all stockholders, members, or partners with % ownership greater than 20%.**

Overseeing the construction and reconstruction of new or renovated educational facilities in the City or District and overseeing and arranging of financing cost thereof.

**Estimated % of sales within Erie County** 0 %

**Estimated % of sales outside Erie County but within New York State** 0 %

**Estimated % of sales outside New York State but within the U.S.** 0 %

**Estimated % of sales outside the U.S.** 0 %

(\*Percentage to equal 100%)

**For your operations, company and proposed project what percentage of your total annual supplies, raw materials and vendor services are purchased from firms in Erie County?**

0

**Describe vendors within Erie County for major purchases**

**Section II: Eligibility Questionnaire - Project Description & Details**

Project Location

**Address of Proposed Project Facility**

See attached list of properties

**Town/City/Village of Project Site**

Buffalo

**School District of Project Site**

Buffalo School District

**Current Address (if different)**

**Current Town/City/Village of Project Site (if different)**

**SBL Number(s) for proposed Project**

**What are the current real estate taxes on the proposed Project Site**

**If amount of current taxes is not available, provide assessed value for each.**

Land

\$ 0

Building(s)

\$ 0

If available include a copy of current tax receipt.

**Are Real Property Taxes current at project location?**

No

**If no please explain**

N/A, all properties are currently exempt from real estate taxes.

\*The ECIDA has an unpaid tax policy and you will be required to certify all taxes and PILOTS are current.

**Does the Applicant or any related entity currently hold fee title or have an option/contract to purchase the Project site?**

No

**If No, indicate name of present owner of the Project Site**

City of Buffalo holds current title

**Does Applicant or related entity have an option/contract to purchase the Project site?**

No

**Describe the present use of the proposed Project site (vacant land, existing building, etc.)**

Currently all facilities used as public schools.

**Provide narrative and purpose of the proposed project (new build, renovations) square footage of existing and new construction contemplated and/or equipment purchases. Identify specific uses occurring within the project. Describe any and all tenants and any/all end users: (This information is critical in determining project eligibility)**

Current refunding of the remaining 2013A School Facility Revenue Bonds (City School District of the City of Buffalo Project) which were originally issued by the ECIDA on April 25, 2013 to refund the 2009A Bonds.

**Municipality or Municipalities of current operations**

City of Buffalo

**Will the Proposed Project be located within a Municipality identified above?**

Yes

**Will the completion of the Project result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state OR in the abandonment of one or more plants or facilities of the project occupant located within the**

state?

<BLANK>

If the Proposed Project is located in a different Municipality within New York State than that Municipality in which current operations are being undertaken, is it expected that any of the facilities in any other Municipality will be closed or be subject to reduced activity?

No

(If yes, you will need to complete the Intermunicipal Move Determination section of this application)

Is the project reasonably necessary to prevent the project occupant from moving out of New York State?

<BLANK>

If yes, please explain and identify out-of-state locations investigated, type of assistance offered and provide supporting documentation available

Have you contacted or been contacted by other Local, State and/or Federal Economic Development Agencies?

<BLANK>

If yes, please indicate the Agency and nature of inquiry below

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

Describe the reasons why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc... Your eligibility determination will be based in part on your answer (attach additional pages if necessary)

Tax-Exempt bonds originally issued by the ECIDA to finance the cost of a portion of the project as mandated by the Buffalo Schools Act, as amended. Applicant is requesting the ECIDA to issue tax-exempt revenue refunding bonds to refund in whole the remainder of its Series 2013A Bonds.

Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency

No

If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and Erie County?

Will project include leasing any equipment?

No

If yes, please describe equipment and lease terms.

Site Characteristics

Is your project located near public transportation?

Yes

If yes describe if site is accessible by either metro or bus line (provide route number for bus lines)

Has your local municipality and/or its planning board made a determination regarding the State Environmental Quality Review (SEQR) for your project?

<BLANK>

If YES indicate in the box below the date the SEQR determination was made. Also, please provide us with a copy of the approval resolution and the related Environmental Assessment Form (EAF) if applicable.

If NO indicate in the box below the date you anticipate receiving a SEQR determination for your project. Also, please insure that the ECIDA has been listed as an "involved agency" on the related EAF submitted to the appropriate municipality and/or planning department.

Will the Project meet zoning/land use requirements at the proposed location?

Yes

Describe the present zoning/land use

No change as all properties are used for public school facilities.



