

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

**DATE AND PLACE:** September 27, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5<sup>th</sup> Floor ESD Conference Room, Buffalo, New York 14203

**PRESENT:** Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Tyra Johnson, Richard Lipsitz, Jr., Hon. Joseph C. Lorigo, Brenda W. McDuffie, Hon. Glenn R. Nellis, Louis Panzica, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche and Hon. Barry A. Weinstein

**EXCUSED:** Hon. Byron W. Brown, James F. Doherty, David L. Lowrey, John J. Mudie and Paul V. Vukelic

**OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Treasurer; Karen M. Fiala, Assistant Treasurer and Robert G. Murray, Secretary

**GUESTS:** Andrew Federick, Erie County Senior Economic Development Specialist

At 9:07 am, Mr. Lipsitz called the meeting to order in the absence of the presence of the chair, Ms. McDuffie.

**MINUTES**

The minutes of the August 23, 2017 meeting of the members were presented. Sister Denise moved, and Mr. Nellis seconded, to approve of the meeting minutes. Mr. Lipsitz called for the vote and the minutes were unanimously approved.

**REPORTS/ACTION ITEMS/INFORMATION ITEMS**

Financial Report. Ms. Profic reviewed the August 2017 financial statements noting that the Agency finished the month with total assets of \$37.3 million and net assets of \$25.5 million. The monthly income statement shows operating revenues of \$394,000, \$340,000 of which was administrative fees, such that the agency is ahead of the budget by \$188,000. August operating revenues were under budget by \$21,000 as a result of favorable variances in professional services and general office expenses. Taking into account solely operating revenue and expenses, there was net income of \$172,000 for August. However, after costs for strategic initiatives and depreciation, there was net income of \$134,000 for the month. On a year-to-date basis, operating revenue is \$2.2 million which is \$547,000 ahead of budget for the year. The

driver of that variance is administrative fees, which at \$1,700,000, are in excess of budget by \$558,000 through August. Operating expenses of \$1.9 million are under budget by \$210,000. Net special project grant revenue of \$321,000 brings net income for the year to \$582,000. After factoring in strategic investments and depreciation, there is a year-to-date net loss of \$2.8 million. Mr. Lipsitz directed that the report be received and filed.

Finance and Audit Committee Update. Ms. Profic noted that at the most recently completed joint meeting of the ECIDA, RDC and ILDC Finance and Audit Committee, that the professional auditing services request for proposals was reviewed, and the draft 2018 budgets and three-year forecasts for the ECIDA, RDC and ILDC were also reviewed. Mr. Lipsitz directed that the report be received and filed.

Proposed Budget Timetable. Ms. Profic reviewed the 2018 budget timetable including upcoming events and due dates. Mr. Lipsitz directed that the report be received and filed.

Review of 2018 Budget. Ms. Profic noted that the proposed budget is included in the Board packet materials and informed members that the draft budget was approved by the Finance and Audit Committee with a caveat that any changes made to the draft budget totaling \$100,000 or more will require a subsequent review and approval by the Finance and Audit Committee prior to submission of the final budget to be approved by the Agency at its October, 2017 meeting. Ms. Profic noted that total operating revenues for 2018 are budgeted at just under \$2,800,000, which is slightly below 2017's projected total. The main piece of this revenue is \$1,960,000 of administrative fees. Historically, Ms. Profic noted that the Agency has used a ten-year rolling average to benchmark its administrative fees. Operating expenses are budgeted at almost \$2,800,000. Salaries and benefits are budgeted to increase less than 1% from 2017 projected totals, with most other expense lines remaining consistent or decreasing based on 2017 projections. The Agency also has a number of active grants, accounting for almost \$2,500,000 in grant revenue/expenses that will offset each other. This leads to a nearly break even budget, with a budgeted \$4,000 loss from operations. Depreciation, estimated at \$130,000, is a noncash item for accounting purposes.

Ms. Profic then reviewed the proposed use of funds, mainly being UDAG funds, that have built up over the years. Ms. Profic reviewed the top five lines totaling \$382,000 which includes requests from BUDC for the Buffalo Building Reuse Project and Invest Buffalo Niagara for their Canadian Lead Generation Initiative, the Agency's annual Invest Buffalo Niagara membership and National Development Council Technical Assistance contract, plus \$100,000 carry forward from the Beverly Gray Business Exchange's 2016 request. The Industrial Land Park Grant is a combined figure as the Agency is budgeting \$200,000 in carrying costs for 2018, combined with \$1,400,000 reimbursement to the UDAG fund by the ILDC from the first half of the \$2,780,000 New York State Empire State Development Corporation grant for Bethlehem Steel land acquisition costs. Ms. Profic concluded by stating the Agency is keeping \$1 million in the budget for venture capital co-investments and forgivable attraction loans, which would allow the Agency to use funds for these purposes should the right opportunity arise. Ms. Profic then reviewed the snapshot of the Agency's five-year capital budget.

