



**Buffalo and Erie County Industrial Land Development Corporation
Board of Directors Meeting**

**February 22, 2023
at 12:30 p.m.**

**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

2.0 Approval of Minutes

2.1 Minutes of the October 26, 2022 Meeting of the Board of Directors (Action Item) (Pages 2-3)

3.0 Reports / Action Items / Information Items:

- 3.1 Financial Report (Informational) (Pages 4-6)
- 3.2 Finance & Audit Committee Update
 - a) Public Sector Banking Services RFP (Action Item) (Pages 7-10)
- 3.3 Governance Committee Update (Informational)
- 3.4 Loan Status Report (Informational) (Page 11)
- 3.5 Videoconferencing Procedures (Action Item) (Pages 12-18)
- 3.6 BNMC & Canisius College Bond Amendments (Action Item) (Pages 19-26)
- 3.7 Project Status Report (Informational)

4.0 Management Team Report:

4.1

5.0 Adjournment - Next Meeting March 22, 2023 at 12:30 p.m.

**MINUTES OF THE MEETING OF THE
THE BOARD OF DIRECTORS
OF THE BUFFALO AND ERIE COUNTY
INDUSTRIAL LAND DEVELOPMENT CORPORATION
(ILDC)**

DATE AND PLACE: October 26, 2022, at Center of Excellence in Bioinformatics and Life Sciences (CBLS), 701 Ellicott Street, Conference Room B2-205, Second Floor, Buffalo, New York 14203

PRESENT: Denise Abbott, Hon. Howard Johnson, Richard Lipsitz, Jr. and Hon. Mark C. Poloncarz

EXCUSED: Hon. April Baskin and Hon. Byron W. Brown

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

GUESTS: Zachary Evans and Thomas Baines on behalf of Erie County; Bukola Millia on behalf of Workforce Investment Board and J. Dale Shoemaker on behalf of Investigative Post

There being a quorum present at 1:23 p.m., the Meeting of the Board of Directors of the Buffalo and Erie County Industrial Land Development Corporation was called to order its Chair, Mr. Poloncarz.

MINUTES

Mr. Lipsitz moved and Ms. Abbott seconded to approve of the September 28, 2022 minutes. Mr. Poloncarz called for the vote and the minutes were unanimously approved.

REPORTS / ACTION ITEMS / INFORMATION ITEMS

Financial Report. Ms. Profic presented the September 2022 financial report. The balance sheet shows the month ended with total assets of \$17.5M. There weren't any significant fluctuations in asset accounts during the month. Liabilities are mainly deferred grant revenue of \$9.3M. Net assets total \$7.9M. One loan under the County Microloan program closed during the month. The September income statement shows \$1,800 of revenue, mainly grant income received from loans under the County's Microloan program. There were also \$12,000 of expenses and \$4,000 of special project expenses, resulting in a net loss of \$15,000 in September. The year to date income statement shows revenues of \$394,000 and expenses of \$221,000. Included in this figure is \$100,000 of bond administrative fee revenue that was subsequently paid to ECIDA under the existing shared services agreement. Net special project expenses of \$154,000 lead to net income of \$18,000 so far in 2022. Mr. Poloncarz directed that the report be received and filed.

Finance and Audit Committee Update: Ms. Profic advised that the Committee met on October 17 and reviewed, and recommended for approval, the 2023 budget to the members for formal consideration.

A. 2023 Budget Timetable. Ms. Profic reviewed the 2023 proposed budget review process.

B. Proposed 2023 Budget. Ms. Profic reviewed the proposed 2023 budget including a narrative and substantial changes to the budget for 2023. Ms. Profic advised there haven't been any changes to the 2023 budgeted amounts since it was reviewed last month. For 2023, the ILDC is budgeting revenue of \$453,000, expenses of \$313,000, and net special project expenses of \$164,000. Special projects include Renaissance Commerce Park and the Angola Ag Park, along with any expenses related to the portion of the County microloans that are granted to borrowers. This leads to an overall budgeted net loss of \$25,000.

Mr. Lipsitz moved and Mr. Johnson seconded to approve of the ILDC 2023 Budget. Mr. Poloncarz called for the vote and the ILDC 2023 Budget was unanimously approved.

ILDC Loan Status Report. Mr. Manhard provided this report to members. Mr. Poloncarz directed that the report be received and filed.

There being no further business to discuss, Mr. Poloncarz adjourned the meeting at 1:28 p.m.

