

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

**DATE AND PLACE:** February 22, 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, Hon. Diane Benczkowski, Hon. Bryon W. Brown, Dottie Gallagher, Tyra Johnson, Denise McCowan, Brenda W. McDuffie, Hon. Mark C. Poloncarz, Kenneth A. Schoetz and Paul Vukelic

**EXCUSED:** Rev. Mark E. Blue, James Doherty, Hon. Joseph Emminger, Michael P. Hughes, Hon. Howard Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Hon. Glenn R. Nellis and Hon. Darius G. Pridgen

**OTHERS PRESENT:** John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiqah Abidi, Senior Accountant; Daryl Spulecki, Credit Analyst; Grant Lesswing, Director of Business Development; Andrew Federick, Business Development Officer; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Laurie Hendrix, Administrative Coordinator; Robbie Ann McPherson, Director of Marketing & Communications; Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

**GUESTS:** Zachary Evans and Daniel Castle on behalf of Erie County; Alex Carducci on behalf of the City of Buffalo; Ryan McCarthy, Fred LaFaso and Madeline LaFaso on behalf of 356 Hertel; Bryan Ehrhart on behalf of Commitment 2000/Father Sam’s; Sean Greenhouse on behalf of Linita; William Brady on behalf of Top Seedz Food Corp.; and Jonathan Epstein on behalf of the Buffalo News

There being a quorum present at 12:05 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by Chair, Ms. McDuffie.

## MINUTES

The minutes of the December 21, 2022 meeting of the members were presented. Mr. Brown moved and Ms. Gallagher 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 a brief update regarding the 2022 year-end audit process. Our independent auditors, Lumsden McCormick have wrapped up their fieldwork. We are awaiting drafts of financial statements. No internal control issues have been brought to our attention during the audit. There are a couple of adjustments related to implementation of the new GASB leasing standard. The financial statements and related reports will be reviewed in detail at the Finance & Audit Committee meeting on March 16<sup>th</sup>. As a reminder, all board members are welcome to attend the Committee meeting. The final reports will be presented to the Board for approval at the March 22<sup>nd</sup> meeting for submission to the ABO prior to the March 31<sup>st</sup> deadline.

Ms. Profic presented the January 2023 financial report. The balance sheet shows the year 2022 ended with total assets of \$30.8M and net assets of \$20.6M. These figures do not include what will be new balance sheets accounts for leases. To provide an update on how the IDA ended the 2022 financial year, in 2022 the Agency recognized operating revenues of \$2.6M, including \$1.6M of administrative fees. This was 84% of our total budget of \$1.85M. While we did not achieve our 2022 administrative fee budget, we did end the year with a strong pipeline of fees to be paid in 2023. The Agency had a net operating loss of approximately \$158,000 in 2022. Further information will be provided when the 2022 audited financial statements are presented to the Board on March 22<sup>nd</sup>.

The Agency finished the month of January with total assets of \$30.8M, which includes \$7.3M of unrestricted cash and \$19.8M of restricted cash (UDAG plus funds held on behalf of others). Liabilities totaled \$10.1M and net assets were \$20.7M at the end of January. The income statement shows net income of \$11,000 for January. Revenues of \$239,000 were over budget by \$10,000, mainly due to the rise in interest rates since the 2023 budget was prepared. We received \$131,000 in administrative fees during the month. Operating expenses of \$218,000 were about \$14,000 under budget. After Special Project grants and depreciation, there was net income of \$11,000. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic presented a summary of the most recent Finance and Audit Committee meeting to the members. During the meeting there was a presentation by Lumsden McCormick discussing their 2022 audit plan and discussion with the Committee members.

Public Sector Banking Services RFP. Ms. Profic reviewed the RFP and evaluation process. While all the respondents were capable and suitable partners, M&T Bank was the staff committee's recommendation. We have been with M&T Bank since our last RFP in 2017 and have been pleased with their services and staff. The Finance & Audit Committee voted to recommend that the Boards approve the retention of M&T Bank as the prime bank of the ECIDA, RDC and ILDC.

Mr. Poloncarz moved and Mr. Brown seconded to approve of the Public Sector Banking Services to be provided by M&T Bank. Ms. McDuffie called for the vote and the Public Sector Banking Services to be provided by M&T Bank was unanimously approved.

Governance Committee Update: Ms. McDuffie provided the Committee with an update on the most recent Governance Committee meeting.

