



**Buffalo and Erie County Industrial Land Development Corporation**  
**Meeting of the Membership**  
**February 28, 2024**  
**At 12:30 p.m.**

**ECIDA Offices (New Location)**  
**95 Perry Street, 4<sup>th</sup> Floor Conference Room**  
**Buffalo, New York 14203**

- 1.0 Call to Order**
- 2.0 Approval of Minutes**
  - 2.1 Approval of the December 20, 2023 Meeting of the Membership Minutes (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 (Informational)
  - 3.3 Governance Committee Update (Informational)
  - 3.4 Loan Status Report (Informational) (Page 7)
  - 3.5 D'Youville University – Bond (Action Item) (Pages 8-41)
  - 3.6 Approval of Sucro Sourcing Letter of Intent
- 4.0 Management Team Reports:**
  - 4.1
- 5.0 Adjournment- Next Meeting March 27, 2024**

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

- DATE AND PLACE:** December 20, 2023, at the Erie County Industrial Development Agency, 95 Perry Street, 4<sup>th</sup> Floor Conference Room, Buffalo, New York 14203
- PRESENT:** Denise Abbott, Daniel Castle, Richard Lipsitz, Jr. and Hon. Mark C. Poloncarz
- EXCUSED:** Hon. April Baskin, Hon. Byron W. Brown and Hon. Howard Johnson
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officers; Gerald Manhard, Chief Lending Officer; Grant Lesswing, Director of Business Development; Andrew Federick, Property & Business Development Officer; Atiqa Abidi, Accounting Manager; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Robbie Ann McPherson, Director of Marketing & Communications; Michelle Moore, Compliance Associate; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC
- GUESTS:** Zachary Evans, Mark Roundtree and Rami Daham on behalf of Erie County

There being a quorum present at 12:08 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 Mr. Castle seconded to approve of the October 25, 2023 minutes. Mr. Poloncarz called for the vote and the minutes were unanimously approved.

**REPORTS / ACTION ITEMS / INFORMATION ITEMS**

Financial Report. Ms. Abidi presented the November financial reports. The balance sheet shows ILDC ended the month with total assets of \$17.4M. Liabilities are made up of amounts due to ECIDA (borrowed for RCP/Agribusiness Park project costs pending grant reimbursements) and deferred grant revenue. Net assets total \$7.7M. One loan under the County Microloan program closed during the month. The November income statement shows \$1,700 of revenue, mainly interest income from loans under the County's Microloan program. There were also \$3,500 of expenses and \$3,200 of special project revenue, resulting in net loss of \$5,000 in November. The year-to-date income

statement shows revenues of \$162,000 and expenses of \$64,000, included in this figure is \$10,000 of bond administrative fee revenue that was subsequently paid to ECIDA under the existing shared services agreement. Net special project revenue of \$254,000 leads to net income of \$352,000 so far in 2023. Mr. Poloncarz directed that the report be received and filed.

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

Approval of DGEIS/Masterplan for Erie County Agribusiness Park. Mr. Cappellino reviewed the status of the ILDC’s Erie County Agribusiness Park (“Ag Park”) at the former Eden Angola Airport in the Town of Evans, being designed to establish facilities dedicated to agribusiness processing, storage, and distribution for the benefit of the local economy and community. The ILDC and Erie County have been designing the masterplan for the Ag Park since 2021, and the master plan includes comprehensive plans for utilities, a roadway network, and development parcels support by a Draft Generic Environmental Impact State (“DGEIS”) which assesses the potential significant environmental impacts associated with the proposed development.

Upon motion made by Ms. Abbott and seconded by Mr. Lipsitz to approve the DGEIS, Mr. Poloncarz called for the vote and the following resolution was then unanimously approved.

RESOLUTION OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (“ILDC”) ACCEPTING DRAFT GENERIC ENVIRONMENTAL IMPACT STATEMENT FOR A DEVELOPMENT MASTER PLAN OF APPROXIMATELY 242.03 ACRES OF LAND LOCATED AT 1526 EDEN EVANS CENTER ROAD IN THE TOWN OF EVANS, COUNTY OF ERIE, INTO AN AGRI-BUSINESS PARK FOR FUTURE AGRICULTURAL RELATED BUSINESSES

**MANAGEMENT REPORT**

Mr. Cappellino reviewed the status of the Ciminelli RFP for Renaissance Commerce Park Parcels 2 and 3, confirming that Ciminelli has determined that the sale and market conditions are not currently favorable to its proposed spec project, and as such, that Ciminelli is not, at this point in time, going to pursue its contemplated project.

Mr. Cappellino stated that ILDC will most likely consider issuing a new RFP for the site.

There being no further business to discuss, Mr. Poloncarz adjourned the meeting at 12:36 p.m.

Dated: December 20, 2023

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

**Industrial Land Development Corp.**  
**Financial Statements**  
As of January 31, 2024

**INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")**

**Balance Sheet**

January 31, 2024

	<b>January 2024</b>	<b>December 2023</b>
<b>ASSETS:</b>		
Restricted Cash *	\$ 403,884	\$ 407,345
Grants Receivable	9,160,559	9,191,178
Loans Receivable, net	487,094	495,740
Prepaid Expenses	-	-
Prepaid Acquisition Costs	697,929	697,929
Total Loan Assets	<u>10,749,465</u>	<u>10,792,192</u>
Capital Assets	6,356,268	6,356,268
Total Assets	<u>\$ 17,105,734</u>	<u>\$ 17,148,460</u>
 <b>LIABILITIES &amp; NET ASSETS:</b>		
Accounts Payable	\$ -	\$ 879,715
Due to/(from) ECIDA	5,360,076	4,519,375
Other Liabilities	4,163,857	4,163,816
Total Liabilities	<u>9,523,933</u>	<u>9,562,905</u>
Restricted Fund Balance	7,581,801	7,585,555
Total Liabilities & Net Assets	<u>\$ 17,105,734</u>	<u>\$ 17,148,460</u>

<b>Loan Portfolio Summary:</b>	<b>January 2024</b>	<b>December 2023</b>
# of Loans	<u>40</u>	<u>40</u>

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

**INDUSTRIAL LAND DEVELOPMENT CORPORATION ("ILDC")**  
**Income Statement**  
Year to Date: January 31, 2024

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
<b>REVENUES:</b>						
Interest Income - Loans	\$ 1,323	\$ 1,417	\$ (94)	\$ 1,323	\$ 1,508	\$ (185)
Grant Income - Microloan Program	-	13,667	(13,667)	-	-	-
Proceeds from (Cost of) Land Sales	-	(20,798)	20,798	-	-	-
Interest Income - Cash & Inv.	186	167	20	186	312	(126)
<b>Total Revenues</b>	<b>1,509</b>	<b>(5,548)</b>	<b>7,058</b>	<b>1,509</b>	<b>1,820</b>	<b>(311)</b>
<b>EXPENSES:</b>						
Management Fee - ECIDA	\$ 2,000	\$ 2,000	-	\$ 2,000	\$ 15,800	\$ (13,800)
Professional Services	-	5,600	(5,600)	-	-	-
General Office Expenses	422	417	6	422	(0)	422
Other Expenses	-	840	(840)	-	40	(40)
<b>Total Expenses</b>	<b>2,422</b>	<b>8,856</b>	<b>(6,434)</b>	<b>2,422</b>	<b>15,840</b>	<b>(13,418)</b>
<b>SPECIAL PROJECT GRANTS:</b>						
Industrial Land Park - ESD	-	241,554	(241,554)	-	-	-
Industrial Land Park - EDA	-	132,540	(132,540)	-	-	-
Industrial Land Park - ECIDA	-	8,333	(8,333)	-	-	-
Angola Ag Park - ECIDA Grant	-	4,167	(4,167)	-	-	-
Other grant revenue	-	22,564	(22,564)	-	-	-
Industrial Land Park grant reimbursement	-	(25,000)	25,000	-	-	-
Industrial Land Park costs	-	(382,427)	382,427	-	(70,307)	70,307
Angola Ag Park costs	(2,841)	(4,167)	1,326	(2,841)	(2,860)	19
Other grant expenses	-	(22,564)	22,564	-	-	-
	<b>(2,841)</b>	<b>(25,000)</b>	<b>22,159</b>	<b>(2,841)</b>	<b>(73,167)</b>	<b>70,326</b>
<b>NET INCOME/(LOSS):</b>	<b>\$ (3,754)</b>	<b>\$ (39,404)</b>	<b>\$ 35,651</b>	<b>\$ (3,754)</b>	<b>\$ (87,187)</b>	<b>\$ 83,433</b>

\* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to ILDC. The amount booked is currently based on 2024 budget.