Dated: October 26, 2022

Elizabeth A. O'Keefe, Secretary

Industrial Land Development Corp.
Financial Statements
As of January 31, 2023

INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")

Balance Sheet

January 31, 2023

	January 2023	December 2022 (Unaudited)
ASSETS:		
Restricted Cash *	\$ 1,175,072	\$ 1,255,405
Grants Receivable	10,212,072	10,212,072
Loans Receivable, net	997,069	1,005,370
Prepaid Expenses	31,500	31,500
Prepaid Acquisition Costs	692,934	692,934
Total Loan Assets	13,108,648	13,197,282
Capital Assets	6,174,218	6,174,218
Total Assets	\$ 19,282,866	\$ 19,371,500
LIABILITIES & NET ASSETS:		
Accounts Payable	\$ 179,255	\$ 824,129
Due to/(from) ECIDA	823,108	179,722
Other Liabilities	10,572,065	10,572,025
Total Liabilities	11,574,429	11,575,876
Restricted Fund Balance	7,708,437	7,795,624
Total Liabilities & Net Assets	\$ 19,282,866	\$ 19,371,500

Loan Portfolio Summary:	January 2023	December 2022
# of Loans	36	36

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

INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")

Income Statement

Year to Date: January 31, 2023

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
REVENUES:						
Interest Income - Loans	\$ 1,508	\$ 1,083	\$ 424	\$ 1,508	\$ 445	\$ 1,062
Grant Income - Microloan Program	-	11,667	(11,667)	-	-	-
Proceeds from (Cost of) Land Sales	-	25,000	(25,000)	-	-	-
Other Income	-	-	-	-	132,850	(132,850)
Interest Income - Cash & Inv.	312	17	297	312	9	304
Total Revenues	1,820	37,767	(35,946)	1,820	133,304	(131,484)
EXPENSES:						
Management Fee - ECIDA	\$ 15,800	\$ 15,833	(33)	\$ 15,800	\$ 110,000	\$ (94,200)
Provision for Loan Losses	-	1,250	(1,250)	-	-	-
Professional Services	-	5,417	(5,417)	-	-	-
General Office Expenses	(0)	17	(17)	(0)	441	(441)
Other Expenses	40	3,581	(3,541)	40	60	(20)
Total Expenses	15,840	26,098	(10,258)	15,840	110,501	(94,661)
SPECIAL PROJECT GRANTS:						
Industrial Land Park - ESD	-	217,696	(217,696)	-	-	-
Industrial Land Park - ECIDA	-	5,833	(5,833)	-	-	-
Angola Ag Park - ECIDA Grant	-	8,333	(8,333)	-	-	-
Other grant revenue	-	23,609	(23,609)	-	8,992	(8,992)
Industrial Land Park grant reimbursement	-	(12,500)	12,500	-	-	-
Industrial Land Park costs	(70,307)	(223,529)	153,222	(70,307)	(67,334)	(2,973)
Angola Ag Park costs	(2,860)	(8,333)	5,473	(2,860)	(1,946)	(914)
Other grant expenses	-	(24,775)	24,775	-	(8,992)	8,992
	(73,167)	(13,667)	(59,501)	(73,167)	(69,281)	(3,887)
NET INCOME/(LOSS):	\$ (87,187)	\$ (1,998)	\$ (85,188)	\$ (87,187)	\$ (46,478)	\$ (40,709)

* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to ILDC. The amount booked is currently based on 2023 budget.

MEMORANDUM

TO: ECIDA, RDC and ILDC Boards of Directors

FROM: Mollie Profic, Vice President

SUBJECT: Public-Sector Banking Services RFP

DATE: February 22, 2023

The ECIDA's Professional Services Request for Proposals (RFP) Process requires proposals for Banking Services to be solicited at least every 5 years. Proposals were last solicited in 2017, after which a banking relationship was established with M&T Bank. In November 2022, ECIDA and its affiliated entities, and Western Region Corporation conducted a joint RFP for banking services.

Request for Proposal Process:

The RFP was submitted directly to the top ten largest banks in Erie County per the 2022 Business First book of Lists and any banks that had proposed in 2017. Ads were also placed in The Buffalo News, the Buffalo Criterion, and Challenger Community News stating the Agency issued an RFP for these services. In addition, the RFP was posted on ECIDA's website. Proposals were due November 15, 2022. Five proposals were received.

Evaluation Process:

Proposals were evaluated by Mollie Profic, CFO, Atiqa Abidi, Senior Accountant, and Patricia Smith, Bookkeeper and points were assigned based on the following criteria as stated in the RFP:

- 1) Proposed Account Structure / Investment Program. (40%)
- 2) Qualifications and public sector banking experience of the individuals to be assigned. (25%)
- 3) Experience of the bank in providing similar services to local governments, CRA rating and local branch network. (25%)
- 4) Scope of services offered including degree of automation. (10%)

Based on the first-round score ratings, a short-list of three banks was developed: Evans Bank, Key Bank, and M&T Bank. The staff committee requested additional information and/or demonstration as needed.

