

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

DATE AND PLACE: March 27, 2024, at the Erie County Industrial Development Agency, 95 Perry Street, 4th Floor Conference Room, Buffalo, New York 14203

PRESENT: Denise Abbott, Rev. Mark Blue, Hon. Joseph Emminger, Dottie Gallagher, Michael P. Hughes, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Denise McCowan, Brenda McDuffie, Hon. Glenn R. Nellis, Hon. Brian Nowak, Kenneth A. Schoetz and Paul Vukelic

EXCUSED: Hon. Bryon W. Brown, James Doherty, Hon. Mark Poloncarz and Hon. Christopher Scanlon

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations; Mollie Profic, Chief Financial Officer; Grant Lesswing, Director of Business Development; Gerald Manhard, Chief Lending Officer; Atiqa Abidi, Accounting Manager; Soma Hawramee, Compliance Portfolio Manager; Michelle Moore, Compliance Associate; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Andrew Pawenski, Esq., Harris Beach PLLC and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans and Daniel Castle on behalf of Erie County; Mark Romanowski, Enrico D’Abate on behalf of BPS Commissary and Paul Lavoie on behalf of SL Evans

There being a quorum present at 12:04 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by the Chair, Ms. McDuffie.

MINUTES

The minutes of the November 29, 2023, meeting of the members were presented. Mr. Nellis moved, and Mr. Johnson seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the February financial reports. The balance sheet shows that the IDA ended the month with total assets of \$36.1M [includes unrestricted cash of \$6.9M available for Agency operations] and net assets of \$19.9M. The monthly income statement shows a net loss of \$227,000 for February. Operating revenue of \$58,000 was below the monthly budget by \$150,000, due mainly to a lack of administrative fees received during the month. Operating expenses were \$237,000 were \$18,000 under budget, with most of that variance in salaries and benefits. Strategic initiatives included payments to ILDC for special district taxes on ILDC-owned properties. The year-to-date Income Statement shows operational revenues of \$232,000, including administrative fee revenue of \$112,000. Operating expenses of \$479,000 are \$32,000 below budget. Net special project grant expenses are \$26,000, and strategic initiatives year to date total \$80,000. After net non-operating revenue of \$69,000, there is currently a net loss of \$283,000 for the year. Ms. McDuffie directed that the report be received and filed.

Finance & Audit Committee Update. Ms. Profic provided a summary of the joint Finance & Audit Committee meeting held on March 21st. Our auditors from Lumsden McCormick presented draft 2023 audited financial statements. The three main points of the presentation were an unmodified (clean) opinion on the financial statements, there were no uncorrected audit adjustments, and there were no material weaknesses or significant deficiencies noted (no management letter comments). The Committee also reviewed and recommend the items listed under #2-8 for approval or re-adoption: 2023 Public Authorities Report, 2023 Investment Reports, Investment & Deposit Policy, Committee Charter, Committee Self-Evaluation, Management's Assessment of the Effectiveness of Internal Controls, and Corporate Credit Card Policy with no suggested changes.

Ms. Profic reviewed the Committee's Self-Evaluation. She stated that each year the Committee completes a self-evaluation, as required by the Committee Charter. Essentially, did the Committee fulfill its duties per the Committee Charter? Comments in the rightmost column give some detail of the Committee activity throughout the year, and additional notes were provided. In 2023, the Committee officially convened a total of 5 times and fulfilled its duties as documented. Ms. McDuffie directed that the report be received and filed.

Audited Financial Statements. Ms. Profic reviewed the draft 2023 audited financial statements, required communications, and management letter. Lumsden McCormick's required communications with those charged with governance, which documents the auditors' responsibility related to the financial statement audit, notes that there were no matters of concern that arose related to the significant risks identified, a summary of accounting estimates made within the financials, that there were no uncorrected audit adjustments, and no disagreements with management. Significant estimates for ECIDA include depreciation of capital assets, and valuation of leases receivable/payable and other assets. She mentioned that an unmodified opinion was issued on the statements. The management letter notes no significant deficiencies or material weaknesses. The Representation Letter will be signed once the audit is approved by the board. Ms. Profic reviewed the draft financial statements. As a public authority, the Agency's financial statements are prepared based on Governmental Accounting Standards and include a Management's Discussion and Analysis section, which provides a condensed overview of the statements.

The balance sheets show total assets of \$36.2M at December 31, 2023, an increase of \$4.6M from 2022. Most of the Agency's assets are current, with cash being the largest portion at \$13.7M. This is a decrease of \$4.7M from 2022, which directly corresponds to a \$4.3M increase in receivables from affiliates. This is due to UDAG funds that have been "lent" to ILDC, which will be repaid once the ILDC obtains the applicable grant reimbursements. Ms. Profic also noted that the cash balance, \$7.5M is unrestricted. Aside from cash and affiliate receivables, grants receivable also increased \$4.2M due to three new grants awarded in 2023 totaling \$4.4M. The new grants also affect the unearned revenue line under Current Liabilities. Noncurrent Assets increased \$759,000 from 2022. The increase in restricted cash directly correlates to the increase in funds held on behalf of others under Noncurrent Liabilities. Moving to Liabilities, the largest reason for the increase in Current Liabilities is the Unearned Revenue as previously mentioned. Funds held on behalf of others at \$9.5M is an increase of about \$200,000 from 2022. Note 3 to the financial statements details these funds which are held in restricted cash accounts.