**Describe required zoning/land use, if different**

**If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements**

**Is the proposed Project located on a site where the known or potential presence of contaminants is complicating the development/use of the property?**

No

**If yes, please explain**

**Has a Phase I Environmental Assessment been prepared, or will one be prepared with respect to the proposed Project Site?**

No

If yes, please provide a copy.

**Have any other studies, or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?**

No

If yes, please provide copies of the study.

**If you are purchasing new machinery and equipment, does it provide demonstrable energy efficiency benefits?**

No

**If yes, describe the efficiencies achieved**

You may also attach additional information about the machinery and equipment at the end of the application.

**Does or will the company or project occupant perform research and development activities on new products/services at the project location?**

No

If yes, include percentage of operating expenses attributed to R&D activities and provide details.

Select Project Type for all end users at project site (you may check more than one)

For purposes of the following, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

Will customers personally visit the Project site for either of the following economic activities? If yes with respect to either economic activity indicated below, you will need to complete the Retail section of this application.

<b>Retail Sales</b>	No	<b>Services</b>	Yes
---------------------	----	-----------------	-----

Please check any and all end uses as identified below.

- No Acquisition of Existing Facility**
- No Assisted Living**
- No Back Office**
- No Civic Facility (not for profit)**
- No Commercial**
- No Equipment Purchase**
- No Facility for the Aging**
- No Industrial**
- No Life Care Facility (CCRC)**
- No Market Rate Housing**
- No Mixed Use**
- No Multi-Tenant**
- No Retail**
- No Senior Housing**
- No Manufacturing**
- No Renewable Energy**
- Yes Other**
- Public Schools**

For proposed facility please include the square footage for each of the uses outlined below

If applicant is paying for FFE for tenants, include in cost breakdown.

<b>Cost</b>	<b>% of Total Cost</b>
-------------	------------------------

<b>Manufacturing/Processing</b>	square feet	\$	0	0%
<b>Warehouse</b>	square feet	\$	0	0%
<b>Research &amp; Development</b>	square feet	\$	0	0%
<b>Commercial</b>	square feet	\$	0	0%
<b>Retail</b>	square feet	\$	0	0%
<b>Office</b>	square feet	\$	0	0%
<b>Specify Other</b>	square feet	\$	0	0%

If you are undertaking new construction or renovations, are you seeking LEED certification from the US Green Building Council?

No

If you answered yes to question above, what level of LEED certification do you anticipate receiving? (Check applicable box)

<BLANK>

Provide estimate of additional construction cost as a result of LEED certification you are seeking < BLANK >

Will project result in significant utility infrastructure cost or uses Yes

What is the estimated project timetable (provide dates)

Start date : acquisition of equipment or construction of facilities

11/15/2023

End date : Estimated completion date of project

11/15/2023

Project occupancy : estimated starting date of occupancy

11/15/2023

Capital Project Plan / Budget

Estimated costs in connection with Project

1.) Land and/or Building Acquisition

\$ 0 square feet acres

2.) New Building Construction

\$ 0 square feet

3.) New Building addition(s)

\$ 0 square feet

4.) Reconstruction/Renovation

\$ 0 square feet

5.) Manufacturing Equipment

\$ 0

6.) Infrastructure Work

\$ 0

7.) Non-Manufacturing Equipment: (furniture, fixtures, etc.)

\$ 0

**8.) Soft Costs: (Legal, architect, engineering, etc.)**

\$ 0

**9.) Other Cost**

\$ 65,000,000

**Explain Other Costs** Tax-exempt bonds were originally issued by the ECIDA to finance a portion of the project as mandated by the Buffalo Schools Act, as amended. Applicant is requesting the ECIDA issue its tax-exempt revenue refunding bonds to refund in whole the 2013A Bonds.

**Total Cost** \$ 65,000,000

Construction Cost Breakdown:

**Total Cost of Construction** \$ 0 (sum of 2, 3, 4 and 6 in Project Information, above)  
**Cost of materials** \$ 0  
**% sourced in Erie County** %

Sales and Use Tax:

**Gross amount of costs for goods and services that are subject to State and local sales and use tax- said amount to benefit from the Agency's sales and use tax exemption benefit** \$ 0

**Estimated State and local Sales and Use Tax Benefit (product of 8.75% multiplied by the figure, above):** \$ 0

\*\* Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate, above, represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate, above, as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.