At this point in time, Ms. McDuffie and Mr. Pridgen joined the meeting. Mr. Lipsitz directed that the report be received and filed.

Auditing Services Procurement Memo. Ms. Profic outlined the auditing services procurement process undertaken for the recent auditing services request for proposals. Ms. Profic noted that proposals were solicited in July, 2017, and five responses were received. Three staff members reviewed the proposals and scored them based on criteria contained within the materials presented to you today. As previously mentioned, the Finance and Audit Committee met on September 12, 2017 and concurred with the staff committee recommendation selecting Freed Maxick to provide professional auditing services to the ECIDA for the 2017 and 2018 audits, with an option of contracting with the firm for 2019, 2020, and 2021. Mr. Emminger moved, and Mr. Lorigo seconded, to select Freed Maxick to provide professional auditing services for the 2017 and 2018 fiscal years and to continue to allow Freed Maxick to be retained to provide auditing services for 2019, 2020 and 2021 based on satisfactory review and approval of the ECIDA's Finance and Audit Committee of Freed Maxick's prior performance. Mr. Lipsitz called for the vote, and the motion was unanimously approved.

Banking Resolution Approval. Ms. Profic reminded members that on August 23, 2017, the Agency approved designation of M&T Bank as the official depository of funds. Related thereto, M&T Bank has a standard form of public funds certified resolution which is required to be approved in exact format by the members of the Agency. Ms. Gallagher-Cohen moved, and Mr. Emminger seconded, to approve of the M&T Bank public funds certified resolution. Mr. Lipsitz called for the vote, and the aforementioned motion was unanimously approved.

2017 Tax Incentive Induced Closed Schedule Estimated Real Property Tax Impact. Ms. Fiala presented this report. Mr. Lipsitz directed that the report be received and filed.

Brownfield Cleanup Program Change Order. Mr. Cappellino updated members on the acquisition and remediation of the Bethlehem Steel real property recalling that in February of 2017, the ECIDA resolved to grant the ILDC \$6,700,000 to fund the carrying and acquisition costs for the purchase of approximately 150 acres of the former Bethlehem Steel site in Lackawanna, New York. As a condition of the purchase, the ILDC required the current property owner to install a certain land cover system to meet New York State Brownfield Cleanup program requirements on approximately 90 acres of the property by December 31, 2017. This would ensure the ILDC that the property would receive a certificate of completion for the remediation and future projects would be eligible for Brownfield Cleanup Program tax credits. Mr. Cappellino noted the original budget request for the acquisition was based on costs associated with utilizing slag as the cover material for the 90 acres. Due to a delay in gaining Albany DEC approval for the slag cover system, the cover system was switched to a soil cover system. The switch to soil allowed for the property to continue to be covered in an effort to meet the December 31, 2017 Brownfield Cleanup Program deadline. The change in cover material from slag to soil will result in an increased cost of approximately \$700,000 to cover the full 90 acres of property as was originally planned. Mr. Cappellino noted that the original funding allocation will allow for the installation of the soil cover system on approximately 70 acres of the site such that this change order request of an additional \$700,000 will allow the ILDC to pursue covering an additional 20 acres which will allow for the cover system to be installed on the full 90 acres as originally planned should the schedule allow. In the event the schedule does not allow for the full completion of the additional 20 acre cover system, any unused funds associated with this change order would be returned to the ECIDA UDAG fund.

Ms. Gallagher-Cohen sought confirmation that the Agency has in fact granted money to the ILDC. Mr. Cappellino confirmed that the Agency has granted UDAG funds, with a condition that 50% of all proceeds received by the ILDC with respect to future land sales be returned to the ECIDA UDAG fund.

Ms. Whyte emphasized that the resolution restates all prior ECIDA resolutions related to the previous UDAG grant provided to the ILDC and also noted that the \$700,000 grant amount is a large amount, however, this amount will leverage the Brownfield Cleanup Program to allow the ILDC to attract new private investment down the road.

Ms. McDuffie queried as to what would happen if the seller is unable to place a cover system on the real property in a timely manner. Mr. Cappellino stated that if the real property is not sold in a covered condition at the time of acquisition, then the ILDC will pay a lower purchase price than it would if the land did have a cover system placed upon it.

Mr. Poloncarz then thanked staff and members for their good work in prior approvals related to the ILDC's acquisition of the Bethlehem Steel site and noted that the value of the real property is much greater if the ILDC can acquire it in a covered condition under the Brownfield Cleanup Program prior to December 31, 2017.

