

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

DATE AND PLACE: November 29, 2023, at the Center of Excellence in Bioinformatics and Life Sciences (CBLs), 701 Ellicott Street, The Event Space/Conference Room B2-205, located on the 2nd floor, Buffalo, New York 14203.

PRESENT: Denise Abbott, Rev. Mark Blue, Hon. Bryon W. Brown, Hon. Joseph Emminger, Michael P. Hughes, Richard Lipsitz, Jr., Brenda McDuffie, Denise McGowan, Hon. Glenn R. Nellis, Hon. Mark Poloncarz and Kenneth A. Schoetz

EXCUSED: Hon. Diane Benczkowski, James Doherty, Dottie Gallagher, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Hon. Darius G. Pridgen and Paul Vukelic

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; Andrew Federick, Property & Business Development Officer; Atiqa Abidi, Accounting Manager; Soma Hawramee, Compliance Portfolio Manager; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Lynette Thompson, Receptionist; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans on behalf of Erie County; Alex Carducci on behalf of the City of Buffalo; Jonathan Epstein on behalf of Buffalo News; Kevin Dagher and Torrie Nasca on behalf of 1175 Delaware Place; Pierre Lorieau, Jim Kourtis, Christopher Bona, Don Heins, Jeffrey McGiveron on behalf of Lactalis

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 October 25, 2023, meeting of the members were presented. Mr. Poloncarz moved, and Mr. Schoetz 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. Abidi presented the October financial reports. The balance sheet shows that the IDA ended the month with total assets of \$32.6M and net assets of \$20.2M. There is a decrease in restricted cash and a corresponding increase from Affiliates due to \$950,000 of funds lent to ILDC for construction invoices that will be reimbursed with grant funds. Operating revenue of \$104,000 was below the monthly budget by \$118,000, due mainly to low administrative fees collected during the month. Operating expenses were \$237,000 and overall below our monthly budget by \$7,300. After grant expenses and depreciation, there was a net loss of \$161,000 for the month. The year-to-date Income Statement shows revenues of \$2.4M, including administrative fee revenue of \$1.3M. We are at 74% of our 2023 administrative fee budget through October. Expenses of \$2.4M are ahead of budget, mainly due to a few administrative fee refunds during the year. Special project grant revenue nets to \$59,000. Net income before strategic investments and depreciation is \$67,000. There is currently a net loss of \$458,000 for the year. Ms. McDuffie directed that the report be received and filed.

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

Approval of Resolution Authorizing the ECIDA to Contract Engineering Services for the Buffalo Southern Railroad Improvement Project. Mr. Cappellino reviewed the contemplated rail road improvement project and summarized the memorandum providing additional background material that was included in the Board package provided to members.

Mr. Emminger moved and Ms. Abbott seconded to approve of authorizing the ECIDA to contract engineering services related to the Buffalo Southern Railroad Improvement project. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) AUTHORIZING THE AGENCY TO ENTER INTO AN AGREEMENT WITH C&S COMPANIES (“C&S”) IN THE AMOUNT OF \$181,740 FOR DESIGN, ENGINEERING AND CONSTRUCTION ADMINISTRATION SERVICES IN RELATION TO THE AGENCY’S CONTEMPLATED RESTORATION OF CERTAIN RAILWAY FACILITIES

Policy Committee Update. Mr. Lipsitz, Chair of the Policy Committee, reviewed the results of the most recent Policy Committee meeting including confirmation that both projects before the Board today were approved by the Policy Committee.

INDUCEMENT RESOLUTIONS

1175 Delaware Place, 1175 Delaware Avenue, Buffalo, New York. Ms. O’Keefe reviewed this proposed sales and use tax, mortgage recording tax and real property tax abatement benefits project involving the rehabilitation of a 58,000 sq. ft. nursing home operated by Emerald South and will incorporate 83 apartments units and one commercial space. A heavy focus will be on

tenant quality of life with improved indoor air quality, green roof, bike storage and EV charging and 30% of the units will be furnished to accommodate a growing demand by tenants.

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

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company 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 \$14,237,500 (which represents the product of 85% multiplied by \$16,750,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 2 existing part time equivalent (“PTE”) employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the “Baseline PTE”); and
 - the number of current employees in the then current year at the Facility; and
 - that within two (2) years of Project completion, the Company has maintained and created PTE employment at the Facility equal to 2 PTE employees. 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. Brown then moved to approve the project. Mr. Poloncarz then seconded to approve the project and spoke in favor of the project.

Ms. McDuffie stated this was the first EIP PILOT and noted housing is near bus line and will allow people to participate in the workforce at will.

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 1175 DELAWARE CAPITAL LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (v) 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

Lactalis American Group, Inc., 2375 South Park Avenue, Buffalo, New York. Ms. O’Keefe reviewed this proposed sales and use tax benefit project involving a 30% increase in production capacity with infrastructure upgrades for the installation of new mozzarella and ricotta cheese production equipment, a new building addition for the whey evaporator and dryer equipment and regulatory plant-wide infrastructure upgrades.

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

As a condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$37,847,100 (which represents the product of 85% multiplied by \$44,526,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 375 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 397 FTE employees [representing the sum of (x) 375 Baseline FTE and (y) 22 FTE employees, being the product of 85% multiplied by 27 (being the 27 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.

Mr. Brown moved and Mr. Lipsitz seconded to approve the Project as proposed. Mr. Lipsitz spoke in favor of the project. Mr. Poloncarz also spoke in favor of the project.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF LACTALIS AMERICAN GROUP, 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

MANAGEMENT TEAM REPORT

Mr. Cappellino congratulated Atiqa Abidi for graduating from Leadership Buffalo.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:33 p.m.

Dated: November 29, 2023



Elizabeth A. O'Keefe, Secretary