The Agency's net position is allocated into three buckets: net investment in capital assets, restricted, and unrestricted. Total net position decreased from \$20.6M in 2022 to \$20.1M in 2023, with decreases in each category. The statements of revenues, expenses and changes in net position (income statements) shows how we arrived at the decrease in net position. 2023 operating revenues were \$2.5M, due mostly to \$1.75M of administrative fee revenue. Operating expenses were up slightly to \$3.1M in 2023. Salaries and benefits increased less than 2% overall as approved salary increases and a new employee hired in 2023 were offset by decreases in certain benefit costs. General and administrative expenses increased \$107,000 (26%) due to project fees of \$175,000 refunded during the year. Before special project grants, there was an operating loss of \$565,000. Special project grants in the middle of the page netted to \$337,000 of expense in 2023, and nonoperating revenue of \$404,000 reduced the decrease in net position to \$498,000. The cash flows statements detail the changes in cash from year to year. The remainder of the financials are the notes and supplementary information. The balance sheet and income statement are broken out between the general and UDAG funds. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 21, and they recommended approval to the Board. Mr. Lipsitz moved and Mr. Blue seconded to approve of the audited financial statements. Ms. McDuffie called for the vote and the audited financial statements were unanimously approved.

Ms. McDuffie commended the staff for their excellent work as reflected in this clean independent audit report.

2023 Investment Report. Ms. Profic reviewed this report which is required by Public Authorities Law and includes, amongst other items, the results of the annual audit of the investment guidelines, and detail of investment income and fees for the year. \$591,000 of investment income was earned on the accounts during 2023, and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 21 meeting and recommended to the Board for approval.

Mr. Nellis moved and Ms. Gallagher seconded to approve of the 2023 Investment Report. Ms. McDuffie then called for the vote and the 2023 Investment Report was unanimously approved.

Governance Committee Update: Ms. O’Keefe provided the Board members with an update and reviewed the Committee’s self-evaluations. Ms. McDuffie also reviewed the summary results of the confidential Board performance evaluation. Ms. McDuffie directed that the report be received and filed.

2024 Tax Incentives Induced/Closing Schedule. Mr. Cappellino provided this report to Board members. Ms. McDuffie directed that the report be received and filed.

Approval of Board Certification of Loan Administration Plan-CARES Act RLF. Mr. Manhard reviewed this resolution with Board members.

Ms. Gallagher moved and Mr. Emminger seconded to approve of Board Certification of Loan Administration Plan-CARES Act RLF as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “RLF BOARD” OR “AGENCY”) IN CONNECTION WITH AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE FEDERAL ECONOMIC DEVELOPMENT ADMINISTRATION

Buffalo Southern Railroad Capital Improvements Grant. Mr. Cappellino described this contemplated railroad improvement project related to a grant from Erie County to undertake the improvements as so described.

Mr. Johnson moved and Ms. Abbott seconded to approve of the Buffalo Southern Railroad Capital Improvements Grant as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A GRANT AGREEMENT BETWEEN THE COUNTY OF ERIE AND THE AGENCY RELATIVE TO CERTAIN RAILROAD REPAIR AND MAINTENANCE ACTIVITIES TO BE UNDERTAKEN AT THE BUFFALO SOUTHERN RAILROAD (THE “RAILWAY FACILITIES”) IN AN AMOUNT OF \$400,000

Policy Committee Update: Mr. Cappellino provided the Board with an update on this month’s Policy Committee meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

SL Evans / Solar Liberty Energy Systems, Inc., 7612 & 7690 Southwestern Blvd., Evans, New York. Ms. O’Keefe reviewed this proposed sales and use tax and real property tax abatement benefits project consisting of the ground mounted installation of 2 solar arrays producing a combined 8.25 MW of AC power that will be located on approximately 33 acres of undeveloped land.

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

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

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company must covenant and agree that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment made with respect to the Project at the time of Project completion equals or exceeds \$17,653,650 (which represents the product of 85% multiplied by \$20,769,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Local Labor Commitment – except as specifically provided for herein, that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iii) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (iv) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Mr. Blue moved and Mr. Johnson seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF SL EVANS, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT AND (B) A PARTIAL ABATEMENT FROM REAL

PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

AMENDATORY INDUCEMENT RESOLUTION

1016 East Delavan, LLC / BPS Commissary Kitchen, 1016-1044 East Delavan Avenue, Buffalo, New York. Ms. O’Keefe described the proposed amendment to this already approved project. General discussion ensued, including a discussion regarding the amended increases in sales tax and mortgage recording tax exemption benefits, and the elimination of the real property tax abatement benefit.

