



**Buffalo and Erie County Regional Development Corporation
Meeting of the Board of Directors**

November 30, 2022 @ 12:00 p.m.

**701 Ellicott Street, Center of Excellence in Bioinformatics and Life Sciences (CBLS)
The Event Space/Conference Room B2-205, located on the 2nd floor, Buffalo, New York 14203**

1.0 Call to Order

2.0 Approval of Minutes

2.1 Minutes of the October 26, 2022, 2022 Meeting of the Board of Directors (Action Item) (Pages 2-3)

3.0 Reports / Action Items / Information Item(s):

3.1 Financial Report (Informational) (Pages 4-7)

3.2 Loan Status Report (Informational) (Page 8)

3.3 Approval of the Following Loan Case(s)

a) Perry's Ice Cream (Action Item) (Pages 9-14)

3.4 Videoconferencing Procedures (Action Item) (Pages 15-21)

4.0 Management Team Report:

4.1

5.0 Adjournment- Next Meeting December 21, 2022

**MINUTES OF THE MEETING OF THE
BOARD OF DIRECTORS OF THE
BUFFALO AND ERIE COUNTY REGIONAL
DEVELOPMENT CORPORATION
(RDC)**

DATE AND PLACE: October 26, 2022, at Center of Excellence in Bioinformatics and Life Sciences (CBLS), 701 Ellicott Street, Conference Room B2-205, Second Floor, Buffalo, New York 14203

PRESENT: Denise Abbott, Hon. Joseph Emminger, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Denise McCowan, Brenda W. McDuffie, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen and Kenneth A. Schoetz

EXCUSED: Hon. Diane Benczkowski, Rev. Mark E. Blue, Hon. Bryon W. Brown, James Doherty, Dottie Gallagher, Michael P. Hughes, Hon. Glenn R. Nellis and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiqa Abidi, Assistant Treasurer; Gerald Manhard; Chief Lending Officer/Secretary; Andrew Federick, Business Development Officer; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Talia Johnson-Huff, Project Manager; Laurie Hendrix, Administrative Coordinator; Robert G. Murray, Esq., General Counsel/Harris Beach PLLC and Terrence M. Gilbride and Christopher C. Canada, Bond Counsel/Hodgson Russ LLP

GUESTS: Zachary Evans and Thomas Baines on behalf of Erie County; Bukola Millia on behalf of Workforce Investment Board and J. Dale Shoemaker on behalf of Investigative Post

There being a quorum present at 1:15 p.m., the meeting of the Buffalo and Erie County Regional Development Corporation (the “RDC”), was called to order by its Chair, Ms. McDuffie.

MINUTES

The minutes of the September 28, 2022 meeting of the members were presented. Mr. Johnson moved and Ms. Abbott 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 September 2022 financial report. The balance sheet shows the RDC finished the month with total assets of \$22.3M, consisting mainly of cash

and loans receivable. Liabilities reflect amounts due to ECIDA for 2022 costs and net assets are \$22.1M. The September income statement shows \$48,000 of revenue, mainly loan interest income, and negative \$19,000 of expenses. The provision for loan losses was reduced by \$45,000 as a result of a borrower no longer requiring a reserve due to resuming regular payments. As a reminder, the portfolio is reviewed internally on a quarterly basis, and these adjustments may be temporary. Overall net income for the month was \$67,000. The year-to-date income statement shows revenues of \$603,000 and \$241,000 of expenses, for net income of \$362,000 through September. Of this revenue, \$194,000 is the last of the CARES Act grant income, which will be used for the ongoing administrative costs of that loan portfolio. Ms. McDuffie directed that the report be received and filed.

Finance and Audit Committee Update: Ms. Profic advised that the Committee met on October 17 and reviewed, and recommended for approval, the 2023 budget to the members for formal consideration.

A. 2023 Budget Timetable. Ms. Profic reviewed the 2023 proposed budget review process.

B. Review of Proposed 2023 Budget. Ms. Profic reviewed the proposed 2023 budget including a narrative which provides an overview of the budget and any changes, along with risk factors impacting the budget. She stated that the budgeted revenues consist of mainly interest income from loans, at \$630,000 based on anticipated loan closings by the end of 2022. Also, budgeted expenses are made up mainly of the ECIDA Management Fee (salary and benefit costs of ECIDA staff based on time spent on RDC business) and a provision for loan losses, estimated at 2.4% of projected outstanding loans or \$450,000. The budgeted figures result in a budgeted net loss of \$197,000. Ms. Profic noted that the provision for loan losses figure is a conservative estimate.

Mr. Emminger moved and Mr. Johnson seconded to approve of the RDC 2023 Budget. Ms. McDuffie then called for the vote and the RDC 2023 Budget was unanimously approved.

Loan Status Report. Mr. Manhard provided this report to members. Ms. McDuffie directed that the report be received and filed.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 1:22 p.m.

