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

DATE AND PLACE:	September 26, 2018, at the Erie County Industrial Development Agency (the "ECIDA" or "Agency"), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203
PRESENT:	Rev. Mark E. Blue, Hon. Patrick B. Burke, Dottie Gallagher, Tyra Johnson, Richard Lipsitz, Jr., Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Sister Denise Roche, Kenneth A. Schoetz, Charles F. Specht and Art Wingerter
EXCUSED:	Hon. Diane Benczkowski, Hon. Bryon W. Brown, James F. Doherty, Hon. Joseph H. Emminger, Hon. Brian J. Kulpa, Hon. Darius G. Pridgen, and Hon. Mark C. Poloncarz
OTHERS PRESENT:	Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Karen M. Fiala, Assistant Treasurer; Mollie Profic, Chief Financial Officer; and Robert G. Murray, Secretary

There being a quorum present at 9:10 a.m., Ms. McDuffie called the meeting to order.

MINUTES

The minutes of the August 22, 2018 meeting of the members were presented. Sister Denise moved and Mr. Nellis seconded, to approve of the minutes. Ms. McDuffie called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the August 2018 financial report, noting that the balance sheet shows the ECIDA finished the month with total assets of $29.9 million and net assets of $20.7 million. The monthly income statements show an operating net loss of $49,800 in August. Operating revenue was below budget for the month by $44,000 due mainly to receipt of administrative fees. Total operating expenses were over budget by $6,000, with the largest variances due to sponsorships and payroll/temporary labor expenses. After factoring in strategic investments and depreciation, there was a net loss of $65,000 for the month. The year to date income statement reflects operating revenue of $1.2 million, being $645,000 below budget for the year. Operating expenses of $1.9 million are $30,000 below budget for the year. After special project grants, strategic initiatives and depreciation, there is currently a net loss of $954,000 for the year. There being no further discussion, Ms. McDuffie directed that the report be received and filed.

Proposed Budget Timetable. Ms. McDuffie reviewed the Agency's budget review timeline and confirmed that the budget must be approved in final form at the Agency's October 24, 2018 meeting.

Review of 2019 Budget. Ms. Profic reviewed the Agency's 2019 Budget and Three-Year Forecast. In particular, Ms. Profic noted that the Agency has estimated operating revenues to be budgeted at just under $2.8 million, representing about a 1% increase over the 2018 budget. The main piece of this revenue is $1.96 million in administrative fees and Ms. Profic noted that historically Agency staff has used a 10 year rolling average to benchmark this figure. Operating expenses are budgeted at $2.8 million, being a 1% increase over the 2018 budget. Salaries and Benefits are budgeted to increase by 1.5% while building operating costs are budgeted to increase by $47,000 over 2018 due to an increase in rent. Ms. Profic also noted the Agency has a number of active grants that account for almost $2 million in grant revenues and grant expenses that will offset each other. This will lead to a break even budget, with a budgeted $1,000 net loss from operations.

Ms. Profic then reviewed proposed uses of funds, mainly UDAG funds, which have built up over the years. Ms. Profic commented that UDAG funds in the amount of approximately $282,000 will be used for purposes related to the Buffalo Urban Development Corporation and its Buffalo Building Reuse Project and for Canadian lead generation activities carried out by Invest Buffalo Niagara, as well as for the Agency's annual Invest Buffalo Niagara membership contribution and National Development Council Technical Assistance expenses. Ms. Profic also noted the Agency is expecting reimbursement of funds granted to the ILDC upon the ILDC's receipt of CFA grant funding in 2019.

General discussion ensued. Mr. Wingerter queried as to whether a three or five year historical administrative fee time period, as opposed to a 10 year administrative fee time period, would be more appropriate to use for purposes of budgeting for 2019 revenues. Ms. Profic noted that there is no significant difference between a three or five or 10 year time period but did note the Agency does exclude bond revenue because bond issuances are unpredictable.

There being no further discussion, Ms. McDuffie directed that the 2019 Budget be received and filed.