**Project refinancing estimated amount, if applicable (for refinancing of existing debt only)** \$ 0

**Have any of the above costs been paid or incurred as of the date of this Application?** Yes

**If Yes, describe particulars:**

Sources of Funds for Project Costs:

**Equity (excluding equity that is attributed to grants/tax credits):** \$  
**Bank Financing:** \$ 0  
**Tax Exempt Bond Issuance (if applicable):** \$ 65,000,000  
**Taxable Bond Issuance (if applicable):** \$ 0  
**Public Sources (Include sum total of all state and federal grants and tax credits):** \$ 0  
**Identify each state and federal grant/credit: (ie Historic Tax Credit, New Market Tax Credit, Brownfield, Cleanup Program, ESD, other public sources)**  
**Total Sources of Funds for Project Costs:** \$65,000,000  
**Have you secured financing for the project?** <BLANK>

Mortgage Recording Tax Exemption Benefit:

Amount of mortgage, if any that would be subject to mortgage recording tax:

**Mortgage Amount (include sum total of construction/permanent/bridge financing).**

**Lender Name, if Known**

**Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above multiplied by 3/4 of 1%):** \$0

Real Property Tax Benefit:

**Identify and describe if the Project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit (485-a, 485-b, other):**

IDA PILOT Benefit: Agency staff will indicate the estimated amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in the PILOT worksheet in the additional document section.

Percentage of Project Costs financed from Public Sector sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon the Sources of Funds for Project Costs as depicted above. The percentage of Project Costs financed from public sector sources will be depicted in the PILOT worksheet in the additional document section.

**Is project necessary to expand project employment?**

No

**Is project necessary to retain existing employment?**

No

**Will project include leasing any equipment?**

No

If yes, please describe equipment and lease terms.

Employment Plan (Specific to the proposed project location)

The Labor Market Area consists of the following six counties: Erie, Niagara, Chautauqua, Cattaraugus, Wyoming and Genessee.

By statute, Agency staff must project the number of FTE jobs that would be retained and created if the request for Financial Assistance is granted. Agency staff will project such jobs over the TWO Year time period following Project completion. Agency staff converts PT jobs into FTE jobs by dividing the number of PT jobs by two (2).

	<b>Current # of jobs at proposed project location or to be relocated at project location</b>	<b>If financial assistance is granted – project the number of FT and PT jobs to be retained</b>	<b>If financial assistance is granted – project the number of FT and PT jobs to be created upon 24 months (2 years) after Project completion</b>	<b>Estimate number of residents of the Labor Market Area in which the project is located that will fill the FT and PT jobs to be created upon 24 months (2 years) after project completion **</b>
<b>Full time</b>	0	0	0	0
<b>Part time</b>	0	0	0	0
<b>Total</b>	0	0	0	0

Salary and Fringe Benefits for Jobs to be Retained and Created

<b>Job Categories</b>	<b># of Full Time Employees retained and created</b>	<b>Average Salary for Full Time</b>	<b>Average Fringe Benefits for Full Time</b>	<b># of Part Time Employees retained and created</b>	<b>Average Salary for Part Time</b>	<b>Average Fringe Benefits for Part Time</b>
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<b>Management</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Professional</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Administrative</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Production</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Independent Contractor</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Other</b>	0	\$ 0	\$ 0	0	\$ 0	\$ 0
<b>Total</b>	0			0		

\*\* Note that the Agency may utilize the foregoing employment projections, among other items, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.

No **By checking this box, I certify that the above information concerning the current number of jobs at the proposed project location or to be relocated to the proposed project location is true and correct.**

Employment at other locations in Erie County: (provide address and number of employees at each location):

<b>Address</b>			
<b>Full time</b>	0	0	0
<b>Part time</b>	0	0	0
<b>Total</b>	0	0	0

Payroll Information

**Annual Payroll at Proposed Project Site upon completion**

0

**Estimated average annual salary of jobs to be retained (Full Time)**

0

**Estimated average annual salary of jobs to be retained (Part Time)**

0

**Estimated average annual salary of jobs to be created (Full Time)**

0

**Estimated average annual salary of jobs to be created (Part Time)**

0

**Estimated salary range of jobs to be created**

**From (Full Time)** 0 **To (Full Time)** 0

**From (Part Time)** 0 **To (Part Time)** 0

**Section III: Environmental Questionnaire**

INSTRUCTIONS: Please complete the following questionnaire as completely as possible. If you need additional space to fully answer any question, please attach additional page(s).

General Background Information

**Address of Premises**

See list of Series 2013A project school facilities attached.

**Name and Address of Owner of Premises**

City of Buffalo

**Describe the general features of the Premises (include terrain, location of wetlands, coastlines, rivers, streams, lakes, etc.)**

Urban areas

**Describe the Premises (including the age and date of construction of any improvements) and each of the operations or processes carried out on or intended to be carried on at the Premises**

Public school facilities.