## Loan Status Report February 2024

<b><u>ILDC Loans Approved Since Last Meeting</u></b>	<b><u>Municipality</u></b>	<b><u>Amount</u></b>
None		
<b><u>ILDC Loans Closed Since Last Meeting</u></b>	<b><u>Municipality</u></b>	<b><u>Amount</u></b>
None		
<b><u>Loans in Closing Process</u></b>	<b><u>Municipality</u></b>	<b><u>Amount</u></b>
None		
<b><u>Loans in the Pipeline</u></b>	<b><u>Municipality</u></b>	<b><u>Amount</u></b>
Todd Rosser dba Rosser's Ridge Maple and More	Chaffee	\$35,000
Brewtally Honest Coffee, LLC	Orchard Park	\$30,000

<b><u>2023 - Loans Closed</u></b>	<b><u>YTD Loan Total</u></b>	<b><u>Jobs to be Created</u></b>	<b><u>Retained Jobs</u></b>
8	\$280,000	7	12.5

### Loan Portfolio Performance

**Past Due Loans:**

<b><u>Loan</u></b>	<b><u>Outstanding Balance</u></b>	<b><u>Amount Past Due</u></b>	<b><u>Days Past Due</u></b>	<b><u>Comments</u></b>
Kevin Thie d/b/a Buffalo Firewood	\$34,723	\$1,007.70	90	Borrower filed Chapter 7 bankruptcy: Pursuing legal action.

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

\$34,723 / \$1,155,677 = 3.0% Delinquency Rate (40 Loans)

**ILDC Funds Available to Lend:        \$245,000**



Briefing Memo  
D'Youville University  
320 Porter Avenue, Buffalo, NY 14201

ILDC Taxable Bond Financing

**Applicant Background:**

D'Youville College ("D'Youville" or the "College") was founded in 1908 as a Catholic, co-educational, comprehensive liberal arts college located on the West Side of Buffalo. It was the first college in Western New York to offer bachelor's degree programs for women. With approximately 3,000 students matriculating annually, the school's 54-degree programs range from associate degrees through doctoral studies. Approximately 90% of students are studying a health-related profession including nursing, chiropractic, pharmacy, occupational and physical therapy.

**Project:**

This Project is to support the expansion of advanced health education programs, including a doctoral program in osteopathic medicine. The program is to be located on the existing D'Youville University campus. The total investment is estimated at \$54M of which \$10M will be equity financing and the remaining \$48M in the form of a taxable bond.

This \$48 M taxable bond financing will cover startup costs to establish the osteopathic medicine program which excludes facility funding. The proposed program is expected to start in the Summer, 2025 with an initial enroll of 90 students within the existing D'Youville University campus. The program will ultimately enroll 720 students (in Year 6 of operation), requiring approximately 110,000 sq. ft. of new build space (planned for an existing surface parking lot on campus at 443 West Ave).

The project will result in the creation of 50 jobs at the University with an average salary of \$190,000. The current # of jobs at the University = 337 FT and 25 PT.

**Project Financing:**

Financing a portion of startup costs and the needed investment in forming an accredited academic program in osteopathic medicine. The ILDC approval will include a mortgage recording tax benefit of up to \$480,000 for this project – to be used, if the bond placement agent determines that a mortgage is a necessary part of the project financing.





**D'Youville Outstanding Debt:**

Outstanding debt includes the following bonds that closed on September 23, 2020:

- ILDC Revenue Bond Series 2020A issued for \$34,370,000
- ILDC Revenue Bond Series 2020B (taxable) issued for \$13,835,000

**Tentative Bond Actions / Timing:**

- Policy Committee Meeting: February 1, 2024
- Audit & Finance Committee Meeting: February 22, 2024
- ILDC Board Meeting: February 28, 2024
- Post Preliminary Official Statement: TBD
- Price Bonds: TBD
- Closing: TBD

**APPLICATION FOR  
FINANCIAL ASSISTANCE  
TAX EXEMPT BONDS  
(NOT FOR PROFIT use only)**



Buffalo & Erie County Industrial Land Development Corporation  
95 Perry Street  
Suite 403  
Buffalo, New York 14203  
phone (716) 856-6525  
fax (716) 856-6754  
web [www.ILDCny.com](http://www.ILDCny.com)

Eligibility Questionnaire - Applicant Background Information

Answer all questions. Use "None" or "Not Applicable" where necessary.

**Applicant Information-company receiving benefit:**

Applicant Name: D'Youville University

Applicant Address: 320 Porter Ave

City/Town: Buffalo State: NY Zip: 14201

Phone: General: 716-829-8000 | CFO Mobile: 716-308-4213

Website: www.dyu.edu E-mail: General: contactus@dyc.edu  
CFO: fumen@dyc.edu

**Business Organization (check appropriate category):**

Corporation  Not for Profit 501c3  Public Corporation   
Other (specify) Educational Corporation Chartered by NY Board of Regents  
Year Established: 1908 State in which Organization is established: NY

**Benefits Requested (select all that apply):**

- 1. ~~Tax-Exempt~~-Taxable Financing  Yes or  No
- 2. Exemption from Mortgage Tax  Yes or  No

**Applicant Business Description:**

Describe in detail applicant background, history and services provided: D'Youville University, founded in 1908, is a private higher education institution with a main campus on the West Side of Buffalo. Approximately 3,000 students matriculate annually in the school's 54 degree programs, which range from associate degrees through doctoral studies. Approximately 90% of students are studying a health related profession, including nursing, chiropractic, pharmacy, occupational and physical therapy.

What percentage of your total annual supplies, raw materials and vendor services are purchased from firms in Erie County 45\* %

Describe vendors within Erie County for major purchases: 45% of supplies and services are from firm's based in Erie County. Significant vendors include Highmark BCBS (health insurance), Wise Owl Wood Company (custom furniture and cabinetry), Dopkins & Company and Lumsden & McCormick (accounting and auditing services), 19 Ideas (Marketing), Cannon Design (architecture), Niagara Scenic

and Cedar Bus (transportation), Lawley (insurance brokerage), National Fuel (utility) and various local contractors used in construction and renovation projects. In addition to the 45% for locally owned vendors, 26% is paid for vendors who handle building maintenance, provide campus security, operate food service and the school bookstore. These vendors are national firms, but are directly employing people working on the D'Youville campus.

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**Individual Completing Application:**

Name: Nicholas Fiume  
Title: Chief Financial Officer  
Address: 320 Porter Ave  
City/Town: Buffalo State: NY Zip: 14201  
Phone: 716-308-4213 E-Mail: fiumen@dyc.edu

**Company Contact (if different from individual completing application):**

Name: same  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**Company Counsel:**

Name of Attorney: Paul Reichel  
Firm Name: Bond Schoeneck & King  
Title: Member  
Address: One Lincoln Center  
City/Town: Syracuse State: NY Zip: 13202  
Phone: 315-218-8135 E-Mail: preichel@bsk.com

Eligibility Questionnaire - Project Description & Details

Address of Proposed Project Facility: 320 Porter Ave

City/Town: Buffalo School District: Buffalo

Current Address (if different): same

City/Town: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Does the Applicant or any related entity currently hold fee title or have an option/contract to purchase the Project site?  Yes or  No If No, indicate name of present owner of the Project site:

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

The Project is to support the expansion of advanced health education programs, including a doctoral program in osteopathic medicine. The program is to be located on the existing D'Youville University campus (i.e. future use is consistent with current use – educational facility)

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/all tenants and any/all end users:

This request is for financing of certain initial startup costs of an osteopathic medicine program, and does not include facility funding. The proposed program will initially enroll 90 students within the existing D'Youville University campus, but will ultimately enroll 720 students (in Year 6 of operation), requiring approximately 110,000 sq. ft. of new build space (planned for an existing surface parking lot on campus at 443 West Ave).

