

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

DATE AND PLACE: July 26, 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, Rev. Mark Blue, Hon. Bryon W. Brown, Dottie Gallagher, Michael P. Hughes, Tyra Johnson, Brenda McDuffie, Denise McGowan, Hon. Glenn R. Nellis, and Kenneth A. Schoetz

EXCUSED: Hon. Diane Benczkowski, James Doherty, Hon. Joseph Emminger, Hon. Howard Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Hon. Mark C. Poloncarz, Darius G. Pridgen; and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations; Mollie Profic, Chief Financial Officer; Gerald Manhard, Chief Lending Officer; Andrew Federick, Property & Business Development Officer; Atiqah Abidi, Accounting Manager; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocienec, Operations Assistant/Assistant Secretary; Laurie Hendrix, Administrative Coordinator; Robbie Ann McPherson, Director of Marketing & Communications; Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Alex Carducci on behalf of the City of Buffalo; Quinn Bushen on behalf of Empire State Development; Dale Shoemaker on behalf of Investigative Post; Jacob Tierney on behalf of Business First; Mel Alston, on behalf of Buffalo Public Schools; Enrico D’Abate on behalf of McGuire Development; Marc Romanowski on behalf of Rupp Pfalzgraf, LLC and John Daly, Mark Daly on behalf of Trautman Associates

There being a quorum present at 12:29 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 June 28, 2023, meeting of the members were presented. Ms. Gallagher moved, and Ms. Johnson 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. Profic presented the June financial reports. The balance sheet shows that the IDA finished the month with total assets of \$32.8M and net assets of \$20.8M. Restricted cash decreased \$400,000 from May to June as a result of a payment from a PIF fund for eligible expenses and UDAG funds borrowed by ILDC for construction invoices. ILDC will repay the UDAG fund upon receipt of grant funds. Under liabilities, funds held on behalf of others, had a decreased that corresponds to the PIF fund usage. The monthly income statement shows a net loss of \$37,000 for June. Operating revenue of \$163,000 was below our monthly budget by \$65,000, due mainly to timing of administrative fees received during the month. Operating expenses of \$214,000 were under our monthly budget by \$15,000. Under Special Project Grants, there was \$35,000 of net revenue in June mainly due to an annual payment to the railroad trust fund and depreciation/amortization of \$22,000. The year-to-date Income Statement shows revenues of \$1.7M, including administrative fee revenue of \$1.1M. We are at about 62% of our annual administrative fee budget through June. Expenses of \$1.3M are overall \$82,000 below budget. Most of the variance relates to the building operating costs category 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 \$86,000. Net income before strategic initiatives and depreciation was \$452,000. After strategic initiatives of \$151,000 and depreciation/amortization of \$134,000, there is currently net income of \$167,000 for the year. Ms. McDuffie directed that the report be received and filed.

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

Policy Committee Update. Mr. Lipsitz updated members and confirmed the BSP Commissary and Trautman projects were reviewed by the committee and the committee resolved to send these two projects to the Board with unanimous recommendations for Board approval. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

1016 East Delavan, LLC (BPS Commissary Kitchen), 1016-1044 East Delavan Avenue, Buffalo, New York. Ms. O'Keefe reviewed this proposed sales and use tax, mortgage recording tax and real property tax abatement benefits project involving the construction of a 67,000 sq. ft. single story commissary kitchen for the sole use of the Buffalo Public Schools (BPS) to prepare and distribute school meals to all Buffalo public schools in the district. The new building will include office space for administration and a test kitchen that will serve as a conference room/community space available for local community meetings and training for food service employees.

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 must covenant and agree 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, 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 \$28,107,629 (which represents the product of 85% multiplied by \$33,067,799, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 16 existing full time equivalent (“FTE”) employees and at least 35 existing part time equivalent (“PTE”) 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/PTE employees in the then current year at the Facility; and
 - that the Company has maintained and created FTE/PTE employment at the Facility equal to 16 FTE employees and 47 PTE employees [the 47 PTE employees being calculated by taking the sum of the Baseline PTE of 35 plus the product of 85% multiplied by 12 PTE (being the total number of new PTE employee positions proposed to be created by the Company as stated in the Company's application for Financial Assistance)]. To confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Ms. Gallagher queried as to what percentage of potential MWBE vendors are local. Mr. Romanowski spoke on behalf of the company, and it was confirmed that all vendors are New York State and/or Erie County certified MWBE businesses.

Mr. Brown then moved to approve the project and spoke in favor of the project.

Mr. Blue queried as to how many or what percentage of listed MWBE vendors are local? Mr. Romanowski stated the company has not determined that percentage yet, and anticipates it will be able to utilize local MWBE firms.

Mr. Blue seconded to approve the Project.

Ms. McDuffie spoke in favor of the project and 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 1061 EAST DELAVAN, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) 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 MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) 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

130 Pearl LLC (Trautman Associates), 130 Pearl Street, Buffalo, New York. Ms. O'Keefe reviewed this proposed sales and use tax and mortgage recording tax benefits project for the redevelopment of the 21,000 sq. ft. three story Underwood Building into 18 apartments with a mix of one- and two-bedroom units. Commercial/retail space will occupy the remaining 3,200 sq. ft.

The Project's cost benefit ratio was presented to and reviewed by the members present and the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project's contemplated community benefits were discussed and considered.

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, through the conclusion of the later of two (2) years following either (x) the

construction completion date, or (y) the termination of the Agent 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 \$4,655,489 (which represents the product of 85% multiplied by \$5,477,047, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 2 existing part time equivalent (“PTE”) 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 2 PTE employment at the Facility equal to 1 FTE employee. 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. Brown then moved, and Mr. Nellis seconded to approve 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 130 PEARL LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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, AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:45 p.m.

Dated: July 26, 2023



Elizabeth A. O'Keefe, Secretary