



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

**Joint Finance & Audit Committee Meeting
February 22, 2024
At 10:00 a.m.**

**95 Perry Street
4th Floor Conference Room
Buffalo, New York 14203**

1. Approval of Minutes – January 9, 2024 (Action) (Page 2)
2. D’Youville College – ILDC Bond (Pages 3-28)
3. 2023 Audit Engagement Letter (Information) (Pages 29-37)
4. New Business (Information)
5. Adjournment – Next Meeting – March 21, 2024 @ 10:00 a.m.

**MINUTES OF A JOINT MEETING OF THE
FINANCE & AUDIT COMMITTEES OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA or AGENCY)
THE BUFFALO & ERIE COUNTY REGIONAL DEVELOPMENT
CORPORATION (RDC) AND THE BUFFALO & ERIE COUNTY INDUSTRIAL
LAND DEVELOPMENT CORPORATION (ILDC)**

DATE AND PLACE: January 9, 2024, at the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York 14203

PRESENT: Penny Beckwith, Allison DeHoney, Mr. Glenn R. Nellis, Michael Szukala, Mr. Paul Vukelic and William Witzleben

ABSENT: Denise McCowan

OTHERS PRESENT: John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer/Assistant Secretary; Atiqa Abidi, Assistant Treasurer; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary

GUESTS: Seth Hennard on behalf of Lumsden McCormick

There being a quorum present at 12:10 p.m., the Meeting of the Members of the Joint Finance & Audit Committee of the Erie County Industrial Development Agency, Buffalo and Erie County Regional Development Corporation and the Buffalo and Erie County Industrial Land Development Corporation was called to order by Chair Szukala.

MINUTES

The October 25, 2023 minutes of the joint meeting of the Finance and Audit Committee were presented. Upon motion made by Mr. Nellis, and seconded by Mr. Vukelic, and after a vote was called for by Mr. Szukala, the October 25, 2023 minutes of the Finance and Audit Committee were unanimously approved.

LUMSDEN MCCORMICK 2023 AUDIT PLAN

Seth Hennard on behalf of Lumsden McCormick provided an overview of its ECIDA, RDC and ILDC 2023 audit plan and schedule.

There being no further business to discuss, Mr. Szukala adjourned the meeting at 12:40 p.m.

Dated: January 9, 2024

Carrie A, Hocieniec, Assistant Secretary

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 cost of the project 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

**THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND
DEVELOPMENT CORPORATION
FINANCE & AUDIT COMMITTEE**

RESOLUTION

A Special Meeting of the Buffalo and Erie County Industrial Land Development Corporation's Finance & Audit Committee was convened on February 22, 2024, at 10:00 a.m.

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

RESOLUTION OF THE MEMBERS OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") FINANCE & AUDIT COMMITTEE RECOMMENDING THAT THE ILDC FINANCE CERTAIN COSTS RELATING TO, AND APPROVING THE UNDERTAKING OF A CERTAIN PROJECT DESCRIBED BELOW AT THE REQUEST OF D'YOUVILLE UNIVERSITY AND THE GRANTING OF CERTAIN FINANCIAL ASSISTANCE IN CONNECTION THEREWITH, INCLUDING THE ISSUANCE OF THE ILDC'S TAXABLE BONDS IN AN AGGREGATE AMOUNT NOT TO EXCEED \$48,000,000 FOR THE PURPOSES OF UNDERTAKING THE PROJECT AND FUNDING THE COSTS OF SUCH ISSUANCE

WHEREAS, the Finance & Audit Committee (the "Committee") has reviewed the application submitted by D'Youville University (the "University") requesting that the Buffalo and Erie County Industrial Land Development Corporation (the "ILDC") undertake a project consisting of: (A) the funding of certain initial startup costs of a new osteopathic medicine program being developed by the University (the "Program") to be located at 320 Porter Avenue in the City of Buffalo, Erie County, New York; (B) the financing of all or a portion of the costs of the foregoing by the issuance by the ILDC of its Taxable Revenue Bonds (D'Youville University Project), Series 2024A in an amount not to exceed \$48,000,000 (the "Initial Bonds"); 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.