Agreement to Authorize Community Development Block Grant Sub-Recipient Agreement. Mr. Cappellino reviewed an Erie County request to engage the Agency to assist the County in administering Erie County's $180,000 Community Development Block Grant ("CDBG") award to capitalize the County's Microenterprise Loan Fund. Mr. Cappellino confirmed the Agency has entered into similar arrangements with Erie County in the past and due to Erie County's receipt of a new CDBG award, it must again resolve to enter into the appropriate Sub-Recipient Agreement with Erie County in order to fund and administer the Micro Enterprise Fund. Ms. Gallagher moved, and Mr. Schoetz seconded to approve of entering into the appropriate Sub-Recipient Agreement. Ms. McDuffie called for the vote and the following resolution as unanimously approved:

> RESOLUTION AUTHORIZING (i) THE ADOPTION, NEGOTIATION AND EXECUTION OF A SUB-RECIPIENT AGREEMENT BETWEEN THE COUNTY OF ERIE AND THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY RELATIVE TO THE CONTINUED RECEIPT AND ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS; AND (ii) AUTHORIZING THE ALLOCATION OF $181,000 OF SUCH FUNDS TOWARDS THE AGENCY'S MICRO ENTERPRISE FUND

Approval of Buffalo Urban Development Corporation ("BUDC") Sublease of Space at 95 Perry Street. Ms. Profic reminded members that the Agency approved the renewal of its lease at the 95 Perry Street offices with Empire State Development ("ESD") and as such, the Agency must renew its sub-sublease with BUDC which was similarly set to expire on September 30, 2018, the same date the Agency's lease with ESD would have otherwise terminated. To enter into the sub-sublease renewal with BUDC, the Agency staff requires authorization to do so. Ms. Profic stated the terms of the BUDC sub-sublease will pass along the Agency's increase in base rent to BUDC.

Mr. Nellis moved and Mr. Mudie seconded to approve of the renewal of the sub-sublease to BUDC. Ms. Gallagher stated that she would be abstaining from participating in this matter and determination because she is a member of the BUDC Board of Directors. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

> RESOLUTION APPROVING AND AUTHORIZING THE AGENCY TO RENEW THE EXISTING SUBLEASE OF SPACE AT THE AGENCY'S FACILITY LOCATED AT 95 PERRY STREET, BUFFALO, NEW YORK, WITH THE BUFFALO URBAN DEVELOPMENT CORPORATION

2018 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact. Ms. Fiala presented this report. Ms. McDuffie directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz presented members with an update of the most recently convened Policy Committee meeting where Policy Committee members approved of, and determined to make a recommendation of approval to the Agency with respect to the Job Retention Material Terms and Conditions that will be presented to members later today. Ms. McDuffie then asked that the report be received and filed.

Job Retention Material Terms Recommendation. Mr. Cappellino provided Committee members with background regarding the establishment of the job creation and job retention material factors established as a condition of providing financial assistance to project applicants since 2013. Mr. Cappellino noted that the current job creation material factor requires applicants commit to meeting 85% of their job creation goals. The job retention material factor, Mr. Cappellino noted, requires recipients of financial assistance to commit to retaining 100% of the jobs that exist at the time of the project approval for the life of the incentive recapture period.

Mr. Cappellino commented that Agency staff has begun to experience instances where companies have compliance issues with the 100% retention requirement as a result of typical workforce turnover including employees leaving unexpectedly, end of year retirements, deaths, etc. With the current requirement at 100% job retention, the unexpected or temporary loss of just one employee can result in a technical default of a company's agreement with the IDA triggering recapture proceedings. Additionally, Mr. Cappellino noted that some companies are experiencing difficulties filling open positions for extended periods of time leading them to run afoul of their IDA job retention requirement, and Mr. Cappellino emphasized the current IDA recapture policy does not account for such understandable dips in job retention.