If tax exempt or taxable bonds are being requested indicate what bonds will be used for:

Financing a portion of startup costs and needed investment in forming an accredited academic program in osteopathic medicine.

Describe the reasons why the ILDC's financial assistance is necessary, and the effect the Project will have on the Applicant's operations. If refinancing an existing bond or loan indicate potential savings: \_\_\_\_\_

ILDC participation in allowing the issuance of taxable bonds provides access to the capital markets and third-party investors. Creation of a new medical school in the Buffalo community is expected to have a substantial impact on both D'Youville University and the surrounding community. In addition to 720 new students at full capacity, the program will enhance the reputation and "draw" of existing undergraduate health programs at the University and further a pipeline with the major local health care providers to address workforce shortages – particularly with primary care physicians.

If the bond placement agent determines that a mortgage is necessary, the ILDC mortgage tax exemption will also result in significant cost savings, which will help support the new osteopathic medicine program.

#### Site Characteristics:

Is your project located near public transportation?  Yes or  No. If yes describe if site is accessible by either metro or bus line (provide route number for bus lines): Four bus lines run within one block of the D'Youville University campus – 22 Porter-Best, 5 Niagara-Kenmore, 40 Buffalo-Niagara Falls, and 3 Grant

Has a project related site plan approval application been submitted to the appropriate planning department?  Yes or  No

This application relates solely to the issuance of taxable bonds to finance osteopathic program start-up costs. No bond proceeds will be used for construction, equipment or other capital expenditures. Note, however, that D'Youville has obtained a building permit for construction of a new building that will eventually house the osteopathic medicine program.

If Yes, include the applicable municipality's and/or planning department's approval resolution, the related State Environmental Quality Review Act ("SEQR") "negative declaration" resolution, if applicable, and the related Environmental Assessment Form (EAF), if applicable

If No, list the ILDC as an "Involved Agency" on the related EAF that will be submitted to the appropriate municipality and/or planning department for site plan approval.

Will the Project meet zoning/land use requirements at the proposed location?  Yes or  No

What is present zoning/land use: \_\_\_\_\_ What is required zoning/land use, if different: \_\_\_\_\_  
No change in use – educational program on existing university campus

If a change in zoning/land use is required, 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?  Yes or  No If yes, explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed project site?  Yes or  No If yes, 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?  
 Yes or  No. If yes, provide copies of the study

**Select Project Type for all end users at project site (check any and all end users as identified below)**

**(You may check more than one)**

- |                                  |                                     |                     |                                     |
|----------------------------------|-------------------------------------|---------------------|-------------------------------------|
| Acquisition of Existing Facility | <input type="checkbox"/>            | Market Rate Housing | <input type="checkbox"/>            |
| Assisted Living                  | <input type="checkbox"/>            | Mixed Use           | <input type="checkbox"/>            |
| Back Office                      | <input type="checkbox"/>            | Multi-Tenant        | <input type="checkbox"/>            |
| Civic Facility (not for profit)  | <input checked="" type="checkbox"/> | Senior Housing      | <input type="checkbox"/>            |
| Equipment Purchase               | <input type="checkbox"/>            | Other               | <input checked="" type="checkbox"/> |
| Facility for Aging               | <input type="checkbox"/>            |                     |                                     |

1. Start date: acquisition of equipment or construction of facilities: \_\_\_\_\_ See Note Below
2. Estimated completion date of project: \_\_\_\_\_ See Note Below
3. Project occupancy – estimated starting date of occupancy: \_\_\_\_\_ See Note Below

Note: Not applicable as this financing is for program startup costs, not capital investment. The planned osteopathic medicine program is expected to enroll students in summer 2025 and achieve full accreditation upon graduation of its first class in 2029.

**Estimated costs in connection with Project:**

- |  |                             |                     |
|--|-----------------------------|---------------------|
| 1. Land and/or Building Acquisition                        |                             | \$ _____            |
| _____ acres _____ square feet                              |                             |                     |
| 2. New Building Construction                               | _____ square feet           | \$ _____            |
| 3. New Building Addition(s)                                | _____ square feet           | \$ _____            |
| 4. Infrastructure Work                                     |                             | \$ _____            |
| 5. Reconstruction/Renovation                               | _____ square feet           | \$ _____            |
| 6. Non-Manufacturing Equipment (furniture, fixtures, etc.) |                             | \$ _____            |
| 7. Soft Costs: (Legal, architect, engineering, etc.)       |                             | \$ _____            |
| 8. Other, Specify: _____                                   | initial program development | <u>\$58,000,000</u> |

TOTAL Costs: \$58,000,000

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

**Sources of Funds for Project:**

Bank Financing	\$ _____
Equity (excluding equity that is attributed to grants/tax credits)	\$ <u>10,000,000</u>
Tax Exempt Bond Issuance (if applicable)	\$ _____
Taxable Bond Issuance (if applicable)	\$ <u>48,000,000</u>
Public Sources (Include sum total of all state and federal grants and tax credits)	\$ _____
Total Sources of Funds for Project Costs:	\$ <u>58,000,000</u>

Have you secured financing for the project?  Yes or  No

If Yes, specify, Bank, underwriter, etc.

Marketing of planned bonds is in progress. Loop Capital will be placement agent for the bonds.

**Mortgage Recording Tax Exemption Benefit:** Amount of mortgage(s), if any that would be subject to mortgage recording tax:

Mortgage Amount (include sum total of construction/permanent/bridge financing): \$ 48,000,000

Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above 1% \$ 480,000\*



\*Note – We are still in discussion with Loop Capital as to whether a mortgage will be necessary and, if so, the principal amount of debt secured by the mortgage. Therefore the mortgage tax exemption may be substantially less than \$440,000

ILDC encourages applicants to utilize MBE/WBE contractors for their projects. Describe your company’s internal practices that promote MBE/WBE hiring and utilization:  
D’Youville University is committed to diversity, equity and inclusion in human resources and policies.  
See <https://www.dyu.edu/about/mission-integration/diversity-equity-inclusion>

Is the project necessary to expand project employment?  Yes or  No

Is project necessary to retain existing employment?  Yes or  No

Note: The current landscape for small private universities in New York provides significant challenges – as seen locally with the recent closure of Medaille and across upstate New York (St. Rose in Albany). Continued expansion of graduate medical programs is strategically important for D’Youville to provide stability to maintain its existing programs.

In addition to retaining our existing 362 regular employees, the new osteopathic medicine program is expected to create 50 new positions between added administrative staff and full-time faculty.

**Employment Plan (Specific to the proposed project location):** You must include a copy of the most recent NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return.

	Current # of jobs at proposed project location or to be relocated at project location	If financial assistance is granted – project the number of FT and PT jobs to be retained	If financial assistance is granted – project the number of FT and PT jobs to be created upon 24 months (2 years) after Project completion
Full time (FT)	337	337	50
Part Time (PT)	25	25	0
Total	362	362	362

Note: The totals above represent regular employees of the University (at least half-time, with benefits). The University also employs many persons as adjunct faculty, artists in plays in productions, and students under the federal work study program. As these are often for very few hours or limited duration, they have been excluded to avoid skewing averages reported below.