Results:

While all of the respondents were capable and suitable partners, M&T Bank was the top-rated bank:

- M&T offers competitive interest rates, the highest earnings credit rate, and there is no requirement for non-interest-bearing accounts to support services.
- M&T has a dedicated government banking team headquartered in Buffalo. The Senior Relationship Manager for M&T Bank has over 17 years of government banking experience. Clients include IDAs, state agencies, counties, and public authorities.
- M&T has received an “outstanding” CRA rating since 1989.
- Forty branches throughout Erie County are convenient for staff tasked with making deposits.
- M&T offers a suite of anti-fraud services, including but not limited to: positive pay/reverse positive pay, ACH monitor, ACH debit block and check block. Multi-factor authentication (MFA) is required to log in to the bank’s Treasury Center. A smart phone app is also available.
- M&T is a community leader in Diversity, Equity and Inclusion initiatives, investment in technology, and is the leading small business lender in the Buffalo-Rochester market for 2022.

On January 10, 2023, the Joint Finance & Audit Committee reviewed the RFP results and recommended that their respective Boards approve the retention of M&T Bank as the prime bank of the ECIDA, RDC and ILDC.

Recommendation:

Per the following resolution, I am requesting that Boards approve the retention of M&T Bank as the prime bank of the ECIDA, RDC and ILDC to the respective Boards for the calendar years 2023-2025, with an option of retaining the bank for the 2026-2027 calendar years.

**RESOLUTION OF THE
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION
REGARDING DEPOSITS OF MONEY AND THE INVESTEMENT OF FUNDS**

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (the “ILDC”) desires to adopt a resolution with respect to deposits and investments of public money in the name of the ILDC for use in normal business operations, in the furtherance of the corporate purposes of the ILDC; and

WHEREAS, in accordance with the ILDC’s Professional Services Requests for Proposals Process and Policy, the ILDC issued an RFP for Banking Services, entitled “Public Sector Banking Services” (hereinafter referred to as the “Banking Services RFP”); and

WHEREAS, the Banking Services RFP was submitted to the ten largest banks located in Erie County, noticed on the ILDC’s website, and placed in the Buffalo News, the Buffalo Criterion, and the Challenger Community News; and

WHEREAS, staff of the ILDC reviewed and scored the Banking Services RFP responses and based on initial scoring of the RFP responses, Evans Bank N.A., KeyBank N.A. and M&T Bank were selected for follow-up and additional requests for information; and

WHEREAS, ILDC staff recommends M&T Bank as the prime bank, to provide banking, cash management, and investment services to the ILDC; and

WHEREAS, on January 10, 2023, the ILDC’s Finance & Audit Committee reviewed the Banking Services RFP process, the ILDC’s staff memorandum regarding the recommendation of M&T Bank, and unanimously resolved to recommend to the ILDC that M&T Bank be chosen as the prime bank to provide banking, cash management, and investment services to the ILDC.

NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, AS FOLLOWS:

Section 1: The ILDC hereby affirms that it is hereby authorized to open and close such bank and investment accounts and to maintain such banking relations as may be determined by the President/Chief Executive Office (“CEO”), from time to time, to be necessary or appropriate for the transaction of the ILDC’s business.

Section 2: Effective with the adoption of this resolution, the ILDC hereby finds, in comparison to the other Banking Services RFP respondents, that M&T Bank requires no service charges, has greater governmental banking experience, an “outstanding” CRA rating, and a dedicated project management team to assist with the banking transition as well as web-based banking, transaction services and positive pay features superior to the other Banking Services RFP respondents and as such, hereby designates M&T Bank as the ILDC’s official depository of funds and to provide cash management and investment services as described within the Banking

Services RFP, said engagement to be for an initial three year term (2023 – 2025), with retention for 2026 and 2027 if approved by the Agency’s Finance and Audit Committee.

Section 3. Each bank and investment account authorized by this resolution shall provide that no withdrawals shall be made from such accounts nor shall any checks be drawn thereon unless withdrawal slips or checks (as applicable) are signed by such individual or individuals as may be designated by both the Chair and the CEO.

Section 4. Each bank and investment account authorized by this resolution shall adhere to the current Investment and Deposit Policy as approved by the ILDC.

Section 5. This Resolution shall take effect immediately and shall remain in effect and be binding until revoked by written notice given by the ILDC to M&T Bank.

ADOPTED: February 22, 2023



Loan Status Report February 2023

<u>ILDC Loans Approved Since Last Meeting</u>	<u>Municipality</u>	<u>Amount</u>
Davies Hillside Farms (Agri-Business)	Springville	\$35,000
Goshen Farms (Agri-Business)	Chaffee	\$35,000

<u>ILDC Loans Closed Since Last Meeting</u>	<u>Municipality</u>	<u>Amount</u>
Davies Hillside Farms (Agri-Business)	Springville	\$35,000
Goshen Farms (Agri-Business)	Chaffee	\$35,000

<u>Loans in Closing Process</u>	<u>Municipality</u>	<u>Amount</u>
(None)		

<u>Loans in the Pipeline</u>	<u>Municipality</u>	<u>Amount</u>
1	Springville	\$35,000

<u>YE 2022 - Loans Closed</u>	<u>YTD Loan Total</u>	<u>Jobs to be Created</u>	<u>Retained Jobs</u>
14	\$435,000	13	16.5

Loan Portfolio Performance

Past Due Loans:

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

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

\$0 / \$1,106,459 0% Delinquency Rate (36 Loans)

ILDC Funds Available to Lend: \$160,000

**BUFFALO AND ERIE COUNTY
INDUSTRIAL LAND DEVELOPMENT CORPORATION
RESOLUTION**

A meeting of the Buffalo and Erie County Industrial Land Development Corporation was convened on Wednesday, February 22, 2023 at 12:00 p.m.