**Describe all known former uses of the Premises**

same

**Does any person, firm or corporation other than the owner occupy the Premises or any part of it?**

No

**If yes, please identify them and describe their use of the property**

**Have there been any spills, releases or unpermitted discharges of petroleum, hazardous substances, chemicals or hazardous wastes at or near the Premises?**

No

**If yes, describe and attach any incident reports and the results of any investigations**

**Has the Premises or any part of it ever been the subject of any enforcement action by any federal, state or local government entity, or does the preparer of this questionnaire have knowledge of: a) any current federal, state or local enforcement actions; b) any areas of non-compliance with any federal, state or local laws, ordinances, rules or regulations associated with operations over the past 12 months?**

No

**If yes, please state the results of the enforcement action (consent order, penalties, no action, etc.) and describe the circumstances**

**Has there been any filing of a notice of citizen suit, or a civil complaint or other administrative or criminal procedure involving the Premises?**

No

**If yes, describe in full detail**

Solid And Hazardous Wastes And Hazardous Substances

**Does any activity conducted or contemplated to be conducted at the premises generate, treat or dispose of any petroleum, petroleum-related products, solid and hazardous wastes or hazardous substances?**

No

**If yes, provide the Premises' applicable EPA (or State) identification number**

**Have any federal, state or local permits been issued to the Premises for the use, generation and/or storage of solid and hazardous wastes?**

No

**If yes, please provide copies of the permits.**

**Identify the transporter of any hazardous and/or solid wastes to or from the Premises**

**Identify the solid and hazardous waste disposal or treatment facilities which have received wastes from the Premises for the past two (2) years**

**Does or is it contemplated that there will occur at the Premises any accumulation or storage of any hazardous wastes on-site for disposal for longer than 90 days?**

<BLANK>

**If yes, please identify the substance, the quantity and describe how it is stored**

Discharge Into Waterbodies

**Briefly describe any current or contemplated industrial process discharges (including the approximate volume, source, type and number of discharge points). Please provide copies of all permits for such discharges**

**Identify all sources of discharges of water, including discharges of waste water, process water, contact or noncontact cooling water, and stormwater. Attach all permits relating to the same. Also identify any septic tanks on site**

**Is any waste discharged into or near surface water or groundwaters?**

<BLANK>

**If yes, please describe in detail the discharge including not only the receiving water's classification, but a description of the type and quantity of the waste**

Air Pollution

**Are there or is it contemplated that there will be any air emission sources that emit contaminants from the Premises?**

No

**If yes, describe each such source, including whether it is a stationary combustion installation, process source, exhaust or ventilation system, incinerator or other source**

**Are any of the air emission sources permitted?**

No

**If yes, attach a copy of each permit.**

Storage Tanks

**List and describe all above and under ground storage tanks at the Premises used to store petroleum or gasoline products, or other chemicals or wastes, including the contents and capacity of each tank. Please also provide copies of any registrations/permits for the tanks**

**Have there been any leaks, spills, releases or other discharges (including loss of inventory) associated with any of these tanks?**

No

**If yes, please provide all details regarding the event, including the response taken, all analytical results or reports developed through investigation (whether internal or external), and the agencies which were involved**

Polychlorinated Biphenyls ("PCB" or "PCBs") And Asbestos

**Provide any records in your possession or known to you to exist concerning any on-site PCBs or PCB equipment, whether used or stored, and whether produced as a byproduct of the manufacturing process or otherwise.**

**Have there been any PCB spills, discharges or other accidents at the Premises?**

No

**If yes, relate all the circumstances**

**Do the Premises have any asbestos containing materials?**

No

**If yes, please identify the materials**



## Section IV: Facility Type - Single or Multi Tenant

Is this a Single Use Facility or a Multi-Tenant Facility?

Single Use Facility

For Single Use Facility

**Occupant Name** Buffalo School District

**Address**

**Contact Person**

**Phone**

**Fax**

**E-Mail**

**Federal ID #**

**SIC/NAICS Code**

SS

## **Section VI: Retail Determination**

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

**Will any portion of the project (including that portion of the costs to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?**

No

If yes, complete the Retail Questionnaire Supplement below. **If no, proceed to the next section.**

## **Section VII: Adaptive Reuse Projects**

Adaptive Reuse is the process of adapting old structures or sites for new purposes.