Mr. Weinstein moved, and Mr. Blue seconded, to approve of the following resolution:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY") TO PROVIDE ADDITIONAL FUNDING TO THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (THE "ILDC") IN THE AMOUNT OF \$700,000 FROM THE AGENCY'S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT ("UDAG") REFLOW FUND TO ENABLE THE ILDC TO COMPLETE ITS PURCHASE OF CERTAIN REAL PROPERTY LOCATED ON THE FORMER BETHLEHEM STEEL SITE IN LACKAWANNA, NEW YORK (THE "REAL PROPERTY")

Mr. Lipsitz called for the vote, and the aforementioned resolution was unanimously approved.

Policy Committee Update. Mr. Lipsitz provided members with an update of the most recently completed Policy Committee meeting, noting that the ITT-Enidine project was recommended by the Policy Committee for approval.

## **INDUCEMENT RESOLUTIONS**

ITT-Enidine, 7 Centre Road, Orchard Park, New York. Ms. Fiala reviewed this proposed sales tax and real property tax abatement benefits project involving the construction of a new 11,000 square foot addition to the company's existing manufacturing facility. Ms. Fiala noted the additional space will be used for expanded manufacturing operations.

As a condition precedent of receiving financial assistance and a material term and condition established by the Agency in connection with approval of the project, Ms. Fiala noted that the company must, subject to potential termination and/or modification and/or recapture of

financial assistance, submit on an annual basis or as otherwise indicated below, through the conclusion of the termination of the Agent Agreement/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 \$1,020,000.00 (which represents the product of 85% multiplied by \$1,200,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 261 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 the Company has maintained and created FTE employment at the Facility equal to 269 FTE employees [representing the sum of 261 Baseline FTE plus 8, the product of 85% multiplied by 10 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company’s application for Financial Assistance)]. 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. Weinstein moved, and Mr. Lorigo seconded, to approve of the project as proposed. Mr. Lipsitz called for the vote, and the following resolutions were unanimously approved:

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE ITT ENIDINE INC. (THE “COMPANY”) PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT**

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ITT ENIDINE 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) 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 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

## **COMPLIANCE**

Local Labor Verified Exemption Request – Unifrax I LLC. At this point in time, Ms. Gallagher-Cohen left the meeting. Mr. Cappellino reviewed a request made by Unifrax I LLC, to allow it to use less than 90% local labor sourced from Erie County, Niagara County, Chautauqua County, Cattaraugus County, Allegheny County, Wyoming County, Genesee County, and/or Orleans County due to the fact that the company is installing specialized equipment that has certain warranty issues related to installation of same whereby the manufacturer requires installation by only approved installers. As such, the company must utilize approved installers as opposed to workers sourced from the local labor area and as permitted by the Agency’s local labor policy, the company is requesting an exemption from the local labor requirement. Mr. Cappellino noted that the company proactively reached out to the Agency to discuss this issue and is seeking approval beforehand as opposed to perhaps running afoul of the local labor policy and seeking approval afterwards. Mr. Cappellino also confirmed that the Agency’s local labor policy expressly permits the Agency to approve of an exemption from use of local labor in this exact same situation. Mr. Weinstein moved, and Mr. Lipsitz seconded, to approve of the local labor waiver request. Mr. Lipsitz then thanked the company for voluntarily coming forward as opposed to this becoming a problem later, if at all, if the company had chosen not to disclose this issue to the Agency. Mr. Emminger then noted that Unifrax is a very good resident in the Town of Tonawanda and thanked the company for its investment. Mr. Lipsitz then called for the vote, and the local labor waiver request was then unanimously approved.

## **MANAGEMENT TEAM REPORTS**

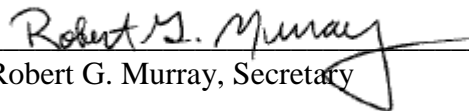
Mr. Weathers reviewed the proposed 2018 meeting schedule. Mr. Weathers then updated members on efforts of compliance officer Dawn Boudreau noting that she has proactively been meeting with financial aid recipients and IDA applicants to ensure proper monitoring and reporting is undertaken and Mr. Weathers wanted the members to be aware of her good efforts that are resulting in better compliance overall and encouraging a good working relationship between the Agency and its clients.

Mr. Weathers also noted that the Agency is in receipt of the New York State Office of State Controller audit and once again noted that the OSC used post-2016 statutes to audit pre-2016 projects, such that there is a mismatch between the law and the projects that were not otherwise covered by the law. Mr. Weathers noted that OSC gave several recommendations for improvement to the ECIDA which require the Agency to continue doing what it has more or less otherwise been doing. Mr. Pridgen then thanked the staff for keeping members informed.

Mr. Poloncarz then asked for an update on the Gordon Foods sales tax recapture issue. Mr. Weathers noted that Gordon Foods sent a check with a general release, which was subsequently revised by ECIDA general counsel into a mutual release and the Agency has since deposited the check, in full reimbursement of state and local sales and use tax exemption amounts that were wrongfully claimed, and returned the amounts to the New York State Department of Taxation and Finance as required under New York law.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 9:56 a.m.

Dated: September 27, 2017

  
Robert G. Murray, Secretary