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

**RESOLUTION OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION (“ILDC”) APPROVING THE USE OF
VIDEO CONFERENCING UNDER EXTRAORDINARY CIRCUMSTANCES
PURSUANT TO SECTION 103-A OF THE NEW YORK PUBLIC OFFICERS
LAW**

WHEREAS, the Buffalo and Erie County Industrial Land Development Corporation (the “ILDC”) is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York, as amended, to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County and to lessen the burdens of government and act in the public interest; and

WHEREAS, Section 103-a of the New York Public Officers Law (“POL”), as enacted by Part WW of Chapter 56 of the Laws of 2022, permits public bodies such as the ILDC to authorize their members to attend meetings by videoconference from locations that are not open to the public (“private locations”), when necessitated by “extraordinary circumstances,” provided that (i) the number of members of the public body who attend the meeting at location(s) where the public can attend is at least equal to the number required to satisfy the public body’s quorum requirement, (ii) the public body has established written procedures governing member and public attendance consistent with Section 103-a of the POL, (iii) such written procedures are conspicuously posted on the public website of the public body, and (iv) the other criteria specified in Section 103-a of the POL are satisfied; and

WHEREAS, ILDC staff, in consultation with the ILDC’s general counsel, have prepared a draft policy in compliance with Section 103-a of the POL entitled “Videoconferencing Participation Pursuant to Public Officers Law Section 103-a” (the “Videoconferencing Policy”) attached hereto as Exhibit A; and

WHEREAS, Section 103-a(2)(a) of the POL requires that the ILDC must adopt a resolution after a public hearing in order to authorize videoconferencing from a private location and as described within the Videoconferencing Policy; and

WHEREAS, the hearing so required was conducted on Monday, November 21, 2022 and the report thereon has been received and considered by the ILDC; and

WHEREAS, the ILDC deems it appropriate that the ILDC and any and all committees or subcommittees of the ILDC now existing or hereafter established be authorized to use videoconferencing to conduct meetings in the manner contemplated by Section 103-a of the POL.

NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION, AS FOLLOWS:

Section 1. The ILDC hereby approves and adopts the Videoconferencing Policy and authorizes the ILDC and any and all committees or subcommittees of the ILDC now existing or hereafter established to use videoconferencing to conduct meetings in the manner authorized by Section 103-a of the POL, including meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not open to the public.

Section 2. The ILDC hereby directs that the Videoconferencing Policy be conspicuously posted on the public website of the ILDC in compliance with Section 103-a of the POL.

Section 3. Any and all actions heretofore taken or authorized by the ILDC and/or its members, officers, employees and agents with respect to this Resolution are hereby ratified, approved and confirmed in all aspects.

Section 4. This Resolution shall take effect immediately.

ADOPTED: February 22, 2023

EXHIBIT A

Videoconferencing Policy

(See Attached)

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“ECIDA”),
BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT
CORPORATION (“RDC”),
AND
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT
CORPORATION (“ILDC”)**

PROCEDURES FOR VIDEOCONFERENCING PARTICIPATION

PURSUANT TO PUBLIC OFFICERS LAW SECTION 103-A

This Videoconferencing Participation Policy (“Policy”) shall apply to the Erie County Industrial Development Agency (“ECIDA”) and its affiliated corporations: Buffalo and Erie County Regional Development Corporation (“RDC”), Buffalo and Erie County Industrial Land Development Corporation (“ILDC”), and any other affiliated entities that may be established by the ECIDA (hereinafter collectively referred to as the “Agency”) upon approval by the respective Board of Directors or Members of the Agency.

In compliance with New York Public Officer’s Law (“POL”) § 103-a(2)(a), the Agency, following a public hearing, authorized the use of videoconferencing as described in POL Section 103-a by resolution(s) dated November 30, 2022.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that “public bodies” must establish written procedures governing member and public attendance to permit its members to participate in Board and Committee meetings by videoconferencing from private locations, under Extraordinary Circumstances.

1. Agency Member Attendance:

A. All members of the Agency (“Members”) shall be physically present at the location(s) of the public meeting unless a Member cannot be physically present at the public meeting for one (1) or more of the circumstances enumerated in subsection B herein.

