

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

**DATE AND PLACE:** September 25, 2024, at the Erie County Industrial Development Agency, 95 Perry Street, 4<sup>th</sup> Floor Conference Room, Buffalo, New York 14203

**PRESENT:** Denise Abbott, Rev. Mark Blue, Patrick Boyle, Thomas Emmerling, Hon. Joseph Emminger, Hon. John J. Gilmour, Michael P. Hughes, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Brenda McDuffie, Glenn R. Nellis, Hon. Brian Nowak, Hon. Mark C. Poloncarz, and Kenneth A. Schoetz

**EXCUSED:** Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, and Hon. Christopher Scanlon

**OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Beth O’Keefe, Vice President of Operations<sup>1</sup>; Jerry Manhard, Chief Lending Officer; Atiqah Abidi, Accounting Manager; Grant Lesswing, Director of Business Development; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Soma Hawramee, Compliance Portfolio Manager; Brian Krygier, Director of Information Technology; Michelle Moore, Compliance Associate; Lori Szewczyk, Director of Grants; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

**GUESTS:** Zachary Evans on behalf of Erie County; Mike Szukala on behalf of Erie County; Daniel Castle on behalf of Erie County; Yessica Vasquez on behalf of City of Buffalo; Jonathan Epstein on behalf of the Buffalo News; Tony Masiello on behalf of M&M Associates; Ryan Herrell<sup>2</sup> on behalf of Laborers Way; Chuck Wilson on behalf of Upstate Niagara Corp.; and Adam Walters on behalf of Phillips Lytle

There being a quorum present at 12:03 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.

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<sup>1</sup> Ms. O’Keefe participated via video conference.

<sup>2</sup> Mr. Herrell participated via video conference.

Mr. McDuffie welcomed John Gilmour as the new Erie County Legislative Chair of the Economic Development Committee, as a new member of the Board of the Agency.

## **MINUTES**

The minutes of the August 28, 2024, meeting of the members were presented. Mr. Lipsitz moved, and Mr. Nellis 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 August financial reports. The balance sheet shows that the IDA ended the month with total assets of \$36.1M and net assets of \$19.6M. Overall assets increased due to an increase in cash during the month. The monthly income statement shows a net income of \$194,000 in August. Operating revenue of \$396,000 was above the monthly budget by \$188,000, due mainly to administrative fees received during the month. Operating expenses of \$247,000 were \$9,000 below our monthly budget, with most line variances under \$3,000. The variance in salaries and benefits is mostly due to differences in benefit costs from budget. After net non-operating revenue of \$45,000, there was a net loss of \$194,063 for the month. The year-to-date income statement shows operating revenues of \$1.5M, including administrative fee revenue of \$929,000. We are at 52% of our annual budget through eight months of the year. Other revenue lines are in line with the YTD budget. Operating expenses of \$2.05M are \$83,000 below budget. The negative \$78,000 variance on the salaries & benefits line is mostly due to the budget including room for performance incentives. Professional services are about \$26,000 below budget, due to lower than expected legal and consulting costs. Public Hearing and marketing is \$25,000 above budget due to additional marketing costs for RCP. Net special project grant expenses are \$16,000, and strategic initiatives year to date total \$326,000. After net non-operating revenue of \$311,000, there is currently a net loss of \$566,960 for the year. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update. Mr. Szukala, Chair of the Finance and Audit Committee, provided a report to the Board and noted that the Finance & Audit Committee unanimously recommended the 2025 budget be approved subject to changes of \$100,000 or more. Ms. Profic reviewed the 2025 proposed budget timeline. Ms. Profic noted the budgets have been reviewed and discussed in detail twice by the Finance & Audit Committee. After today's presentation of the draft budget to the Board, there will be two Budget Q&A sessions for Board members on October 3 and October 8. These are optional sessions, with one in person and one via Zoom. Calendar invitations for both sessions will be sent to board members after today's meeting as placeholders if you wish to attend. The budget will be presented for formal approval at next month's meeting. Budgets must then be submitted to the ABO by November 1. Ms. Profic then presented a PowerPoint of the proposed 2025 budget. Ms. McDuffie directed that the report be received and filed.

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

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

Approval of the Rail Lease Agreement with Erie County and approval of the Rail Operator Lease Agreement. Mr. Cappellino reviewed the proposed Erie County railroad lease with the ECIDA and the related operating leases with the railroad operators.

Mr. Blue moved, and Mr. Nellis seconded to approve of the rail agreements. Mr. Poloncarz and Mr. Gilmour stated they would abstain from participating in the dialogue and the vote. Ms. McDuffie called for the vote, and the following resolution was unanimously approved with two members abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING: (i) THE RATIFICATION AND CONFIRMATION OF AN EXTENSION TO A CERTAIN RAIL LINE LEASE AGREEMENT BY AND BETWEEN THE AGENCY AND THE COUNTY OF ERIE, AND (ii) THE NEGOTIATION AND EXECUTION OF EXTENSIONS OF CERTAIN RAIL LINE OPERATING AGREEMENTS BETWEEN THE AGENCY AND EXISTING OPERATORS

Urban Land Institute (“ULI”) Advisory Panel Special Projects Request. Ms. McDuffie noted this item was tabled at last month’s Agency board of director’s meeting, and that she is now placing this item back on the agenda for consideration at today’s meeting.