WHEREAS, the Public Authorities Accountability Act of 2005 (the "PAAA"), which was signed into law on January 13, 2006 as Chapter 766 of the Laws of 2005, was enacted by the New York State (the "State") Legislature to insure greater accountability and openness of public authorities throughout the State; and

WHEREAS, pursuant to Section 2 of the Public Authorities Law ("PAL") of the State, the provisions of the PAAA apply to certain defined "local authorities," including the ILDC; and

WHEREAS, pursuant to Section 2824(8) of the PAL, it shall be the responsibility of the members of the Finance & Audit Committee to review proposals for the issuance of debt by the ILDC and make recommendations related thereto; and

WHEREAS, Under Article IV(E) of the Committee's Charter, the "Finance & Audit Committee shall review proposals for the issuance of debt and make recommendations regarding such proposed debt issuance"; and

WHEREAS, the Committee understands that the Initial Bonds will be special limited obligations of the ILDC payable from only the sources derived from the University pursuant to the documents executed and delivered in connection with the issuance of the Initial Bonds and purchased by a qualified institutional buyer or an accredited investor ("Purchaser") subject to a private placement offering to be made to private investors or commercial lenders; and

WHEREAS, the Committee further understands that Purchaser has or will have investigated independently the circumstances surrounding the issuance of the Initial Bonds and the security and sources of payment for the Initial Bonds; and

WHEREAS, the Committee has reviewed information relating to the proposed issuance of the Initial Bonds and recommends that the ILDC undertake the Project and proceed with the issuance thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE FINANCE & AUDIT COMMITTEE OF THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION AS FOLLOWS:

1. That it is in the best interest of economic development in Erie County for the ILDC to provide the Financial Assistance to the Project Facility, provided (a) that the Initial Bonds shall never be a debt of the State of New York, the County of Erie, or any political subdivision thereof, and neither the State of New York, the County of Erie, nor any political subdivision thereof shall be liable thereon, and (b) that the Initial Bonds shall be limited obligations of the ILDC payable from only the sources derived from the University pursuant to the documents executed and delivered in connection with the issuance of the Initial Bonds.

2. This resolution shall take effect immediately.

Dated: February 22, 2024

**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

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.

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 Clergy Act disclosure is available at 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.

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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 30th day of January,
2024

 NR
(Signature) Loria SzeWCzyk

LORI A. 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 30th day of JANUARY, 2024


(Signature) Lori A. SzeWCzyk

LORI A. 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:**

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

**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
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.

January 19, 2024

Mollie Profic, CPA, Chief Financial Officer
and Members of the Audit Committee
Erie County Industrial Development Agency
and related entities
95 Perry Street, Suite 403
Buffalo, NY 14203

Dear Mollie and Members of the Audit Committee:

You have requested that we audit the separate financial statements of Erie County Industrial Development Agency (ECIDA) and its related organizations, Buffalo and Erie County Regional Development Corporation (RDC) and Buffalo and Erie County Industrial Land Development Corporation (ILDC), collectively ECIDA and related entities, as of December 31, 2023 and for the year then ended, and the related notes to the financial statements, which collectively comprise ECIDA and related entities' basic financial statements.

In addition, we will audit ECIDA and related entities' compliance over major federal award programs for the year ended December 31, 2023. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the entity's major federal award programs. The objectives of our audit of the financial statements are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America (GAAS) and in accordance with *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

The objectives of our compliance audit are to obtain sufficient appropriate audit evidence to form an opinion and report at the level specified in the governmental audit requirement about whether the entity complied in all material respects with the applicable compliance requirements and identify audit and reporting requirements specified in the governmental audit requirement that are supplementary to GAAS and *Government Auditing Standards*, if any, and perform procedures to address those requirements.