**Are you applying for tax incentives under the Adaptive Reuse Program?**

No

**Section VIII: Inter-Municipal Move Determination**

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, Agency financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

**Current Address**

The Buffalo Board of Education

**City/Town**

Buffalo

**State**

New York

**Zip Code**

14202

**Will the project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state?**

No

**Will the project result in the abandonment of one or more plants or facilities of the Project occupant located within the state?**

No

**If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:**

**Does this project involve relocation or consolidation of a project occupant from another municipality?**

**Within New York State**

No

**Within Erie County**

No

**If Yes to either question, please, explain**

**Will the project result in a relocation of an existing business operation from the City of Buffalo?**

No

**If yes, please explain the factors which require the project occupant to relocate out of the City of Buffalo (For example, present site is not large enough, or owner will not renew leases etc.)**

**What are some of the key requirements the project occupant is looking for in a new site? (For example, minimum sq. ft., 12 foot ceilings, truck loading docs etc.)**

**If the project occupant is currently located in Erie County and will be moving to a different municipality within Erie County, has the project occupant attempted to find a suitable location within the municipality in which it is currently located?**

No

**What factors have lead the project occupant to consider remaining or locating in Erie County?**

**If the current facility is to be abandoned, what is going to happen to the current facility that project occupant is located in?**

**Please provide a list of properties considered, and the reason they were not adequate. (Some examples include: site not large enough, layout was not appropriate, did not have adequate utility service, etc.) Please include full address for locations.**



## **Section IX: Senior Housing**

IDA tax incentives may be granted to projects under the Agency's Senior Citizen Rental Housing policy when the project consists of a multi-family housing structure where at least 90% of the units are (or are intended to be) rented to and occupied by a person who is 60 years of age or older.

**Are you applying for tax incentives under the Senior Rental Housing policy?**

No

**Section X: Tax Exempt Bonds**

In order to receive the benefits of a tax-exempt interest rate bond, private borrowers and their projects must be eligible under one of the federally recognized private active bond categories (Fed Internal Rev Code IRC sections 142-144, and 1394).

**Are you applying for tax exempt bonds / refinancing of bonds related to a residential rental facility project?**

No

## MEMORANDUM FROM



Christopher C. Canada, Esq.  
Direct Dial: 518.736.2921  
Email: [ccanada@hodgsonruss.com](mailto:ccanada@hodgsonruss.com)

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**To:** John Cappellino, Chief Executive Officer  
Erie County Industrial Development Agency

**Cc:** Robert Murray, Esq.

**Date:** October 19, 2023

**Subject:** Replacement of Remarketing Agent – The Canisius High School of Buffalo, N.Y.

### REQUEST

You have asked for a brief summary relating to the proposed replacement of the remarketing agent on the Erie County Industrial Development Agency Variable Rate Demand Civic Facility Revenue Bonds (The Canisius High School of Buffalo, N.Y. Project – Letter of Credit Secured), Series 2008 (the “Series 2008 Bonds”). The Series 2008 Bonds were issued on January 30, 2008 in the aggregate principal amount of \$22,250,000 pursuant to a bond resolution adopted by the members of Erie County Industrial Development Agency (the “Issuer”) on December 10, 2007 and a trust indenture dated as of January 1, 2008 (the “Indenture”) by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”) for the holders of the Series 2008 Bonds.

### OVERVIEW

The Series 2008 Bonds fall into the category of variable rate demand obligations “(VRDOs)”. Prior to the Great Recession and the housing market collapse, VRDOs were common in the municipal bond market. VRDOs typically include the following key features:

- VRDOs bear interest at variable rates which get reset on predetermined dates (for example, once a week or once a month).
- VRDOs are commonly backed by a letter of credit issued by a commercial bank.
- VRDOs have a “put” or tender component. This means that a bondholder has the option to tender their bonds for repurchase in connection with the resetting of the interest rate on the VRDOs.
- A commercial bank typically acts a remarketing agent (the “Remarketing Agent”) for VRDOs. The Remarketing Agent’s role includes (i) resetting the interest rate on the bonds and (ii) selling (or “remarketing”) the bonds tendered by existing bondholders to new bondholders.
- In the event the Remarketing Agent is unable to remarket all of the VRDOs tendered by bondholders, a tender agent (usually the bond trustee) would draw on the letter of credit to pay off those bondholders who tendered their VRDOs and which the Remarketing Agent was unable to resell on the secondary market.

With respect to the Series 2008 Bonds, a letter of credit was issued by Manufacturers and Traders Trust Company (the “Bank”) and Manufacturers and Traders Trust Company also acted as the initial remarketing agent (the “Initial Remarketing Agent”).