**Salary and Fringe Benefits for Jobs to be Retained and Created:**

Category of jobs to be retained and/or created	# of employees retained and/or created	Average salary for Full Time	Average fringe benefits for full time	Average salary for part time, if applicable	Average fringe benefits for part time, if applicable
Management	54 Ret; 10 Cr.	113,900	18,000		
Professional	163 Ret; 30 Cr	74,508	16,000	26,000	2,500
Administrative	105; 10 Cr.	63,307	15,000		
Production	40	53,084	14,000	22,000	2,200
Independent Contractor					
Other					

**Payroll Information:**

Annual Payroll at proposed project site upon project completion

\$ 42,000,000

Estimated average annual salary of jobs to be retained (full time)

\$ 71,000

Estimated average annual salary of jobs to be retained (part time)

\$ 24,000

Estimated average annual salary of jobs to be created (full time)

\$ 190,000\* (Note – approximately half of the jobs to be created are medical school faculty, who will command salaries of an average of \$240,000. The remainder will be more consistent with D’Youville’s average for administrative and professional staff – approximately \$71,000)

Estimated average annual salary of jobs to be created (part time)

\$ N/A

Estimated salary range of jobs to be created

From (full time) \$ To (full time) \$

From (part time) \$ To (part time) \$

Environmental Questionnaire

NOTE - THIS FINANCING IS FOR PROGRAM START-UP COSTS ONLY. NO CONSTRUCTION, EQUIPMENT, OR CAPITAL IMPROVEMENTS. THE QUESTIONNAIRE IS ANSWERED FOR THE EXISTING D'YOUVILLE CAMPUS

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

A). GENERAL BACKGROUND INFORMATION:

- 1. Address of Premises: 320 Porter Ave. Buffalo, NY 14201 (D'Youville University campus)
2. Name and Address of Owner of Premises: D'Youville University, 320 Porter Ave. Buffalo, NY 14201
3. Describe the general features of the Premises (including terrain, location of wetlands, coastlines, rivers, streams, lakes, etc.): 27 acre university campus on West Side of Buffalo. Includes various classroom, lab, student recreation, housing and support spaces. The campus is approximately 0.25 miles from the Niagara River

- 4. Describe the Premises (including the age and date of construction of any improvements) and each of the operations or processes carried on or intended to be carried on at the Premises. D'Youville University has operated at the campus location since 1908, with campus buildings constructed at various points over the past 115 years. Significant investment has been made in upgrades and modernization of the physical plant over the past 10 years. Campus buildings are in above average condition.

- 5. Describe all known former uses of the Premises. D'Youville University has operated from the campus for the past 115 years. Portions of the campus more recently acquired include former use as residential property and a Catholic parish complex.

- 6. Does any person, firm or corporation other than the owner occupy the Premises or any part of it? [X] Yes or [ ] No If yes, identify them and describe their use of the property. Certain spaces are leased to community partners of D'Youville - generally to support the overall educational mission. This includes a primary care clinic operated by Catholic Health, a pharmacy (Vital Pharmacy), and space used by the campus bookstore and food services.

- 7. Have there been any spills, releases or unpermitted discharges of petroleum, hazardous substances, chemicals or hazardous wastes at or near the Premises? [ ] Yes or [X] No If yes, describe and attach any incident reports and the results of any investigations.

- 8. 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. [ ] Yes or [X] No If yes, state the results of the enforcement action (consent order, penalties, no action, etc.) and describe the circumstances.

- 9. Has there been any filing of a notice of citizen suit, or a civil complaint or other administrative or criminal procedure involving the Premises? [ ] Yes or [ ] No. If yes, describe in full detail.

D'Youville University operates a college campus for approximately 3,000 students and 400 faculty and staff, along with thousands of annual visitors for events, performances and athletic contests. The University maintains a full-time professional campus safety department. Slips and falls and minor criminal conduct can routinely occur in the normal course of business. We are not aware of any unusual or material uninsured claims or matters, or of matters of non-compliance with law or regulation by the University. Like all higher education institutions, annual reporting on campus crime statistics is made to the Department of Education. Our Clery Act disclosure is available at [https://www.dyu.edu/sites/default/files/2023-09/DYU\\_SECURITY\\_FIRE\\_23.pdf](https://www.dyu.edu/sites/default/files/2023-09/DYU_SECURITY_FIRE_23.pdf)

**B) SOLID AND HAZARDOUS WASTES AND HAZARDOUS SUBSTANCES:**

1. 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?  Yes or  No. If yes, provide the Premises' applicable EPA (or State) identification number.  
\_\_\_\_\_
2. Have any federal, state or local permits been issued to the Premises for the use, generation and/or storage of solid and hazardous wastes?  Yes or  No. If yes, provide copies of the permits. Identify the transporter of any hazardous and/or solid wastes to or from the Premises.  
\_\_\_\_\_
3. Identify the solid and hazardous waste disposal or treatment facilities which have received wastes from the Premises for the past two (2) years. \_\_\_\_\_  
\_\_\_\_\_
4. 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?  Yes or  No. If yes, identify the substance, the quantity and describe how it is stored. \_\_\_\_\_  
\_\_\_\_\_

**C) DISCHARGE INTO WATERBODIES:**

1. Briefly describe any current or contemplated industrial process discharges (including the approximate volume, source, type and number of discharge points). Provide copies of all permits for such discharges.  
None  
\_\_\_\_\_
2. Identify all sources of discharges of water, including discharges of waste water, process water, contact or noncontact cooling water, and storm water. Attach all permits relating to the same. Also identify any septic tanks on site.  
Various public bathrooms and kitchen facilities have discharge into the municipal sewer system.  
No known septic tanks on site  
\_\_\_\_\_
3. Is any waste discharged into or near surface water or groundwaters?  Yes or  No. If yes, describe in detail the discharge including not only the receiving water's classification, but a description of the type and quantity of the waste.

**D) AIR POLLUTION:**

1. Are there or is it contemplated that there will be any air emission sources that emit contaminants from the Premises?  Yes or  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.  
\_\_\_\_\_

- 
- 
2. Are any of the air emission sources permitted?  Yes or  No If yes, attach a copy of each permit.

**E) STORAGE TANKS:**

1. List and describe all above and underground 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. Also provide copies of any registrations/permits for the tanks. \_\_\_\_\_  
None \_\_\_\_\_
2. Have there been any leaks, spills, releases or other discharges (including loss of inventory) associated with any of these tanks?  Yes or  No. If yes, 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. \_\_\_\_\_

**F) POLYCHLORINATED BIPHENYLS ("PCB" or "PCBs") AND ASBESTOS:**

1. 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.
2. Have there been any PCB spills, discharges or other accidents at the Premises?  Yes or  No If yes, relate all the circumstances. \_\_\_\_\_
3. Do the Premises have any asbestos containing materials?  Yes or  No. If yes, identify the materials.  
Various campus buildings were constructed using asbestos containing materials, primarily in flooring tiles and insulation.

## Representations, Certifications and Indemnification

Nicholas Fiume (name of CEO or other authorized representative of Applicant) deposes and says that he/she is the Chief Financial Officer (title) of D'Youville University (name of corporation or other entity) named in the attached Application (the "Applicant"), that he/she has read the foregoing Application and knows the contents thereof, and hereby represents, understands, and otherwise agrees with the ILDC and as follows:

A. **Local Labor Workforce Certification Reports:** The Applicant understands and agrees that, if the project, as described within this Application, receives any Financial Assistance from the Buffalo and Erie County Industrial Land Development Council (the "ILDC"), the Applicant agrees to file, or cause to be filed, with the ILDC Local Labor Workforce Certification Reports, at least quarterly, regarding the use of local labor working on the project site during and through the construction period to confirm use of all local labor residing in Erie, Niagara, Chautauqua, Cattaraugus and/or Alleghany Counties.

B. The Applicant acknowledges and agrees that in the event the project as described within this Application is deemed a public work for purposes of Article Eight of the New York State Labor Law, then all provision of such Article Eight shall apply. In such an event, the Applicant further acknowledges and agrees that it shall pay, or cause to be paid, to all employees, no less than the prevailing rate of wage and supplements under Article Eight of the New York State Labor Law with respect to the project as described within this Application.

C. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigations. In connection with the Application, the ILDC may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the ILDC so that the ILDC is authorized to use and rely on the reports. The ILDC, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.

D. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the ILDC from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys' consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the ILDC, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.

E. **Hold Harmless Provision:** The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the ILDC incurred in connection with any actions required to be taken by the ILDC in furtherance of the Application including the ILDC's reasonable costs of general counsel and/or

the ILDC's bond/transaction counsel whether or not the Application, the proposed project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the ILDC shall not be liable for and agrees to indemnify, defend, and hold the ILDC harmless from and against any and all liability arising from or expense incurred by: (i) the ILDC's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the ILDC; (ii) the ILDC's acquisition, construction and/or installation of the proposed project described herein; and (iii) any further action taken by the ILDC with respect to the proposed project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. This obligation includes an obligation to submit an ILDC Fee Payment to the ILDC in accordance with the ILDC fee policy effective as of the date of this Application.

F. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the ILDC and the ILDC's general counsel and/or the ILDC's bond/transaction counsel, the same to be paid at the times indicated:

- (i) a non-refundable \$1,000 application and publication fee (the "Application Fee");
- (ii) Unless otherwise agreed to by the ILDC, an amount equal to one percent (1.00%) of the ILDC bond issuance;
- (iii) All reasonable fees, costs and expenses incurred by the ILDC for (1) legal services, including but not limited to those provided by the ILDC's general counsel and/or the ILDC's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the ILDC's general counsel and the ILDC's bond/transaction counsel; and (2) other consultants retained by the ILDC in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.

G. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, then, upon the presentation of an invoice, Applicant shall pay to the ILDC, its agents, or assigns all reasonable costs incurred by the ILDC in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the ILDC's general counsel and/or the ILDC's bond/transaction counsel.

H. The Applicant acknowledges and agrees that all payment liabilities to the ILDC and the ILDC's general counsel and/or the ILDC's bond and/or transaction counsel as expressed in Sections F and G are obligations that are not dependent on final documentation of the transaction contemplated by this Application.

I. The cost incurred by the ILDC and paid by the Applicant, the ILDC's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the project and included in the financing of costs of the proposed project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.

J. The Applicant acknowledges that the ILDC is subject to New York State's Freedom of Information Law (FOIL). **Applicant understands that all project information and records related to this**

application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.

K. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the ILDC and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

D'Youville University  
(Name of corporation or entity)


Nicholas Fiume  
(Name of officer)

Chief Financial Officer  
(Title)

NOTARY

Sworn to before me this 30<sup>th</sup> day of January,  
2024

(Signature)

 NR  
Loria Szewczyk

**LORIA SZEWCZYK**  
Notary Public, State of New York  
No. 01SZ5030580  
Qualified in Erie County  
Commission Expires 07/18/ 2026



ILDC Tax Exempt Bond – Addendum to Application

Local Labor Certification and New York State Labor Law Acknowledgment

1. Will labor, solely sourced from one or more of the following counties, be utilized to construct, expand, or renovate the facility (Erie, Niagara, Chautauqua, Cattaraugus and Alleghany)?

Yes or  No

2. If the “No” box was checked above, and if labor will not be solely sourced from the five counties, as referenced above, a waiver permitting the use of labor from outside of the five aforementioned counties can be obtained. If a waiver is desired, please explain in detail why labor from outside of the five aforementioned counties will need to be utilized to construct, expand, or renovate the facility:

No labor will be used as there is no construction. This financing is for program start-up costs only.

3. Whenever a recipient of financial assistance from the ILDC enters into any contract, subcontract, lease, grant, bond, covenant or other agreement for or in connection with any construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration, or improvement work (collectively, “Work”) on a project, such project shall be deemed to be a public work for purposes of Article Eight of the New York State Labor Law and all the provisions of such Article shall apply. In such an event, an employer shall pay employees no less than the prevailing rate of wage and supplements under Article Eight of the New York State Labor Law. In the event the proposed project uses financial assistance from the ILDC to directly undertake Work, will the Applicant adhere to all the provisions of Article Eight of the New York State Labor Law and pay employees no less than the prevailing rate of wage and supplements thereunder?

Yes or  No – N/A – No construction

The Applicant and the individual executing this ILDC Local Labor Certification and New York State Labor Law Acknowledgment on behalf of Applicant (collectively the “Applicant”) acknowledge that the ILDC and its counsel will rely on the representations made herein when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and further, the Applicant understands and acknowledges that, if the ILDC becomes aware of the use of labor from counties other than the five aforementioned counties in the absence of a waiver permitting otherwise, then the ILDC will provide notice of same to the Company and provide the Company with a reasonable time period to cure same. The Applicant further understand and acknowledges that in the event the project as proposed is deemed to be a public work for purposes of Article Eight of the New York State Labor Law as required under that

certain Erie County Legislature 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, and Resolution No. 5-3 (2010) adopted by the Legislature on March 25, 2010, and Resolution No. 110 of 2011, adopted by the Legislature on June 30, 2011, that it must at all times adhere to and comply with all of the provisions of Article Eight of the New York Labor Law and pay employees no less than the prevailing rate of wage and supplements under Article Eight of the New York State Labor Law.


D'Youville University  
(Name of corporation or entity)

Nicholas Fiume  
(Name of officer)

  
Chief Financial Officer  
(Title)

NOTARY

Sworn to before me this 30<sup>th</sup> day of January, 2024

  
(Signature) Loria A. SzeWCzyk

**LORIA SZEWCZYK**  
Notary Public, State of New York  
No. 01SZ5030580  
Qualified in Erie County  
Commission Expires 07/18/2026

## ILDC Insurance Requirements

### **Buffalo & Erie County Industrial Land Development Corporation (Insurance Specifications as of November 1, 2018)**

**A summary of ILDC insurance requirements follows. Please note that insurance is to be provided by the Company and/or Project owner after Board approval and prior to utilization of ILDC financial assistance and shall be maintained during the term of any applicable Agent Agreement and/or Lease Agreement by and between the ILDC and the Company.**

During the term of an Agent Agreement and/or a Lease Agreement entered into with the Erie County Industrial Agency an **ACORD 25-Certificate of Liability Insurance** and **ACORD 855 NY-New York Construction Certificate of Liability Addendum** shall be provided evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing Erie County Industrial Development Agency as Certificate Holder. It is our suggestion that you share these requirements with your current insurance agent, broker or insurance company.

Acceptable Certificates of Insurance shall indicate the following minimal coverage, limits of insurance, policy numbers and policy effective and expiration dates.

**Commercial General Liability:** Agent and subcontractors shall provide such coverage on an occurrence basis for the named insured's premises & operations and products-completed operations. Blanket Contractual Liability provided within the "insured contract" definition may not be excluded or restricted in any way. Property damage to work performed by subcontractors may not be excluded or restricted nor shall the Additional Insured's coverage for claims involving injury to employees of the Named Insured or their subcontractors be excluded or restricted. The "insured contract" exception to the Employers Liability exclusion also may not be removed or restricted in any way.

These coverages are to be properly evidenced by checking the appropriate box(es) on the **ACORD 855-NY Construction Certificate of Liability Addendum's** Information Section, Items G, H, I and L. Policy shall have attached **Designated Location(s) General Aggregate Limit CG 25 04** endorsement.

**Limits expressed shall be no less than:**

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Fire Damage Liability	\$ 100,000
Medical Payments (per person)	\$ 5,000

Erie County Industrial Development Agency shall be named as Additional Insured per **ISO Form CG 20 26-Additional Insured Designated Person or Organization** to provide coverage for the Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis. All insurance required of the Company shall waive any right of subrogation of the insurer against any person insured under such policy and waive any right of the insurer to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

**ACORD 855 NY-New York Construction Certificate of Liability Insurance:** It is not uncommon for insurers to modify the standard ISO policy language with endorsements that result in modifications to language preferred by the insurer. This addendum is required to supplement the **ACORD 25-Certificate of Liability Insurance** with additional information that provides a more detailed expression of the types of coverage required. Specifically required coverages may be excluded or limited by the attachment of exclusionary or limitation endorsements. This addendum provides the insurer the ability to certify coverage provided by the absence of such exclusionary or limiting modifications.

Blanket Additional Insured endorsement to include – Owner, Lessees or Contractors - Automatic Status For Other Parties When Required in Written Construction Agreement – Wording should include any other person or organization you are required to add as an additional insured under the contract or agreement (**Paragraph 2 of CG 20 38 04 13 or equivalent**).

Any scheduled person or organization section of the additional insured endorsement containing wording other than designated names shall not be accepted.

**Umbrella/Excess Liability:** Commercial Umbrella or excess liability for a limit of at least \$5,000,000 per occurrence with a \$5,000,000 Aggregate. Coverage should respond on a follow-form basis and excess over the aforementioned underlying policy limits. Erie County Industrial Development Agency shall be named as Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis.