B. Members may be excused from physically attending any public meeting of the Agency, and may instead attend via videoconferencing from a private location, if any of the following circumstances (thereinafter “Extraordinary Circumstances”):

- (i) Disability of a Member.
- (ii) Illness of a Member.
- (iii) The Member has caregiving responsibilities for:
 - (a) one (1) or more dependents, or
 - (b) family member(s) with an illness or disability.

C. Notification of Agency.

- (i) In the event a Member is unable to be physically present at the designated public meeting location(s) and wishes to participate by videoconferencing from a private location due to an Extraordinary Circumstance, the Member must notify the Agency by submitting the form attached hereto as **Exhibit A** no later than ten (10) business days prior to the scheduled meeting to the President/CEO of the Agency to ensure proper notice of the meeting and related videoconference is given to the public.
- (ii) In the event an Extraordinary Circumstance arises within ten (10) business days of the scheduled meeting, the Member shall notify the President/CEO of the Agency immediately by submitting the form attached hereto as **Exhibit A** to provide the Agency with an opportunity to amend the notice of meeting.
- (iii) In the event an Extraordinary Circumstance arises within ten (10) business days of the scheduled meeting, and the Agency determines it would be impractical to amend the notice of meeting, the Agency may reschedule the meeting to a later date.

2. **Public Attendance:**

A. Members of the public shall be allowed to attend any public meeting conducted via videoconferencing at the physical location of the meeting, or via videoconferencing if a Member of the Agency attends via videoconferencing.

3. **Rules and Procedures for Public Meetings Conducted Via Video Conference:**

A. A quorum of Members participating in the meeting must be physically present at the meeting location(s) open to the public for the meeting to be properly convened. Members participating in the meeting via videoconferencing shall not count towards the Agency quorum requirements for the meeting but may participate and vote if a physical quorum of the Members exists.

B. Except in the case of executive sessions conducted pursuant to POL § 105, Members must be able to be seen, heard and identified by other Members and the public during any matter formally discussed or voted on, including, but not limited to, motions, proposals, and resolutions. This shall include the use of first and last name placards placed physically in front of the Members or, for Members participating by videoconferencing from a private location, such Members shall ensure their names appear on their videoconferencing screen or video feed.

C. If public comment or participation in the meeting is authorized or required, the video feed, and public participation therein, must be in real time, and the Agency shall ensure the meeting is conducted in a manner ensuring virtual public participation or testimony equal to in-person participation or testimony.

D. The meeting minutes for a meeting where a Member attends via videoconferencing shall include which Members participated remotely, and the meeting minutes shall be made available to the public pursuant to POL § 106.

E. The public notice for any meeting held via video conference shall include the following information:

- (i) Notification that videoconferencing will be used to conduct the meeting;
- (ii) Identification of where the public can view and/or participate in the meeting, including:
 - (a) the physical location(s) of the meeting; and
 - (b) any web addresses for video links; and
- (iii) Identification of the location(s) where any required documents and/or records will be posted or available for public viewing.

F. Each open portion of meetings held via videoconference must be recorded. The recording:

- (i) Must be posted or linked on the website of the Agency within five (5) business days of the meeting;
- (ii) Must remain available for a minimum of five (5) years after it is posted; and
- (iii) Shall be transcribed upon written request subject to any reasonable fees for the production thereof.

G. Meetings held via video conference must utilize technology to permit access by individuals with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and the corresponding guidelines thereto. For purposes of this section, the term “disability” shall have the meaning defined in New York Executive Law § 292.

4. Miscellaneous.

A. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state emergency proclaimed by the chief executive of a county, city village or town pursuant to Executive Law § 24 if the Agency determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Agency to hold an in-person meeting.

B. These procedures shall be conspicuously posted on the Agency’s website.

EXHIBIT A

**REQUEST FOR VIDEOCONFERENCING PARTICIPATION
PURSUANT TO PUBLIC OFFICERS LAW SECTION 103-A**

Meeting Date:	
Name of Member:	
Agency Membership:	
Reason for Physical Absence (Check All That Apply):	<input type="checkbox"/> Disability of the Member. <input type="checkbox"/> Illness of the Member. <input type="checkbox"/> The Member has caregiving responsibilities for: <input type="checkbox"/> one (1) or more dependents, or <input type="checkbox"/> family members with an illness or disability.
Description of Absence: (Summarize)	

For Agency Use Only:

<u>Date Request Received:</u>	
<u>Date Request Approved:</u>	
<u>Request Approved By: (Print Name)</u>	
<u>Signature:</u>	



MEMORANDUM
February 22, 2023

To: Board of Directors

Re: BNMC & Canisius College Bond Amendments

Background:

As of June 30th, 2023, the London Interbank Offered Rate (LIBOR) will no longer be available as the applicable index for determining interest rates for financial instruments. Bonds issued by the ILDC have typically utilized LIBOR for interest rate setting. As a result of the discontinuance of LIBOR, the United States is moving to the Secured Overnight Financing Rate (SOFR) to benchmark interest rates.