Ms. McDuffie asked if all approvals have been obtained. Mr. Romanowski spoke on behalf of the Company and confirmed all construction permits have been obtained, however, the Company is waiting for City of Buffalo Common Council approval to take title to the property which is anticipated to be obtained within the next three months.

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

Mr. Johnson moved and Mr. Blue seconded to approve the amendment. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

AMENDATORY RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF (i) A REVISED SALES TAX EXEMPTION BENEFIT AND A REVISED MORTGAGE RECORDING TAX EXEMPTION BENEFIT, (ii) THE ELIMINATION OF A REAL PROPERTY TAX ABATEMENT BENEFIT, AND (iii) CERTAIN REVISED MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE 1016 EAST DELAVAN, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

SPECIAL RESOLUTION

Calspan Corporation / TransDigm, Inc., 4455 Genesee Street and 40 Sonwil Drive, Cheektowaga, New York. Mr. Cappellino described this consent request from TransDigm company which has acquired all of the outstanding equity interest of certain membership interests related to Calspan Corporation thus requiring the Agency’s consent of same.

Ms. Gallagher moved and Mr. Blue seconded to approve the resolution as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE MERGER OF CALSPAN CORPORATION INTO CALSPAN, LLC (THE "MERGER") AS REQUIRED PURSUANT TO CERTAIN PROJECT AGREEMENTS BY AND BETWEEN CALSPAN CORPORATION AND THE AGENCY RELATED TO CERTAIN FACILITIES RECEIVING FINANCIAL ASSISTANCE FROM THE AGENCY

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.

2023 Mission Statement, Performance Measures and Results; 2024 Mission Statement and Performance Measures. Ms. O’Keefe reviewed the 2023 Mission Statement, Performance Measures and Results and, the 2024 Mission Statement and Performance Measures.

Mr. Johnson moved and Mr. Nellis seconded to approve of the 2023 Mission Statement, Performance Measures and Results and 2024 Mission Statement and Performance Measures. Ms. McDuffie called for the vote and the 2023 Mission Statement, Performance Measures and Results and 2024 Mission Statement and Performance Measures were unanimously approved.

2023 Public Authorities Report. Ms. Profic stated as a Public Authority of the State of New York, ECIDA and its affiliates are required to comply with the NYS Public Authorities Law and submit a comprehensive annual report including information on several topics. Several of the items are covered by other documents, like the operations and accomplishments and financial statements, which are noted throughout the document. The third item, Mission Statement & Performance Measurements, is updated each year with actual results. Many of the items included are standard from year to year and are also approved or re-adopted by the Board annually and was updated for 2023 to update the work underway at ILDC-owned properties, the RDC’s lending activity, and the approval of the Economic Inclusion Policy. Attachments include outstanding bond information, salary & benefit information, projects undertaken by each entity, our Property Report, Board Member attendance, and the Procurement Reports for each entity. Once approved, the certification will be signed by Mr. Cappellino and Ms. Profic and the report will be posted to the website. This report was reviewed by the Governance Committee at their meeting on March 20th and the Finance & Audit Committee at their meeting on March 21st and has been recommended to the Board for approval.

Mr. Emminger moved and Mr. Schoetz seconded to approve of the 2023 Public Authorities Report. Ms. McDuffie called for the vote and the 2023 Public Authorities Report was unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Ms. McDuffie noted that Items 4-23 on the agenda were reviewed by counsel, the appropriate Board Committees recommended no changes, and as such, the staff recommends that the policies and charters items numbered 4-23 within the agenda, and as identified below, be approved without any changes. Ms. Gallagher moved and Mr. Blue seconded to approve of the

various polices and charters as itemized below. Ms. McDuffie called for the vote and the following policies and charters were then unanimously approved:

- Airborne Infectious Disease Policy
- Board Member Compensation, Reimbursement & Attendance Policy
- Code of Ethics & Conflict of Interest Policy
- Defense & Indemnification Policy
- Corporate Credit Card Policy
- ECIDA Employee Compensation Program
- Fee Structure Policy
- Finance & Audit Committee Charter
- Governance Committee Charter
- Investment & Deposit Policy
- Procurement Policy
- Professional Services RFP Process and Policy
- Property Disposition Guidelines
- Real Property Acquisition Policy
- Sexual Harassment Policy
- Statement of Duties & Responsibilities of the Board of Directors
- Statement of the Competencies & Personal Attributes Required by Board Members
- Travel, Conferences, Meals & Entertainment Policy
- Video Conferencing Policy
- Whistleblower Policy and Procedures

MANAGEMENT TEAM REPORT

Mr. Cappellino noted the ECIDA 2023 Year in Review is provided on the table and thanked Ms. McPherson for preparing the report.

Mr. Cappellino noted annual Financial Disclosure Statements must be submitted by mid-May.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:57 p.m.

Dated: March 27, 2024



Elizabeth A. O'Keefe, Secretary