**Workers Compensation/Disability Insurance:**

- i) The Company and/or Project Owner shall provide evidence of insurance and maintain Workers Compensation/Disability insurance as required by statute. Erie County Industrial Development Agency shall be named as the Certificate Holder.
- ii) **Accepted Forms:**

<b>Workers Compensation Forms</b>		<b>DBL (Disability Benefits Law) Forms</b>	
<b>CE-200</b>	<b>Exemption</b>	<b>CE-200</b>	<b>Exemption</b>
<b>C-105.2</b>	<b>Commercial Insurer</b>	<b>DB-120.1</b>	<b>Insurers</b>
<b>SI-12</b>	<b>Self-Insurer</b>	<b>DB-155</b>	<b>Self-Insured</b>
<b>GSI-105.2</b>	<b>Group Self-Insured</b>		
<b>U-26.3</b>	<b>New York State Insurance Fund</b>		

**If the Company and/or Project owner have no employees, the Company and/or Project owner shall provide a completed and signed Form CE-200 or later revision, which is found on the New York State Workers Compensation Board website: [www.wcb.ny.gov](http://www.wcb.ny.gov)  
This form is to be completed on-line, printed, and signed.**

**ILDC Address: All evidence of insurance shall be sent to:  
Buffalo & Erie County Industrial Land Development Corporation  
95 Perry St, Suite 403  
Buffalo, NY 14203**

## ILDC Issuance Counsel Fee Schedule

### ILDC General Counsel Fees:

Benefited Amount	Standard Legal Fee
<=\$500,000	
<=\$750,000	\$5,000
>\$750,000 - \$1.5M	\$9,000
>\$1.5M - \$3M	\$13,000
>\$3M - \$5M	\$17,000
>\$5-\$10M	\$20,000
>\$10M	\$28,000

In addition to the counsel fees, disbursements of up to \$1,000 will be added to each closing.

### ILDC Standard Fees:

A non-refundable \$1,000 application fee payable to the Erie County Industrial Development Agency is due upon submission of your application. Send your check to: ILDC, 95 Perry Street, Suite 403 Buffalo, NY, Suite 14203.

Payment of costs in connection with publishing of public hearing notice

ILDC will charge an administrative fee of 1% of the amount of the bond.

Company is liable for tax exempt bond fees negotiated directly with bond counsel

Any additional costs associated with meeting the agency's current environmental policy are the responsibility of the applicant.

If a project application is withdrawn or does not close, the applicant is responsible for any costs incurred by the agency on behalf of the project.

**BOND RESOLUTION  
D'YOUVILLE UNIVERSITY PROJECT**

A regular meeting of Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") was convened in public session in the offices of the Issuer located at 95 Perry Street – Suite 403, Buffalo, New York on February 28, 2024 at 12:30 o'clock p.m., local time.

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

**PRESENT:**

Hon. Mark Poloncarz	Chairperson
Denise Abbott	Director
Hon. April Baskin	Director
Hon. Byron Brown	Director
Daniel Castle	Director
Hon. Howard Johnson	Director
Richard Lipsitz	Director

**ABSENT:**

**ISSUER STAFF PRESENT INCLUDED THE FOLLOWING:**

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

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

RESOLUTION AUTHORIZING (A) THE ISSUANCE AND SALE BY BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ISSUER") OF ITS TAXABLE REVENUE BONDS (D'YOUVILLE UNIVERSITY PROJECT) IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$48,000,000 AND THE EXECUTION OF RELATED DOCUMENTS AND (B) THE EXECUTION OF CERTAIN AMENDMENTS BY THE ISSUER RELATING TO THE ISSUER'S REVENUE BONDS (D'YOUVILLE PROJECT), SERIES 2020A AND THE ISSUER'S REVENUE BONDS (D'YOUVILLE COLLEGE PROJECT), SERIES 2020B (TAXABLE) AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, pursuant to the provisions of Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”), in January, 1982, a certificate of incorporation was filed with the New York Secretary of State’s Office (the “Certificate of Incorporation”) creating the Issuer as a public instrumentality of Erie County, New York (the “County”) pursuant to the Enabling Act; and

WHEREAS, the Issuer is authorized and empowered by the provisions of the Enabling Act and resolutions adopted by the Erie County Legislature (the “County Legislature”) on July 24, 2009, November 19, 2009, March 25, 2010, and June 20, 2011, respectively (together with the Enabling Act, the “Act”) to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in the County, lessen the burdens of government and act in the public interest; and

WHEREAS, in January, 2024, the Issuer accepted an application (the “Application”) from D’Youville University, a New York not-for-profit education corporation (the “University”), which Application requested that the Issuer consider undertaking a project (the “Initial Project”) consisting of the following: (A) the funding of certain initial startup costs of a new osteopathic medicine program being developed by the University (the “Program”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Initial Bonds (as defined herein); and (C) paying a portion of the costs incidental to the issuance of the Initial Bonds, including issuance costs of the Initial Bonds and any reserve funds as may be necessary to secure the Initial Bonds; and

WHEREAS, the Issuer now desires to authorize issuance of its Revenue Bonds (D’Youville University Project), Series 2024A (Taxable) in the maximum aggregate principal amount of not to exceed \$48,000,000 (the “Initial Bonds”) for the purpose of financing a portion of the costs of the Initial Project under this resolution, one or more certificates of determination (each, a “Certificate of Determination”) executed by an authorized officer of the Issuer and a trust indenture (the “Indenture”) by and between the Issuer and UMB Bank, N.A., as trustee (the “Trustee”) for the holders of the Initial Bonds; and

WHEREAS, pursuant to the Indenture, the Trustee will advance the proceeds of the Initial Bonds to the University to pay the costs of the Initial Project, but only upon satisfaction of the requirements for making such disbursements set forth in the Indenture and in the hereinafter described Loan Agreement; and

WHEREAS, prior to or simultaneously with the issuance of the Initial Bonds, the Issuer and the University will execute and deliver a loan agreement (the “Loan Agreement”) by and between the Issuer, as lender, and the University, as borrower, pursuant to the terms of which Loan Agreement (A) the Issuer will agree (1) to issue the Initial Bonds and (2) to make a loan to the University of the proceeds of the Initial Bonds (the “Loan”) for the purpose of assisting in financing the Initial Project, and (B) in consideration of the Loan, the University will agree (1) to cause the Initial Project to be undertaken and completed, (2) to use the proceeds of the Loan to pay (or reimburse the University for the payment of) the costs of the Initial Project, and (3) to make payments sufficient in amount to pay when due all amounts due with respect to the Initial Bonds (the “Loan Payments”) to or upon the order of the Issuer in repayment of the Loan, which Loan Payments shall include amounts equal to the debt service payments due on the Initial Bonds; and

WHEREAS, as security for the Initial Bonds, (A) the University will execute and deliver to the Issuer a mortgage and security agreement from the University to the Issuer, which Mortgage among other things, grants to the Issuer a first mortgage lien on, and a security interest in, the Mortgaged Property (as defined in the Mortgage), subject to Permitted Encumbrances (as defined in the Indenture) and (B) the Issuer will execute and deliver to the Trustee an assignment of mortgage (the “Mortgage Assignment”) from the Issuer to the Trustee, pursuant to which the Issuer will assign the Mortgage to the Trustee; and



WHEREAS, in connection with the issuance of the Initial Bonds, the University will execute and deliver an environmental compliance and indemnification agreement (the “Environmental Compliance Agreement”) from the University to the Issuer and the Trustee, pursuant to which, among other things, the University indemnifies the Issuer and the Trustee against certain environmental liabilities related to the Mortgaged Property; and

WHEREAS, the Initial Bonds will be initially purchased by Loop Capital Markets, acting as placement agent for the Initial Bonds (the “Placement Agent”) pursuant to a bond purchase agreement (the “Initial Bond Purchase Agreement”) by and among the Placement Agent, the Issuer and the University. The Placement Agent will utilize a preliminary limited offering memorandum (the “Initial Preliminary Limited Offering Memorandum”) and a final limited offering memorandum (the “Initial Limited Offering Memorandum”) in connection with the initial offering of the Initial Bonds. The Placement Agent also intends to obtain a rating of the Initial Bonds from one or more securities rating agencies (each such rating agency that provides a rating of the Initial Bonds, a “Rating Agency”); and

WHEREAS, to assure compliance with the continuing disclosure requirements imposed by the United States Securities and Exchange Commission, the University will execute and deliver to the Trustee, as dissemination agent, a continuing disclosure undertaking (the “Continuing Disclosure Agreement”). The Initial Bonds will be issued as “book-entry-only” obligations to be held by The Depository Trust Company, as depository (the “Depository”) for the Initial Bonds pursuant to a blanket letter of representations executed by the Issuer and the Depository (the “Initial Depository Letter”); and