This change will require a technical amendment to the Buffalo Niagara Medical Campus 2016 series and the Canisius College 2015 series bond documents to account for the change from LIBOR to SOFR. An additional technical amendment for the Canisius College 2015 series bonds will allow for loss payee insurance proceeds to be paid directly to the College as a result of facility damage from the recent blizzard.

Requested Action:

Seeking Board approval of the modification of the Buffalo Niagara Medical Campus 2016 series and the Canisius College 2015 series bond documents to change the applicable interest index from LIBOR to SOFR and to allow for loss payee insurance proceeds to be paid directly to the borrower.

RESOLUTION

(Buffalo Niagara Medical Campus, Inc. Project)

A regular meeting of the Buffalo and Erie County Industrial Land Development Corporation was convened on Wednesday, February 22, 2023, at 12:00 p.m.

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

RESOLUTION AUTHORIZING CERTAIN ACTIONS RELATING TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION TAX-EXEMPT REVENUE BONDS (BUFFALO NIAGARA MEDICAL CAMPUS, INC. PROJECT), SERIES 2016A AND TAX-EXEMPT REVENUE BONDS (BUFFALO NIAGARA MEDICAL CAMPUS, INC. PROJECT), SERIES 2016B

WHEREAS, the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "Issuer") is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended (the "N-PCL") and Resolution No. 218 of 2009 adopted by the Erie County Legislature (the "Legislature") on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, Resolution Intro 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 20, 2011 (collectively the "County Resolutions"; and, together with the N-PCL, the "Enabling Act"), to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County (the "County") and lessen the burdens of government and act in the public interest; and

WHEREAS, **854 ELLICOTT ST., LLC** (the "Company"), a wholly-owned subsidiary of Buffalo Niagara Medical Campus, Inc., a New York not-for-profit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), requested that the Issuer issue its (i) Tax-Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc. Project), Series 2016A (the "Series 2016A Bonds") in the aggregate principal amount of \$37,053,762 and (ii) Tax-Exempt Revenue Bonds (Buffalo Niagara Medical Campus, Inc. Project), Series 2016B (the "Series 2016B Bonds"; and, together with the Series 2016A Bonds, the "Bonds") in the aggregate principal amount of \$7,274,738 for the purpose of paying a portion of the costs of the acquisition, renovation, construction and equipping of a project (the "Project") to be undertaken by the Company on land to be ground leased by the City of Buffalo, New York ("Buffalo") to the Company located at 854 Ellicott Street, Buffalo, New York (the "Land"), consisting of: (A) the demolition of the existing improvements located on the Land, consisting principally of an existing approximately 155,100 square-foot parking garage containing approximately 900 parking spaces; (B) the acquisition, construction and equipping on the Land of an approximately 640,000 square-foot parking garage containing approximately 1,825 parking spaces to accommodate the parking needs of Oishei Children's Hospital and Jacobs School of Medical and Biomedical Sciences (the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and collectively with the Land and Improvements, the

"Facility"); and (D) funding a debt service reserve fund, if any, and paying capitalized interest, if any, and paying of certain costs and expenses incidental to the issuance of the Bonds; and

WHEREAS, pursuant to that certain Bond Purchase Agreement and Building Loan Contract, dated as of September 1, 2016 (the "Original Bond Purchase Agreement") as so amended by the First Amendment to the Bond Purchase Agreement and Building Loan Contract, dated as of November 24, 2018 (the "First Amendment"), and as so further amended by the Second Amendment to the Bond Purchase Agreement and Building Loan Contract, dated as of February 1, 2023 (the "Second Amendment" and together with the Original Bond Purchase Agreement and the First Amendment, the "Bond Purchase Agreement") each by and between the Issuer, the Company, **233 GENESEE STREET CORPORATION** as purchaser (the "Purchaser") and **MANUFACTURERS AND TRADERS TRUST COMPANY**, as agent for the Purchaser (the "Agent"), the Bonds were purchased by the Purchaser and bear interest at the Variable Interest Rate (as defined in the Original Bond Purchase Agreement), which uses LIBOR (as defined in the Original Bond Purchase Agreement) as the index for determining the interest payable on the Bonds;

WHEREAS, the Issuer, the Purchaser, the Agent, and the Company are entering into the Second Amendment for the purpose of amending certain provisions of the Bond Purchase Agreement to implement, upon the occurrence of Benchmark Transition Event (as defined in the Second Amendment), a replacement of LIBOR with SOFR (as defined in the Second Amendment) as the applicable index for determining interest payable on the Bonds; and

WHEREAS, the Company, the Purchaser and the Issuer deem it appropriate to amend the Bond Purchase Agreement in accordance with Section 8.04 of the Bond Purchase Agreement upon the execution of the Second Amendment; and

WHEREAS, the Issuer has been advised by its bond counsel, Harris Beach PLLC ("Bond Counsel"), that the Second Amendment will not result in a deemed "reissuance" of the Bonds for federal tax purposes; and

WHEREAS, the Issuer desires to execute and deliver the Second Amendment, subject to the terms and conditions of this resolution (the "Resolution").

