

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

DATE AND PLACE: September 27, 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, Rev. Mark Blue, Hon. Joseph Emminger, Hon. Howard Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Brenda McDuffie, Denise McGowan, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz and Kenneth A. Schoetz

EXCUSED: Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, Michael P. Hughes, Tyra Johnson, Darius G. Pridgen and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Atiqah Abidi, Assistant Treasurer; Gerald Manhard, Chief Lending Officer; 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; and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Alex Carducci on behalf of the City of Buffalo; Zachary Evans on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Dale Shoemaker on behalf of Investigative Post; Jonathan Epstein on behalf of Buffalo News, Jacob Tierney on behalf of Business First, Quinn Bushen on behalf of Empire State Development; Marco Riccioni on behalf of IMA Life; Byron DeLuke on behalf of TM Montante and Mark Sadkowski on behalf of Life Technologies

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.

MINUTES

The minutes of the July 26, 2023, 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. Abidi presented the August financial reports. The balance sheet shows that the IDA ended the month with total assets of \$33.0M and net assets of \$20.3M. Restricted cash increased by about \$105,000 from July to August as a result of PILOT Increment Financing receipts. Under liabilities, funds held on behalf of others had an increase that corresponds to the PIF receipts. The monthly income statement shows a net loss of \$281,000 for August. Operating revenue of \$217,000 was very close to our monthly budget of \$223,000. Operating expenses of \$384,000 were over our monthly budget by \$155,000. This is due to an administrative fee refund that was made in August. Under Special Project Grants, there was a net loss of \$88,000 in August mainly due to a grant made to ILDC for carrying costs, and depreciation/amortization of \$22,000. The year-to-date Income Statement revenues of \$1.99M, including administrative fee revenue of \$1.26M. We are at about 70% of our annual administrative fee budget through August. Expenses of \$1.9M are overall \$53,000 above budget mainly due to the administrative fee refund, while building operating costs are below budget as a result of GASB 87 lease accounting whereby our lease cost was capitalized and recorded as a liability, then amortized monthly. Special project grant revenue nets to \$78,000. Net income before strategic initiatives and depreciation is \$159,000. After strategic initiatives of \$314,000 and depreciation/amortization of \$178,000, there is currently net loss of \$333,000 for the year. Ms. McDuffie directed that the report be received and filed.

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

Finance and Audit Committee Update. Ms. Abidi reviewed the various processes of the ECIDA budget development and confirmed formal budget approval will be presented at the October Board meeting subject to changes of \$100,000 or more. Ms. McDuffie directed that the report be received and filed.

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

Review of 2024 Proposed Budget. Ms. Abidi reviewed the proposed/draft 2024 budget. Ms. McDuffie directed that the report be received and filed.

95 Perry Street Lease Renewal. Mr. Cappellino described the 95 Perry Street lease assignment and amendment, and sub-sublease amendment agreement with BUDC relating to the Agency's rental of office space at 95 Perry Street, Buffalo New York.

Mr Poloncarz moved to approve the related MOU by and between ESD and the Agency, the lease assignment/amendment by and between ESD, the Agency, and Michigan Street Development LLC, and the sub-sublease amendment by and between the Agency and BUDC and also stressed the benefits of having a "one-stop-shop" for economic development agencies, being ECIDA, BUDC, and ESD, all located at the same 95 Perry Street location. Mr. Johnson seconded the motion. Ms. McDuffie then called for the vote and the motion was unanimously approved.

Governance Committee Update. Ms. McDuffie confirmed the Governance Committee met earlier this month and approved the staff recommendation to authorize one-year extensions for all legal service providers, consistent with the Agency's professional services policy.

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

Policy Committee Update. Mr. Lipsitz confirmed the Policy Committee reviewed the compliance issues and recommended that the Board approve of a local labor use waiver, as the company had an 88.3% local labor and did not reach the 90% requirements.

INDUCEMENT RESOLUTION

IMA Life North America / IMA Life Colvin Woods, 700 Colvin Woods Parkway, Tonawanda, New York 14150. Ms. O’Keefe reviewed this proposed sales and use tax and real property tax abatement benefits project involving the construction of a new 80,000 sq. ft. facility which will include 50,000 sq. ft. of production space and 30,000 sq. ft of office space, as well as exterior parking, truck court, and dumpster areas. The new facility will include a development laboratory, three production bays and warehouse space for the development, sale, assembly, testing and shipping of Freeze Dryers for the pharmaceutical sector. It will also include corporate office space and be positioned to service as the North America headquarters for IMA Group.

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 actually made with respect to the Project at the time of Project completion equals or exceeds \$23,422,752 (which represents the product of 85% multiplied by \$27,556,179, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 120 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 145 FTE employees [representing the sum of (x) 120 Baseline FTE and (y) 25 FTE employees, being the product of 85% multiplied by 30 (being the 30 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. Emminger spoke in favor of the project. Ms. Abbott also spoke in favor of the project.

Mr. Emminger then moved to approve the Project and Mr. Kulpa seconded to approve of the Project.

Mr. Poloncarz 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 IMA LIFE NORTH AMERICA, 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 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

COMPLIANCE MATTERS

Life Technologies Corporation – Local Labor Waiver. Mr. Cappellino reviewed the Life Technologies local labor waiver request, to approve of the 88.3% local labor usage, as Life Technologies was unable to meet the 90% local labor usage requirement due to COVID-19 labor challenges in 2020 and 2021 and because its required use of certified labor that did not reside locally.

Mr. Cappellino confirmed the ECIDA Local Labor Policy does allow the Board to grant waivers based on the foregoing reasons cited by Life Technologies. It was noted that the Policy Committee recommended to the Board approval of the waiver request. Mr. Lipsitz described the rationale behind granting the waiver. Mr. Poloncarz moved, and Mr. Blue seconded to approve the Local Labor Policy waiver for Life Technologies. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION AUTHORIZING A WAIVER OF THE LOCAL LABOR
WORKFORCE CERTIFICATION POLICY AS APPLICABLE TO THE LIFE
TECHNOLOGIES CORPORATION

MANAGEMENT TEAM REPORTS

Mr. Cappellino provided the report to members.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:43 p.m.

Dated: September 27, 2023



Elizabeth A. O'Keefe, Secretary