WHEREAS, some or all of the Initial Bonds may be issued as “book-entry-only” obligations to be held by The Depository Trust Company, as depository (the “Depository”) for such Initial Bonds, and, to comply with the requirements of the Depository, the Issuer and the Trustee will execute and deliver to the Depository a letter of representations (the “Depository Letter”) relating to such Initial Bonds; and

WHEREAS, the Issuer now desires to (A) authorize the issuance of the Initial Bonds for the purpose of financing a portion of the costs of the Initial Project; (B) authorize the circulation of the Initial Preliminary Limited Offering Memorandum and the Initial Limited Offering Memorandum in connection with the marketing of any or all of the Initial Bonds; (C) delegate to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer (each, an “Authorized Officer”) authority to deem as final any the Initial Preliminary Limited Offering Memorandum and the Initial Limited Offering Memorandum to be used by the Placement Agent in connection with the marketing of any or all of the Initial Bonds; (D) delegate to the Authorized Officer authority to determine the final details of any of the Initial Bonds (the “Bond Details”) once the marketing of such Initial Bonds is completed and the University has agreed to the Bond Details, which Bond Details so determined may include but not be limited to the following: (1) the aggregate principal amount of Initial Bonds to be issued; (2) the number of series thereof; and (3) for each series of the Initial Bonds (each, a “Series”), (a) the authorized principal amount of such Series, (b) whether such Series shall include subseries of such Series (each, a “Subseries”), (c) the designation of such Series and any Subseries, (d) the purpose or purposes for which such Series is being issued, which shall be limited to (i) payment of the costs of the Initial Project, (ii) payment of the costs of issuance of such Series, (iii) making a deposit to a debt service reserve fund securing such Series, if any, (iv) funding or refunding of any prior debt incurred with respect to the Initial Project or any other prior indebtedness incurred by or on behalf of the University intended to be refinanced as part of the Initial Project (collectively, the “Prior Debt”), which may include interest thereon, (v) funding or refunding of other debt of the Issuer, which may include interest thereon, all or a portion of the proceeds of which were applied to making a loan to the University, and (vi) exchanging bonds of such Series for bonds, notes or other evidences of indebtedness of the University or of the Issuer issued on behalf of the University, (e) whether a debt service reserve fund is established securing such Series, the debt service reserve fund requirement relating to same, the terms and conditions for such debt service

reserve fund and the terms and conditions upon which a reserve fund facility may be used to fund all or a portion of the debt service reserve fund, (f) whether the Initial Bonds of a Series shall be issued as “draw-down” bond to be funded over time as provided in the Indenture, (g) the date or dates, the maturity date or dates and principal amounts of each maturity of the bonds of such Series and/or Subseries, the amount and date of each sinking fund installment, if any, and which bonds of such Series and/or Subseries are serial bonds or term bonds, if any, and the record date or record dates of the bonds of such Series and/or Subseries, (h) the interest rate or rates of the bonds of such Series and/or Subseries, the date from which interest on the bonds of such Series and/or Subseries shall accrue, the dates on which interest on the bonds of such Series and/or Subseries shall be payable, (i) the denomination or denominations of and the manner of numbering and lettering the bonds of such Series and/or Subseries, (j) the trustee, bond registrar and paying agent or paying agents for such Series and/or Subseries and the place or places of payment of the principal, sinking fund installments, if any, or redemption price of and interest on the bonds of such Series and/or Subseries, (k) the redemption price or purchase in lieu of redemption price or redemption prices or purchase in lieu of redemption prices, if any, and the redemption or purchase in lieu of redemption terms, if any, for the bonds of such Series and/or Subseries, (l) provisions for the sale or exchange of the bonds of such Series and/or Subseries and for the delivery thereof, (m) the form of the bonds of such Series and/or Subseries and the form of the trustee’s certificate of authentication thereon, and whether any bonds of such Series and/or Subseries are to be issued as book entry bonds and the depository therefor, (n) if bonds of such Series and/or Subseries are to be exchanged for bonds, notes or other evidence of indebtedness of the University or the Issuer, the provisions regarding such exchange, (o) directions for the application of the proceeds of the bonds of such Series and/or Subseries, (p) the trustee for such Series and/or Subseries, and (q) any other provisions deemed advisable by the Authorized Officer not in conflict with the provisions of this resolution; (E) delegate to the Authorized Officer authority to approve the form and substance of the hereinafter defined Issuer Documents; and (F) authorize execution and delivery by the Issuer of various documents relating to the issuance of the Initial Bonds, including but not limited to the hereinafter defined Issuer Documents; and

WHEREAS, on September 23, 2020, the Issuer issued its Revenue Bonds (D’Youville College Project), Series 2020A in the aggregate principal amount of \$34,370,000 (the “Series 2020A Bonds”) and its Revenue Bonds (D’Youville College Project), Series 2020B (Taxable) in the aggregate principal amount of \$13,835,000 (the “Series 2020B Bonds” and together with the Series 2020A Bonds, the “Series 2020 Bonds”) pursuant to a bond resolution adopted by the Board of Directors on August 26, 2020 and a trust indenture dated as of September 1, 2020 (the “2020 Indenture”) by and between the Issuer and U.S. Bank National Association, as trustee (the “2020 Trustee”); and

WHEREAS, in connection with the issuance of the Series 2020 Bonds, the Issuer and the University executed and delivered a loan agreement (the “2020 Loan Agreement”) by and between the Issuer, as lender, and the University, as borrower; and

WHEREAS, in connection with the preparation of the Indenture, it was discovered that the definition of Indebtedness in the 2020 Indenture and the 2020 Loan Agreement, respectively, contains inconsistent provisions which impact the ability of the University to incur additional debt secured by a first position parity lien on Pledged Revenues (as defined in the 2020 Indenture); and

WHEREAS, the Issuer received a letter from the University dated February 16, 2023 (the “Request Letter”), which Request Letter is attached hereto as Exhibit A, wherein the University requested that the Issuer enter into certain amendments to the 2020 Indenture and the 2020 Loan Agreement relating to the definition of Indebtedness contained therein (collectively, the “Modification Request”); and

WHEREAS, in connection with the Modification Request, the Issuer now desires to authorize the following actions (collectively, the “Action”): (1) to amend the definition of Indebtedness currently provided in the 2020 Indenture pursuant to a supplemental indenture to be entered into by the Issuer and

the 2020 Trustee and (2) to amend the definition of Indebtedness currently provided in the 2020 Loan Agreement pursuant to an amendment to be entered into among the Issuer, the University and the 2020 Trustee (collectively, the “Modification Documents”); 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 Initial Project and the Action, respectively; and

WHEREAS, the Initial Project and the Action each appear 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 Initial Project or the Action; and

WHEREAS, in accordance with Section 2824(8) of the Public Authorities Law of the State of New York, as amended, at a meeting of the Finance & Audit Committee of the Issuer (the “Committee”) held on February 28, 2024, the Committee reviewed information relating to the proposed issuance of the Initial Bonds and recommended that the Issuer proceed with the issuance thereof; and

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

Section 1. Based upon the foregoing, the Issuer makes the following findings and determinations with respect to the Initial Project:

(A) Pursuant to Sections 617.5(c)(10) and 617.5(c)(29) of the Regulations, the Initial Project and the Action are each 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 with respect to the Initial Project or the Action.

Section 2. The Issuer hereby finds and determines that:

(A) By virtue of the Certificate of Incorporation and 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; and

(B) The undertaking of the Program and the making of the Loan to the University will relieve and reduce unemployment, promote and provide for additional and maximum employment and better and maintain job opportunities, and thereby lessen the burdens of government; and

(C) It is desirable and in the public interest for the Issuer to (i) issue and sell the Initial Bonds upon the terms and conditions determined by the Authorized Officer once the marketing of the Initial Bonds is completed and the University has agreed to the Bond Details and (ii) comply with the Modification Request.