Recently, The Canisius High School of Buffalo, N.Y. (the “Institution”) notified the Issuer that the Initial Remarketing Agent had resigned from its role as Remarketing Agent (subject to the appointment of a successor Remarketing Agent) and Stern Brothers (“Stern Brothers”) wishes to act as replacement Remarketing Agent.

Under the Indenture, the consent of the Issuer is required in connection with the replacement of the Remarketing Agent. Additionally, the replacement Remarketing Agent under the Indenture shall have a combined capital stock surplus and undivided profits of at least \$25,000,000 (the “Capital Requirement”). The Institution has, at the behest of Stern Brothers, requested that the Issuer waive the Capital Requirement with respect to Stern Brothers stepping in as Remarketing Agent.

### **CONCLUSION**

My sense is that the Capital Requirement set forth in the Indenture was meant to prevent banks without remarketing experience from acting in this role during the heyday of VRDOs. Based on my conversation with representatives of Stern Brothers, they remarket hundreds of series of bonds across the country and have done so for many years. Given that Stern Brothers is an active participant in the remarketing space and the security provided to the holders of the Series 2008 Bonds would presumably not be negatively impacted at all by the change in Remarketing Agent, the waiver of the Capital Requirement by the Issuer should not require the consent of the holders of the Series 2008 Bonds. As such, the Issuer consenting to the replacement of the Remarketing Agent and waiving the Capital Requirement vis a vis Stern Brothers is not problematic from my perspective.

**APPROVING RESOLUTION  
THE CANISIUS HIGH SCHOOL OF BUFFALO, N.Y. PROJECT**

A regular meeting of Erie County Industrial Development Agency (the "Issuer") was convened in public session in the offices of the Issuer located at 95 Perry Street – Suite 403, Buffalo, New York on October 25, 2023 at 12:00 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the members of the Issuer and, upon roll being called, the following members of the Issuer were:

**PRESENT:**

Brenda McDuffie	Chairperson
Richard Lipsitz	Vice Chairperson
Denise Abbott	Member
Hon. Diane Benczkowski	Member
Rev. Mark Blue	Member
Hon. Byron Brown	Member
James Doherty	Member
Hon. Joseph Emminger	Member
Dottie Gallagher	Member
Michael Hughes	Member
Hon. Howard Johnson	Member
Tyra Johnson	Member
Hon. Brian Kulpa	Member
Denise McCowan	Member
Glenn Nellis	Member
Hon. Mark Poloncarz	Member
Hon. Darius Pridgen	Member
Kenneth Schoetz	Member
Paul Vukelic	Member

**ABSENT:**

**ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:**

John Cappellino	President and Chief Executive Officer
Mollie Profic	Vice President and Treasurer
Jerry Manhard	Assistant Treasurer/Assistant Secretary
Atiqa Abidi	Assistant Treasurer
Elizabeth O'Keefe	Vice President of Operations and Secretary
Daryl Spulecki	Assistant Treasurer
Carrie Hocieniec	Assistant Secretary
Robert G. Murray, Esq.	Issuer Counsel
Christopher C. Canada, Esq.	Bond Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_

RESOLUTION (A) THE CONSENT OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "ISSUER") TO THE REPLACEMENT OF THE REMARKETING AGENT RELATING TO THE ISSUER'S VARIABLE RATE DEMAND CIVIC FACILITY REVENUE BONDS (THE CANISIUS HIGH SCHOOL OF BUFFALO, N.Y. PROJECT – LETTER OF CREDIT SECURED), SERIES 2008 ISSUED BY THE ISSUER ON JANUARY 30, 2008; (B) THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AND (C) MAKING A FINDING IN COMPLIANCE WITH THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT.

WHEREAS, the Erie County Industrial Development Agency (the "Issuer") is authorized and empowered by Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended (the "Enabling Act"), together with Section 891-a of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, installation and equipping of one or more "projects" (as defined in the Act), to acquire, construct, equip and install said projects or to cause said projects to be acquired, constructed, equipped and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on January 30, 2008, the Issuer issued its Variable Rate Demand Civic Facility Bonds (The Canisius High School of Buffalo, N.Y. Project), Series 2008 in the original principal amount of \$22,250,000 (the "Bonds"); and