Accounting principles generally accepted in the United States of America (GAAP) require that management's discussion and analysis (MD&A) be presented to supplement ECIDA's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with GAAS. These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation, and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The RSI schedules previously mentioned are required by GAAP and will be subjected to certain limited procedures but will not be audited.

Supplementary information other than RSI will accompany ECIDA and related entities' basic financial statements, as applicable. We will subject such supplementary information to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with GAAS. We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

- Schedule of expenditures of federal awards and related notes
- Schedule of balance sheets – by account or program
- Schedule of revenue, expenses, and changes in net position – by account or program

The schedules of bond notes and straight leases accompanying ECIDA's financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditors' report will not provide an opinion or any assurance on that other information.

Also, the reports we submit to you will include Reports on Compliance with Section 2925(3)(f) of the New York State Public Authorities Law, that will not be subjected to the auditing procedures applied in our audit.

Schedule of Expenditures of Federal Awards (SEFA)

We will subject ECIDA and related entities' SEFA to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with GAAS. We intend to provide an opinion on whether the SEFA is presented fairly in all material respects in relation to the financial statements as a whole.

Data Collection Form

Prior to the completion of our engagement, we will complete the sections of ECIDA and related entities' Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts, and conclusions. It is management's responsibility to submit a reporting package including financial statements, SEFA, summary schedule of prior audit findings, and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit clearinghouse. We will assist you in the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the *earlier* of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

Audit of the Financial Statements

We will conduct our audits in accordance with GAAS, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America; and the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). As part of an audit of financial statements in accordance with GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective and *Government Auditing Standards* does not require auditors to detect abuse.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any other periods.

We will issue written reports upon completion of our audit of ECIDA and related entities' basic financial statements. Our reports will be addressed to the applicable Boards of Directors. Circumstances may arise in which our reports may differ from its expected form and content based on the results of our audits. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add emphasis-of-matter or other-matter paragraph(s) to our auditors' reports, or if necessary, withdraw from the engagement. If our opinions on the basic financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audits or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

Audit of Major Program Compliance

Our audit of ECIDA and related entities' major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the Uniform Guidance, and will include tests of accounting records, a determination of major programs in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether material noncompliance with applicable laws and regulations, the provisions of contracts and grant agreements applicable to major federal award programs, and the applicable compliance requirements occurred, whether due to fraud or error, and express an opinion on the entity's compliance based on the audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the entity's compliance with the requirements of the federal programs as a whole.

As part of a compliance audit in accordance with GAAS and in accordance with *Government Auditing Standards*, and/or any state or regulatory audit requirements, we exercise professional judgment and maintain professional skepticism throughout the audit. We also identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks.

Our procedures will consist of determining major federal programs and performing the applicable procedures described in the U.S. Office of Management and Budget *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs and performing such other procedures as we consider necessary in the circumstances. The purpose of those procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Also, as required by the Uniform Guidance, we will obtain an understanding of internal control over compliance relevant to the audit in order to design and perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the entity's major federal award programs. Our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report. However, we will communicate to you, regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we have identified during the audit.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

Management's Responsibilities

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with GAAP;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error;
3. For identifying, in its accounts, all federal awards received and expended during the period and the federal programs under which they were received;
4. For maintaining records that adequately identify the source and application of funds for federally funded activities;
5. For preparing the SEFA (including notes and noncash assistance received) in accordance with the Uniform Guidance;
6. For designing, implementing, and maintaining effective internal control over federal awards that provides reasonable assurance that the entity is managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards;
7. For identifying and ensuring that the entity complies with federal laws, statutes, regulations, rules, provisions of contracts or grant agreements, and the terms and conditions of federal award programs and implementing systems designed to achieve compliance with applicable federal statutes, regulations, and the terms and conditions of federal award programs;
8. For disclosing accurately, currently, and completely the financial results of each federal award in accordance with the requirements of the award;
9. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented;
10. For taking prompt action when instances of noncompliance are identified;
11. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations, taking corrective action on reported audit findings from prior periods, and preparing a summary schedule of prior audit findings;
12. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
13. For submitting the reporting package and Data Collection Form to the appropriate parties;
14. For making the auditor aware of any significant contractor relationships where the contractor is responsible for program compliance;

15. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements including disclosures relevant to federal award programs, such as records, documentation, and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons from whom we determine it necessary to obtain audit evidence.
16. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current years under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole;
17. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
18. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
19. For informing us of any known or suspected fraud involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance;
20. For the accuracy and completeness of all information provided;
21. For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and
22. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With regard to the SEFA referred to above, you acknowledge and understand your responsibility (a) for the preparation of the SEFA in accordance with the Uniform Guidance, (b) to provide us with the appropriate written representations regarding the SEFA, (c) to include our report on the SEFA in any document that contains the supplementary information and that indicates that we have reported on such schedule, and (d) to present the SEFA with the audited financial statements, or if the SEFA will not be presented with the audited financial statements; to make the audited financial statements readily available to the intended users of the schedule no later than the date of issuance by you of the supplementary information and our report thereon.

As part of our audit process, we will request from management and, when appropriate, those charged with governance, written confirmation concerning representations made to us in connection with the audit, including your understanding of your responsibilities as defined in this letter to us in your management representation letter.

We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Other Services

We will also prepare RDC's and ILDC's federal and state tax returns for the year ended December 31, 2023 based on information provided by you. As necessary, we will also assist ECIDA and related entities in preparing the financial statements, SEFA, and related notes in conformity with GAAP and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

We will not assume management responsibilities on behalf of ECIDA and its related entities. However, we will provide advice and recommendations to assist management of the entities in performing their responsibilities.

Management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

We will perform the services in accordance with professional standards, including the Statements on Standards for Tax Services issued by the AICPA. The other services are limited to the financial statement and tax/information return preparation services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities. We will advise management with regard to tax positions taken in the preparation of the information returns, but management must make all decisions with regard to those matters.

Engagement Administration, Fees, and Other

Seth D. Hennard, CPA is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. We will coordinate the timing of our work with management to comply with all reporting deadlines.

We will provide you with a comprehensive audit needs list through Suralink, a software that provides real-time updates to our information requests on a secure platform. This will help us organize and monitor all information requests in one place to ensure our audit remains efficient and to minimize disruption to your staff.

If you intend to publish or otherwise reproduce the basic financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible to maintain such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

During the course of the audit we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

You agree to inform us of facts that may affect the basic financial statements of which you may become aware during the period from the date of the auditors' report to the date the financial statements are issued.

At the conclusion of our audit engagement, we will communicate to the applicable Boards of Directors the following significant findings from the audit:

- Our view about the qualitative aspects of the entity's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;
- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

The audit documentation for this engagement is the property of Lumsden & McCormick, LLP and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to Federal or State Oversight Agencies or their designees, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under my supervision. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by an oversight agency. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

With regard to using the auditors' report, you understand that you must obtain our prior written consent to reproduce or use our report in bond offering official statements or other documents. With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

Our fees for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our fee will not exceed \$55,500, plus out-of-pocket costs, in accordance with our proposal. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your engagement. Our invoices for these fees will be rendered each month as work progresses and are due upon receipt. Interest will be charged at the rate of 1 ½% per month for past due invoices. In accordance with our firm policies, work may be suspended if your account become 60 days or more overdue and may not be resumed until your account is paid in full.

The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to ECIDA and related entities and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. Please acknowledge your concurrence with the terms of this engagement by signing and returning this letter to me.

Sincerely,

LUMSDEN & McCORMICK, LLP



Seth D. Hennard, CPA
Partner

ACKNOWLEDGED:

This letter correctly sets forth the understanding of Erie County Industrial Development Agency and related entities.



Mollie Profic, CPA, Chief Financial Officer