2022 Tax Incentive Induced/Closing Schedule. Mr. Cappellino presented this report to the members. Ms. McDuffie directed that the report be received and filed.

Start-Up NY Affiliation Agreement. Mr. Cappellino reviewed the Start-Up NY Affiliation Agreement request from SUNY Buffalo for Verivend, Inc. (the “Company”), a Buffalo-based company engaged in the business of fintech software development, which has been approved by SUNY to participate in the Start-Up NY Program through the Tax Benefit Period expiring on October 4, 2030. Mr. Cappellino noted that the Agency will not be providing any financial assistance, and will only be licensing the use of certain real property to the Company, and that this is a New York State real property tax abatement program, that abates all local real property taxes, amongst other taxes, for the duration of the tax benefit period.

Ms. Gallagher moved and Ms. Abbott seconded to approve of the Start-Up NY Affiliation Agreement. Ms. McDuffie called for the and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO (i) THE TERMINATION OF CERTAIN AGREEMENTS WITH RESPECT TO THE EXISTING CIRCUIT START-UP NY PROJECT FACILITY; AND (ii) ESTABLISHING THE VERIVEND START-UP NY PROJECT FACILITY

Conference Room Expansion. Mr. Cappellino reviewed the proposed expansion and improvement of the Agency’s conference room on the 4<sup>th</sup> floor of the Agency’s 95 Perry Street facility, to accommodate public board meetings and hearings.

Mr. Poloncarz moved and Ms. Gallagher seconded to approve of the conference room expansion. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING THE AGENCY TO IMPROVE AND EXPAND ITS 4<sup>TH</sup> FLOR CONFERENCE ROOM, INCLUDING THE PURCHASE OF CERTAIN EQUIPMENT AND FURNISHINGS, TO ACCOMMODATE ON-SITE AND IN-PERSON PUBLIC HEARINGS AND PUBLIC MEETINGS

Policy Committee Update. Mr. Cappellino updated members on the most recently held Policy Committee meeting noting the Policy Committee recommended that the ECIDA approve the two projects on today’s agenda.

## INDUCEMENT RESOLUTIONS

356 Hertel Avenue, LLC, 356 Hertel Avenue/42 Foundry, Buffalo, New York. Ms. O’Keefe reviewed this proposed sales tax exemption benefit project which consists of the mixed-use redevelopment of an existing historic complex. The new development will consist of 82 apartments (72,000 sq. ft. of residential space), 30,000 sq. ft. self-storage facility and 14,000 sq. ft. of retail space. Ms. O’Keefe advised that benefits will only be provided on the residential space.

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 (i) the construction completion date, or (ii) 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 \$27,257,630 (which represents the product of 85% multiplied by \$32,067,800, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment –that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 35 FTE employees [being the product of 85% multiplied by 42 FTE employee positions proposed to be created by the Company as stated in its Application)]. 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. Poloncarz seconded to approve 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 356 HERTEL AVE, 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) 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

Commitment 2000, Inc./Father Sam's Bakery, 105 Monsignor Valente Drive, Buffalo, New York. Ms. O'Keefe reviewed this proposed sales tax exemption, mortgage recording tax exemption and real property tax benefit project which consists of the 16,975 sq. ft. building expansion at the Company's headquarters that will be used to manufacture and maintain a fully automated pressed tortilla line.

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, submit, 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 \$7,330,230 (which represents the product of 85% multiplied by \$8,623,800, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 75 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 84 FTE employees [representing the sum of (x) 75 Baseline FTE and (y) 9 FTE employees, being the product of 85% multiplied by 11 (being the 11 new FTE employee positions proposed to be created by the Company as stated in its Application)]. 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

Ms. Abbott moved and Ms. Benczkowski seconded to approve 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 COMMITMENT 2000, 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, (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 (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

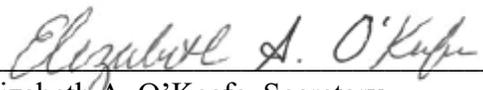
**MANAGEMENT TEAM REPORTS**

Mr. Cappellino recognized Ms. Abidi as she starts her Leadership Buffalo work this year.

Ms. McDuffie expressed condolences and prayers for Johanna Coleman, a former six-year member of the ECIDA Policy Committee, who has recently passed away, and asked for a moment of silence in her remembrance.

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

Dated: February 22, 2023

  
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Elizabeth A. O'Keefe, Secretary