WHEREAS, the Bonds were issued for the purpose of financing a portion of the costs of a certain project (the "Project") undertaken for the benefit of The Canisius High School of Buffalo, N.Y., a New York education corporation (the "Institution"), consisting of the following: (A) (i) the acquisition of a leasehold interest in approximately eleven (11) acres of land located a 2448 and 2869 Clinton Street, West Seneca, Erie County, New York (collectively, the "West Seneca Land"), (ii) the construction on the West Seneca Land of a multi-sport athletic facility comprised of a playing field and running track, bleacher seating, a comfort station/flexible classroom space, road access, concrete walkways, landscaping and a parking lot and associated lighting (collectively, the "Athletic Facility"), (iii) the acquisition of a leasehold interest in a portion of the Institution's campus located at 1180 Delaware Avenue, Buffalo, Erie County, New York (collectively, the "Buffalo Land" and together with the West Seneca Land, the "Land"), the demolition of an existing building thereon and the construction of an approximately 26,000 square foot fieldhouse, an approximately 27,000 square foot science center addition to the existing classroom bundling, the construction and equipping of a connection building, cafeteria renovations and renovations to a portion of a facility known as the Rand Mansion and certain improvements to the existing parking lot and surrounding area (collectively, the "Delaware Avenue Facility") and (iv) the acquisition and installation of machinery and equipment thereon and therein in connection with the foregoing (collectively, the "Equipment") (the Land, the Athletic Facility,

the Delaware Avenue Facility and the Equipment being collectively referred to as the “Project Facility”) and (B) the financing of all or a portion of the costs of the Project by the issuance of the Bonds; and

WHEREAS, the Bonds were issued pursuant to a bond resolution adopted by the members of the Issuer on December 10, 2007 (the “Bond Resolution”) and a trust indenture dated as of January 1, 2008 (the “Indenture”) by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the “Trustee”); and

WHEREAS, the Bonds are payable solely out of the revenues or other receipts, funds or moneys of the Issuer pledged therefore or otherwise available to the Trustee for the payment thereof under an irrevocable, transferable direct pay letter of credit (the “Letter of Credit”) issued by Manufacturers and Traders Trust Company (the “Bank”); and

WHEREAS, in connection with the issuance of the Bonds, the Issuer, the Institution, the Trustee and Manufacturers and Traders Trust Company, as the initial remarketing agent (the “Original Remarketing Agent”), entered into a remarketing agreement dated as of January 1, 2008 (the “Remarketing Agreement”) by and among the Issuer, the Institution, the Trustee and the Original Remarketing Agent; and

WHEREAS, pursuant to the Remarketing Agreement, the remarketing agent therein (the “Remarketing Agent”) is required to remarket the Bonds tendered by the Owners thereof on each Purchase Date (as such terms are defined in the Remarketing Agreement) and determine the interest rate on the Bonds; and

WHEREAS, pursuant to Section 10.14 of the Indenture, (a) the Remarketing Agent shall have a combined capital stock surplus and undivided profits of at least \$25,000,000 (the “Capital Requirement”) and be authorized by law to perform all of the duties imposed upon it under the Indenture and (b) the Institution may appoint a replacement remarketing agent upon the resignation or removal of the Remarketing Agent with the consent of the Issuer and the Bank; and

WHEREAS, pursuant to a notification from the Institution dated July 21, 2023 (the “Request”), a copy of such Request being attached hereto as Exhibit A, the Issuer was notified that (i) the Original Remarketing Agent has resigned from its role as Remarketing Agent under the Remarketing Agreement (subject to the appointment of a successor Remarketing Agent), (ii) Stern Brothers (“Stern Brothers”) wishes to act as replacement Remarketing Agent, (iii) requesting that the Issuer consent to the appointment of Stern Brothers as replacement Remarketing Agent and (iv) requesting that the Issuer waive the Capital Requirement with respect to Stern Brothers as successor Remarketing Agent (collectively, the “Action”); and

WHEREAS, in connection therewith, the Issuer, the Institution, the Bank, the Trustee, the Original Remarketing Agent and Stern Brothers desire to enter into certain documents necessary in order to effect the Action (such documents being collectively referred to hereinafter as the “Remarketing Documents”); and

WHEREAS, the Issuer now wishes to authorize the Action; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the Issuer must determine the potential environmental significance of the Action;

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

Section 1. Pursuant to SEQRA, the Issuer hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Action (including but not limited to the execution and delivery of the Remarketing Documents) is a “Type II action” (as said quoted term is defined in the Regulations).

(B) Accordingly, the Issuer hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Act, the Issuer has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.

(B) It is desirable and in the public interest for the Issuer to enter into the Remarketing Documents.