NOW, THEREFORE, BE IT RESOLVED by the Buffalo and Erie County Industrial Land Development Corporation as follows:

Section 1. The Issuer determines that the actions contemplated herein, with respect to the previously approved and unchanged Project are Type II Actions pursuant to Article 8 of the New York Environmental Conservation Law and the regulations adopted pursuant thereto at 6 NYCRR §617.5(c) (collectively referred to as "SEQRA") and therefore no findings or determination of significance are required.

Section 2. The Issuer hereby ratifies, confirms and approves all actions heretofore taken by the Chairperson and the staff of the Issuer with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with

the requirements of the Enabling Act and all other applicable laws that relate thereto.

Section 3. The Issuer hereby ratifies, confirms and approves the execution and delivery of the Second Amendment.

Section 4. The Chairman, Vice Chairman, the Secretary, the Treasurer or any Assistant Secretary, Assistant Treasurer or the President and Chief Executive of the Issuer (each an "Authorized Officer") is hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required, to execute and deliver all documents, and to do all such further acts and things as may be necessary or in the opinion of the Authorized Officer acting on behalf of the Issuer, 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 Second Amendment binding upon the Issuer.

Section 5. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 6. Due to the complex nature of this transaction, the Issuer hereby authorizes each of its Authorized Officers to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by counsel to the Issuer and/or Bond Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Authorized Officer acting on behalf of the Issuer.

Section 7. This resolution shall take effect immediately.

Dated: February 22, 2023

RESOLUTION

(The Canisius College of Buffalo, New York Project)

A regular meeting of the Buffalo and Erie County Industrial Land Development Corporation was convened on Wednesday, February 22, 2023, at 12:00 p.m.

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

RESOLUTION AUTHORIZING CERTAIN ACTIONS RELATING TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION TAX-EXEMPT REVENUE BONDS (THE CANISIUS COLLEGE OF BUFFALO, NEW YORK PROJECT), SERIES 2015A AND SERIES 2015B

WHEREAS, the **BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION** (the "Issuer") is authorized and empowered by Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended (the "N-PCL") and Resolution No. 218 of 2009 adopted by the Erie County Legislature (the "Legislature") on July 24, 2009, as amended by Resolution No. 295 of 2009, adopted by the Legislature on November 19, 2009, Resolution Intro 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 20, 2011 (collectively the "County Resolutions"; and, together with the N-PCL, the "Enabling Act"), to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in Erie County (the "County") and lessen the burdens of government and act in the public interest; and

WHEREAS, pursuant to a Trust Indenture, dated as of October 1, 2015 (the "Original Indenture"), as amended by a First Amendment of Trust Indenture, dated as of December 1, 2018 (the "First Amendment") and as further amended by a Second Amendment to Trust Indenture, dated as of February 1, 2023 (the "Second Amendment"; and together with the Original Indenture and the First Amendment, the "Indenture"), each by and between the Issuer and MANUFACTURERS AND TRADERS TRUST COMPANY (the "Trustee") for the benefit of The Canisius College of Buffalo, New York (the "Institution"), the Issuer previously issued its (i) Tax-Exempt Revenue Refunding Bonds (The Canisius College of Buffalo, New York Project), Series 2015A (the "Series 2015A Bonds") in the aggregate principal amount of \$30,760,000 and (ii) Tax-Exempt Revenue Refunding Bonds (The Canisius College of Buffalo, New York Project), Series 2015B (the "Series 2015B Bonds"; and, collectively, the Series 2015A Bonds and the Series 2015B Bonds are hereinafter defined as the "Bonds") in the aggregate principal amount of \$16,195,000 and loaned the proceeds of the Institution which proceeds were used to: (a) refund the outstanding principal balance of the Dormitory Authority of the State of New York (the "Authority") Canisius College Insured Revenue Bonds, Series 2004 (the "Series 2004 Bonds") issued in the aggregate original principal amount of \$28,840,000; (b) refund the outstanding principal balance of the Authority's Canisius College Insured Revenue Bonds, Series 2005 (the "Series 2005 Bonds") issued in the aggregate original principal amount of \$23,610,000; (c) refund the outstanding principal balance of the Buffalo and Erie County Industrial Land Development

Corporation Tax-Exempt Revenue Bonds (The Canisius College of Buffalo, New York Project), Series 2010 (the "Series 2010 Bonds"; and, collectively with the Series 2004 Bonds and the Series 2005 Bonds, the "Refunded Bonds") issued in the aggregate original principal amount of \$16,000,000; and (d) to pay costs incidental to the issuance of the Bonds, including issuance costs of the Bonds, redemption costs of the Refunded Bonds and to fund a debt service reserve fund, if any, required with respect to the Bonds; and