Mr. Cappellino reviewed the proposed two-tier retention goal structure, which has been approved by the Policy Committee, to address difficulties found with the 100% threshold job retention material term requirement. Mr. Cappellino noted the two-tier structure has been established to address and distinguish the typical temporary workforce turnover issues from events and issues related to a company's actual failure to uphold the job retention requirement. Mr. Cappellino emphasized this new retention goal would be applicable to job creation projects that also have a retention component, as well as job retention only projects for the designated recapture monitoring time period. Mr. Cappellino also emphasized the new retention goal policy would only impact companies that experience temporary workforce turnover events, such that companies that permanently layoff or eliminate jobs would not be subject to the proposed new retention goals and as such, permanent job layoffs would trigger the ECIDA's implementation of its recapture policy and processes in the event the company's employment, under such circumstances, drops below the 100% job retention goal.

Mr. Cappellino explained the two-tiered systems as follows:

<u>Proposed Two-Tier Retention Goal:</u>

1. Companies with employment at application of 150 employees or less would be required to maintain 90% of their retained employment level for the recapture period as set at project approval.

2. Companies with more than 150 employees would be required to maintain 95% of their retained employment level for the recapture period as set at project approval.

Mr. Cappellino stated that the two-tiered system establishes two differing percentages because if the same percentage goal for companies of all sizes is used, it may cause companies with small work forces to run afoul of a high percentage goal, while a low percentage goal could cause companies with large work forces to remain compliant even while having a large number of layoffs. The two-tiered system addresses these concerns while still maintaining the overall intent of the retention goal material factors.

Mr. Cappellino then thanked Dawn Boudreau, the Agency's Compliance Officer, for her good work in monitoring company employment data and for her amendments to the Agency's Compliance Reporting forms to take this new policy into consideration.

Mr. Wingerter asked Mr. Cappellino to confirm the difference between 95% and 90% compliance. Mr. Cappellino responded that if a company is below 95% of its job retention number, then the company must go to the Policy Committee to explain the circumstances resulting in the less than 95% retention figure and at that point in time, the Policy Committee can rely on the Agency's existing recapture policy and processes to take action or to take no action as allowed for under the recapture policy.

Ms. Gallagher thanked the Policy Committee for its good work in developing a new retention threshold, however, queried as to why New York State's standard 85% job retention threshold percentage, that is used for job retention when New York State provides grants, was not considered. Ms. Boudreau responded that most of the Agency's projects involve retention of less than 100 employees so the thinking is that a 90% or 95% threshold is reasonable because an 85% threshold would allow a larger number of job losses than the 90% or 95% threshold.

Mr. Lipsitz responded that he would prefer to leave the job retention number at 100%, but is willing to accept a 90% and 95% threshold and noted that these thresholds could be reconsidered in the future.

Mr. Blue spoke in favor of the two-tier system because it provides leeway for companies.

Ms. McDuffie emphasized that staff and Policy Committee members were very careful to ensure that the retention goals applied to temporary workforce turnover events only and do not permit permanent job layoffs.

Mr. Lipsitz moved and Sister Denise seconded to approve of the job retention material term recommendation. Ms. McDuffie called for the vote and the following resolution was unanimously approved:

> RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("AGENCY") ESTABLISHING CERTAIN FULL TIME EMPLOYMENT RETENTION TERMS AND CONDITIONS REQUIRED TO BE COMPLIED WITH BY RECIPIENTS OF FINANCIAL ASSISTANCE AND TO BE MADE APPLICABLE TO THE RELEVANT MONITORING PERIOD WITH RESPECT TO THE AGENCY'S POLICY FOR TERMINATION AND/OR MODIFICATION OF AGENCY FINANCIAL ASSISTANCE AND RECAPTURE OF AGENCY FINANCIAL ASSISTANCE PREVIOUSLY GRANTED

MANAGEMENT TEAM REPORT

Mr. Weathers reviewed the Agency's 2019 Board meeting schedule. Mr. Weathers also noted that the legal counsel request for proposals was issued and reviewed the legal RFP review schedule.

Mr. Weathers then acknowledged the good work of Lori Szewczyk, the Agency's Director of Grants, noting that Ms. Szewczyk has recently secured approximately $620,000 in new grants and has submitted over $4 million in additional grants, all for the benefit of the smaller villages/towns and residents of Erie County.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 10:00 a.m.

Dated: September 26, 2018

Robert G. Murray

Robert G. Murray, Secretary