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the Action; (B) subject to approval of the form and substance of the Remarketing Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Remarketing Documents; and (C) subject to (i) compliance with the terms and conditions contained in the existing documents relating to the Bonds and (ii) compliance with state and federal law applicable to the Action, authorize the execution and delivery of the Remarketing Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President of Operations and Assistant Treasurer of the Issuer (each, an “Authorized Officer”) is hereby authorized, on behalf of the Issuer, to execute and deliver the Remarketing Documents and the other documents related thereto and, where appropriate, the Assistant Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the forms thereof approved by Bond Counsel and counsel to the Issuer, with such changes, variations, omissions and insertions as the Authorized Officer of the Issuer shall approve, the execution thereof by the Authorized Officer of the Issuer to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided for by the provisions of the Remarketing Documents, and to execute and deliver all such additional 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 this resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Remarketing Documents binding upon the Issuer.

Section 6. This resolution shall take effect immediately.

[Remainder of page left blank intentionally]

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Brenda McDuffie	VOTING	_____
Richard Lipsitz	VOTING	_____
Denise Abbott	VOTING	_____
Hon. Diane Benczkowski	VOTING	_____
Rev. Mark Blue	VOTING	_____
Hon. Byron Brown	VOTING	_____
James Doherty	VOTING	_____
Hon. Joseph Emminger	VOTING	_____
Dottie Gallagher	VOTING	_____
Michael Hughes	VOTING	_____
Hon. Howard Johnson	VOTING	_____
Tyra Johnson	VOTING	_____
Hon. Brian Kulpa	VOTING	_____
Denise McCowan	VOTING	_____
Glenn Nellis	VOTING	_____
Hon. Mark Poloncarz	VOTING	_____
Hon. Darius Pridgen	VOTING	_____
Kenneth Schoetz	VOTING	_____
Paul Vukelic	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF ERIE )

I, the undersigned Secretary of Erie County Industrial Development Agency (the “Issuer”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Issuer, including the resolution contained therein, held on October 25, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Issuer had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Issuer present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this \_\_\_ day of October, 2023.

---

Elizabeth A. O’Keefe  
Secretary



EXHIBIT A

REQUEST

See attached.



**\$22,250,000**  
**Erie County Industrial Development Agency**  
**Variable Rate Demand Civic Facility Revenue Bonds**  
**(The Canisius High School of Buffalo, N.Y. Project-Letter of Credit Secured),**  
**Series 2008**  
**CUSIP: 295085BK9**

**NOTICE OF REQUEST TO ISSUER AND BANK TO CONSENT TO THE**  
**APPOINTMENT OF SUCCESSOR REMARKETING AGENT**

Pursuant to Section 10.14 of the Trust Indenture dated as of January 1, 2008, under which the referenced bonds were issued, the undersigned authorized signatory of The Canisius High School of Buffalo, N.Y. (the "Institution") requests that the Erie County Industrial Development Agency (the "Issuer") and Manufacturers and Traders Trust Company (the "Bank") consent to the appointment of Stern Brothers & Co. as Remarketing Agent and: (a) waive in this single instance the requirement that a successor Remarketing Agent have capitalization of at least \$25,000,000; (b) direct the Trustee to waive in this single instance the requirement that a successor Remarketing Agent have capitalization of at least \$25,000,000 as set forth in Section 10.14 of the Indenture.

**The Canisius High School of Buffalo, N.Y.**

By 

Name: Matthew J. Carver

Title: CFO

Date: 7/21/23

**Notice Parties:**

**Trustee/Tender Agent:**  
**Manufacturers and Traders Trust Company**  
One M&T Plaza, 7<sup>th</sup> Floor  
Buffalo, NY 14203  
Attention: Corporate Trust Department  
Email:  
Phone: 716-842-5935

**Issuer/Authority:**  
**Erie County Industrial Development Agency**  
275 Oak Street  
Buffalo, NY 14203  
Attention: President/CEO/Executive Director  
Email:  
Phone: 716-856-6525

With a copy to:  
Hodgson Russ LLP  
The Guaranty Building  
140 Pearl Street, Suite 100  
Buffalo, NY 14202  
Attention: Kenneth Friedman, Esq.  
Email:  
Phone: 716-856-4000

With a copy to:  
Hurwitz & Fine, P.C.  
1300 Liberty Building  
Buffalo, NY 14202  
Attention: Robert P. Fine, Esq.  
Email:  
Phone: 716-849-8900

**Bank/Liquidity Provider:**  
**Manufacturers and Traders Trust Company**  
Marc DeGiulio  
Alexis Agnello