Mr. Cappellino reviewed the ULI funding request and confirmed with Mr. Blue that Mr. Brown’s concerns related to the requested funding have been resolved.

Mr. Blue noted that he would abstain from voting.

General discussion ensued. Mr. Walters spoke on behalf of the ULI effort.

Mr. Kulpa expressed a timing concern with respect to the City’s DRI application process.

Ms. McDuffie noted she is a local DRI application committee member and will abstain from consideration of this item.

Mr. Kulpa recommended language \_\_\_\_\_.

Mr. Kulpa moved and Mr. Nowak seconded to approve the ULI funding request provided the ULI actions be undertaken in a manner consistent with the City’s DRI application process. Ms. McDuffie and Mr. Blue stated they would abstain from the vote. Ms. McDuffie then called for the vote and the following resolution was unanimously approved with two members abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) TO (i) AUTHORIZE THE ALLOCATION OF \$25,000 FROM THE AGENCY’S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT (“UDAG”) REFLOW FUND TO BE UTILIZED IN FURTHERANCE OF AN URBAN

LAND INSTITUTE (“ULI”) ADVISORY SERVICES PANEL TO CONDUCT A REVIEW AND ANALYSIS OF THE JEFFERSON AVENUE CORRIDOR LOCATED IN THE CITY OF BUFFALO, AND (ii) TO ENTER INTO A GRANT AGREEMENT IN FURTHERANCE OF SAME

Policy Committee Update: Mr. Lipsitz noted there was no September Policy Committee meeting but noted in August, the Policy Committee approved the Upstate Niagara project. Ms. McDuffie directed that the report be received and filed.

Mr. Lipsitz moved and Mr. Emminger seconded to enter into Executive Session for the purpose of discussing a potential litigation matter against the Agency. The motion was then unanimously approved.

At 12:40 p.m., the Agency entered into Executive Session.

Upon motion made by Mr. Lipsitz and seconded by Mr. Blue, and unanimously approved, the Agency terminated Executive Session at 12:44 p.m.

## **INDUCEMENT RESOLUTION**

Upstate Niagara Cooperative, Inc., North America Drive, West Seneca, New York. Mr. Cappellino reviewed this proposed sales and use tax and real property tax abatement benefits project consisting of the construction of 250,000 SF addition to the existing 225,000 SF facility which will significantly add to the manufacturing capacity as well as storage space for finished goods, ingredients and packaging.

General discussion ensued.

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 \$127,500,000 (which represents the product of 85% multiplied by \$150,000,000, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 240 existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and

- the number of current FTE employees in the then current year at the Facility; and
  - that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 350 FTE employees [representing the sum of (x) 240 Baseline FTE and (y) 110 FTE employees, being the product of 85% multiplied by 130 (being the 130 new FTE employee positions proposed to be created by the Company as stated in its Application)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.
- (vi) Construction Period Commitment – that the Company, in accordance with the EIP Policy, meets a 30% MWBE (25% MBE and 5% WBE) utilization rate, based upon total construction contract value, for construction activities.
- (vii) Post Construction Period Commitment – that the Company meets a 30% minority and women (minimum 20% minority and at least 30% minorities or women) job creation requirement within two years after Project completion and maintains those hires/percentages during the term of the applicable PILOT Agreement and on an annual basis completes/implements at least two (2) of the EIP Policy Best Practices as described therein during the term of the applicable PILOT Agreement.

Mr. Emminger moved and Mr. Nellis seconded to approve the Project. Mr. Emmerling stated he would abstain from the vote. Ms. McDuffie then called for the vote and the following resolution was unanimously approved with one abstention:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF UPSTATE NIAGARA COOPERATIVE, INC., 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**

Laborers Way 1, LLC, 310 Ship Canal Parkway, Buffalo, New York. Mr. Cappellino described the proposed amendment to this already approved project to increase the sales and use tax exemption benefit due to overall general construction cost increases. General discussion ensued, regarding the amended increase in sales tax.

Mr. Poloncarz queried as to the timeline for completion. Mr. Herrell on behalf of the company responded March 2025 for certificate of occupancy. Mr. Poloncarz also queried as to only seeking sales tax since the building is already up and Mr. Cappellino stated in the affirmative.

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. Poloncarz moved and Mr. Emminger seconded to approve the amendment. Mr. Emmerling abstained from the vote. Ms. McDuffie then called for the vote and the following resolution was unanimously approved with one abstention:

AMENDATORY RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF (i) AN INCREASE IN THE AMOUNT OF SALES TAX EXEMPTION BENEFIT AND (ii) CERTAIN MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE LABORERS WAY 1, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:59 p.m.

Dated: September 25, 2024

  
Elizabeth A. O'Keefe, Secretary