(D) This resolution is subject to the following conditions: (i) neither the directors nor officers of the Issuer, nor any person executing the Initial Bonds, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof; and (ii) the Initial 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, and neither the State of New York, or Erie County, New York nor any political subdivision thereof shall be liable thereon; and

Section 3. In consequence of the foregoing, the Issuer hereby determines to: (A) authorize the use of, and authorize the Authorized Officer the authority to determine the form and substance of, and deem final, the Initial Preliminary Limited Offering Memorandum and the Initial Limited Offering Memorandum to be used by the Placement Agent in connection with the initial offering and/or any subsequent offering of any of the Initial Bonds, (B) authorize the Authorized Officer the authority to (i) execute and deliver on behalf of the Issuer the Initial Bond Purchase Agreement related to any of the Initial Bonds, (ii) determine, on behalf of the Issuer, from time to time the Bond Details relating to the Initial Bonds, and (iii) execute the Certificate of Determination authorizing issuance of the Initial Bonds and setting forth said Bond Details so determined; (C) issue the Initial Bonds from time to time on the terms and conditions set forth in the Indenture, the related Certificate of Determination and the Initial Bond Purchase Agreement related to such Initial Bonds, (D) sell any or all of the Initial Bonds to the initial and/or subsequent purchasers thereof pursuant to the terms set forth in the Indenture, the related Certificate of Determination and the Initial Bond Purchase Agreement, (E) use the proceeds of the Initial Bonds to make the Loan to the University for the purpose of financing all or a portion of the costs of issuance of the Initial Bonds and all or a portion of the costs of the Initial Project, (F) secure the Initial Bonds by assigning to the Trustee pursuant to the Mortgage Assignment certain of the Issuer's rights under the Mortgage and the Loan Agreement, including the right to collect and receive certain amounts payable thereunder and (G) (i) authorize the Modifications, (ii) subject to approval of the form and substance of the Modification Documents by Bond Counsel and counsel to the Issuer, approve the form and substance of the Modification Documents and (iii) authorize the execution and delivery of the Modification Documents.

Section 4. The Issuer hereby delegates to the Authorized Officer the power to approve, on behalf of the Issuer, the form and substance of the Loan Agreement, the Mortgage, the Mortgage Assignment, the Indenture, the Initial Bonds, the Initial Preliminary Limited Offering Memorandum, the Initial Limited Offering Memorandum, the Modification Documents and any documents necessary and incidental thereto including, but not limited to, any documents authorized by any Certificate of Determination and approved by counsel to the Issuer (hereinafter collectively called the "Issuer Documents").

Section 5. The Issuer is hereby authorized to issue, execute, sell and deliver to the Trustee the Initial Bonds in the principal amount of not to exceed \$48,000,000 or so much as necessary to finance the Costs of the Initial Project, in the form and in the amount and containing the other provisions determined by the Authorized Officer in the Certificate of Determination, is hereby authorized to deliver said Initial Bonds to the Trustee against receipt of the purchase price thereof, all pursuant to the Act and in accordance with the provisions of this resolution, the Certificate of Determination and the Indenture, provided that:

(A) The Initial Bonds authorized to be issued, executed, sold and delivered pursuant to this Section 5 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 Initial Bonds, the Loan Agreement, and the Indenture and the Certificate of Determination, or as are hereinafter approved by the Authorized Officer in

accordance with Section 6 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 Initial Bonds shall be issued solely for the purpose of providing funds to finance (i) the costs of the Initial Project as described in the Issuer Documents, and (ii) a portion of the administrative, legal, financial, and other expenses of the Issuer in connection with the Initial Project and incidental to the issuance of the Initial Bonds.

(C) Neither the member, directors nor officers of the Issuer, nor any person executing the Initial Bonds or any of the Financing Documents (as hereinafter defined) 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 Initial 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, nor Erie County, New York nor any political subdivision thereof (other than the Issuer) shall be liable thereon.

(D) The Initial 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 repayment of the Loan 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) The University will pay the administrative fee of the Issuer relating to the issuance of the Initial Bonds on the Closing Date (as defined in the Indenture).

Section 6. (A) Upon receipt of advice from counsel to the Issuer that the Initial Preliminary Limited Offering Memorandum or the Initial Limited Offering Memorandum is in substantially final form, the Issuer hereby delegates to the Authorized Officer the authority to (i) deem such Initial Preliminary Limited Offering Memorandum or Initial Limited Offering Memorandum final (except for the permitted omissions described in paragraph (b)(1) of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended) by executing a certificate to that effect, (ii) authorize the Placement Agent to circulate such Initial Preliminary Limited Offering Memorandum or Initial Limited Offering Memorandum and (iii) execute and deliver any other documents or agreements requested by the Placement Agent in connection with the circulation of such Initial Preliminary Limited Offering Memorandum or Initial Limited Offering Memorandum by such Placement Agent.

(B) Upon receipt of advice from counsel to the Issuer that the Issuer has received from the Placement Agent the results of the initial marketing or subsequent remarketing of the Initial Bonds or any Series or Subseries of the Initial Bonds and has received from the University evidence that the University has accepted the results of the initial marketing or subsequent remarketing of such Initial Bonds or Series or Subseries of the Initial Bonds, the Issuer hereby delegates to the Authorized Officer the authority to (i) execute and deliver the related Bond Purchase Agreement on behalf of the Issuer and (ii) determine, on behalf of the Issuer, the Bond Details of the related Initial Bonds.

(C) The Authorized Officer is hereby authorized, on behalf of the Issuer, to execute and deliver the Issuer Documents and the other documents related thereto (collectively with the Issuer Documents, the "Financing 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 substantially the forms thereof approved by the Authorized Officer, with such changes, variations, omissions and insertions as the Authorized Officer shall approve, the execution thereof by the Authorized Officer to constitute conclusive evidence of such approval.

(D) The Authorized Officer is hereby further authorized, on behalf of the Issuer, to designate any additional Authorized Representatives of the Issuer (as defined in and pursuant to the Loan Agreement).

(E) The Authorized Officer is hereby further authorized to execute any documentation requested by the Placement Agent and approved by counsel to the Issuer to indicate the Issuer's approval of the Initial Preliminary Limited Offering Memorandum and/or Initial Limited Offering Memorandum.

Section 7. 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 Financing 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 Financing Documents binding upon the Issuer.

Section 8. All action taken by the Authorized Officer in connection with Section 6 of this resolution (if any) prior to the date of this resolution is hereby ratified and confirmed.

Section 9. This resolution shall expire if the Initial Bonds are not issued and sold by the Issuer within one (1) year from the date of adoption of this resolution.

Section 10. This resolution shall take effect immediately and the Initial Bonds are hereby ordered to be issued in accordance with this resolution.

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

Hon. Mark Poloncarz	VOTING	_____
Denise Abbott	VOTING	_____
Hon. April Baskin	VOTING	_____
Hon. Byron Brown	VOTING	_____
Daniel Castle	VOTING	_____
Hon. Howard Johnson	VOTING	_____
Richard Lipsitz	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Buffalo and Erie County Industrial Land Development Corporation (the "Issuer"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the board of directors of the Issuer (the "Board of Directors"), including the resolution contained therein, held on February 28, 2024 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 Board of Directors 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 Board of Directors 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 February, 2024.

BY: \_\_\_\_\_  
(Assistant) Secretary

(SEAL)

EXHIBIT A  
REQUEST LETTER

See attached.



# DYOUVILLE

February 16, 2024

Buffalo and Erie County Industrial Land Development Corporation  
95 Pery Street – Suite 403  
Buffalo, New York 14203  
ATTN: John Cappellino

Re: Buffalo and Erie County Industrial Land Development Corporation  
Revenue Bonds (D'Youville College Project), Series 2020A and Series  
2020B (Taxable)

Dear Mr. Cappellino:

We are writing to request that the Buffalo and Erie County Industrial Land Development Corporation (the "Issuer") amend certain documents relating to the \$34,370,000 original principal amount Revenue Bonds (D'Youville College Project), Series 2020A and \$13,835,000 original principal amount Revenue Bonds (D'Youville College Project), Series 2020B (Taxable). The purpose of the amendments is to clarify the types of obligations considered "Indebtedness" within the meaning of such term in the Trust Indenture dated as of September 1, 2020 by and between the Issuer and U.S. Bank National Association, as trustee, and the Loan Agreement dated as of September 1, 2020 by and between the Issuer and D'Youville University.

Our counsel will provide their legal opinion that the amendments are permitted under the terms of the financing documents.

Please let me know if you need anything further in connection with this request.

Very truly yours,

D'Youville University

By: 

Nicholas Fiume  
Chief Financial Officer for Institution

320 Porter Avenue, Buffalo, New York | 716.829.8000 | dyc.edu