WHEREAS, the Bonds were originally purchased and are currently held by the 233 GENESEE STREET CORPORATION (the "Bondholder") and bear interest at the LIBOR Rate (as defined in the Indenture); and

WHEREAS, the Institution and the Bondholder have requested that the Issuer and Trustee (i) amend certain provisions of the Indenture to implement, upon the event of its permanent or indefinite unavailability, a replacement of the London Interbank Offered Rate ("LIBOR") with the Secured Overnight Financing Rate ("SOFR") as the applicable index for determining interest payable on the Bonds prior to any Conversion Date (as defined in the Indenture) and (ii) amend the form of the Bonds (the "Modifications") and (iii) reaffirming certain security instruments relating to the Bonds (collectively, the amendments being referred to herein as the "Financing Documents"); and

WHEREAS, the proposed Modifications will be made pursuant to and in accordance with the terms of the Indenture upon the execution of the Second Amendment; and

WHEREAS, the Issuer has been advised by its bond counsel, Harris Beach PLLC ("Bond Counsel"), that the proposed Modifications will not result in a deemed "reissuance" of the Bonds for federal tax purposes; and

WHEREAS, the Institution has informed the Issuer, the Bondholder and the Trustee of an occurrence of damage (the "Damage") to a portion of its property (the "Damaged Property"); and

WHEREAS, the Damage is covered by insurance, and the Institution filed a claim with Travelers Indemnity Company and expects funds to be made available thereunder for purposes of reconstructing, replacing and/or repairing the Damaged Property (the "Proceeds"); and

WHEREAS, pursuant to Section 5.11(a) of that certain Loan Agreement dated as of October 1, 2015, by and between the Issuer and the Institution (the "Loan Agreement"), at the election of the Institution, with the consent of the Bondholder, amounts received (or receivable) by the Institution as Proceeds may be used to pay the cost of reconstructing, replacing or repairing the Damaged Property if the Institution determines that such action is practicable, taking into account (a) the nature of the Damaged Property, (b) the estimated cost of the proposed reconstruction, replacement or repair, and (c) the adequacy of available funds to pay such costs, provided, however, that the determinations must be set forth in an Institution Certificate (as defined in the Loan Agreement); and

WHEREAS, further pursuant to Section 5.11(c) of the Loan Agreement, moneys (which include the Proceeds) to be used for any reconstruction, replacement or repair of the Damaged

Property shall be deposited in the Project Fund (as defined in the Loan Agreement) for such purpose and shall be disbursed by the Trustee upon requisition of the Institution; and

WHEREAS, the Institution has requested a Waiver (the "Waiver") of the requirements set forth in Section 5.11 of the Loan Agreement with respect to (a) the Institution Certificate and (b) the requirement that moneys (which includes the Proceeds) be deposited in the Project Fund for the reconstruction, replacement or repair of the Damaged Property (collectively, the "Waived Conditions"); and

WHEREAS, the Issuer desires to (i) execute the Modifications; and (ii) agree to the Waived Conditions, subject to the terms and conditions of this resolution (the "Resolution").

NOW, THEREFORE, BE IT RESOLVED by the Buffalo and Erie County Industrial Land Development Corporation as follows:

Section 1. The Issuer determines that the Trustee's request and the Institution's request with respect to the previously approved and unchanged Project are Type II Actions pursuant to Article 8 of the New York Environmental Conservation Law and the regulations adopted pursuant thereto at 6 NYCRR §617.5(c) (collectively referred to as "SEQRA") and therefore no findings or determination of significance are required.

Section 2. The Issuer hereby ratifies, confirms and approves all actions heretofore taken by the Chairperson and the staff of the Issuer with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Enabling Act and all other applicable laws that relate thereto.

Section 3. The Issuer hereby ratifies, confirms and approves the Modifications and execution of the Second Amendment.

Section 4. The Issuer hereby consents to the Waived Conditions as outlined in the Waiver, subject, however, to the delivery of evidence satisfactory to the Chairperson or staff of the Issuer that (i) that immediately after the contemplated amendments and waivers taking effect, the Institution is not in default of any obligation under the Loan Agreement; and (ii) all other conditions of the Waived Conditions have been satisfied.

Section 5. The Chairman, Vice Chairman, the Secretary, the Treasurer or any Assistant Secretary, Assistant Treasurer or the President and Chief Executive of the Issuer (each an "Authorized Officer") is hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required, to execute and deliver all documents, and to do all such further acts and things as may be necessary or in the opinion of the Authorized Officer acting on behalf of the Issuer, 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 Financing Documents binding upon the Issuer.

Section 6. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this Resolution were adopted in an open meeting of the

Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 7. Due to the complex nature of this transaction, the Issuer hereby authorizes each of its Authorized Officers to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by counsel to the Issuer and/or Bond Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Authorized Officer acting on behalf of the Issuer.

Section 8. This resolution shall take effect immediately.

Dated: February __, 2023