Dated: October 26, 2022

Elizabeth A. O'Keefe, Secretary

Regional Development Corporation

Financial Statements

As of October 31, 2022

REGIONAL DEVELOPMENT CORPORATION ("RDC")

Balance Sheet

October 31, 2022

	October 2022	September 2022	December 2021
ASSETS:			
Restricted Cash**	\$ 5,922,980	\$ 5,595,174	\$ 7,790,415
Accounts Receivable	194,750	189,614	10,168
Direct Loans *	16,799,091	17,085,074	14,748,199
50/50 Bank Participation Loans *	69,831	74,242	112,852
Reserve for Loan losses	(524,886)	(594,805)	(610,903)
Total Loan Assets, net	<u>16,344,036</u>	<u>16,564,511</u>	<u>14,250,149</u>
TOTAL ASSETS	<u><u>\$ 22,461,766</u></u>	<u><u>\$ 22,349,298</u></u>	<u><u>\$ 22,050,732</u></u>

LIABILITIES & NET ASSETS			
Accounts Payable	\$ -	\$ -	\$ 133
Due to ECIDA	260,398	233,617	297,384
Total Liabilities	<u>260,398</u>	<u>233,617</u>	<u>297,518</u>
Restricted Fund Balance	<u>22,201,368</u>	<u>22,115,681</u>	<u>21,753,214</u>
TOTAL LIABILITIES & NET ASSETS	<u><u>\$ 22,461,766</u></u>	<u><u>\$ 22,349,298</u></u>	<u><u>\$ 22,050,732</u></u>

* Loan Portfolio Summary:	October 2022	September 2022	December 2021
# of Legacy RLF Loans	31	33	32
# of CARES Act RLF Loans	30	30	30
# of 50/50 Bank Participation Loans	1	1	1
	<u>62</u>	<u>64</u>	<u>63</u>

** Cash is invested in interest bearing accounts at M&T Bank. The maximum FDIC insured amount is \$250,000, with the remainder collateralized with government obligations by the financial institution.

REGIONAL DEVELOPMENT CORPORATION ("RDC")

Income Statement
Month of October 2022

	Actual vs. Budget		
	Actual	Budget	Variance
REVENUES:			
Interest Income - Loans	\$ 49,377	\$ 47,083	\$ 2,294
Interest Income - Cash & Inv.	703	42	662
Administrative Fees	-	1,250	(1,250)
Grant Income - CARES Act RLF	-	8,591	(8,591)
Other Income	188	417	(229)
Total Revenues	<u>50,268</u>	<u>57,383</u>	<u>(7,115)</u>
EXPENSES:			
Management Fee - ECIDA*	23,800	23,800	-
Rent & Facilities Expenses	2,100	2,083	17
Professional Services	7,234	3,333	3,901
General Office Expenses	367	142	225
Other Expenses	999	1,815	(816)
Total Expenses	<u>(35,419)</u>	<u>31,173</u>	<u>(66,592)</u>
NET INCOME/(LOSS):	<u>\$ 85,687</u>	<u>\$ 26,210</u>	<u>\$ 59,477</u>

* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to RDC. The amount booked reflects 2022 budgeted figures.

REGIONAL DEVELOPMENT CORPORATION ("RDC")

Income Statement

Year to Date: October 31, 2022

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
REVENUES:						
Interest Income - Loans	\$ 441,415	\$ 470,833	\$ (29,418)	\$ 441,415	\$ 376,146	\$ 65,269
Interest Income - Cash & Inv.	2,946	417	2,529	2,946	2,364	582
Administrative Fees	13,250	12,500	750	13,250	-	13,250
Grant Income - CARES Act RLF	193,650	85,911	107,739	193,650	5,179,241	(4,985,591)
Other Income	2,038	4,167	(2,129)	2,038	11,324	(9,287)
Total Revenues	653,299	573,828	79,471	653,299	5,569,075	(4,915,777)
EXPENSES:						
Management Fee - ECIDA*	238,000	238,300	(300)	238,000	267,000	(29,000)
Provision for Loan Losses	(86,017)	187,500	(273,517)	(86,017)	(41,335)	(44,682)
Rent & Facilities Expenses	21,000	20,833	167	21,000	21,000	-
Professional Services	27,320	42,000	(14,680)	27,320	42,784	(15,464)
General Office Expenses	2,437	1,417	1,021	2,437	2,602	(165)
Other Expenses	2,403	18,146	(15,743)	2,403	62,678	(60,275)
Total Expenses	205,144	508,196	(303,052)	205,144	354,729	(149,585)
NET INCOME/(LOSS):	\$ 448,154	\$ 65,631	\$ 382,523	\$ 448,154	\$ 5,214,346	\$(4,766,192)

* Represents an allocation of salary and benefit costs from the ECIDA based on time charged to RDC. The amount booked reflects 2022 budgeted figures.



**Loan Status Report
October 2022 - November 2022**

<u>RDC Loans Approved Since Last Meeting</u>	<u>Municipality</u>	<u>Amount</u>
None		
<u>RDC Loans Closed Since Last Meeting</u>	<u>Municipality</u>	<u>Amount</u>
Upstate Steel Supply (construction materials)	Lancaster	\$ 750,000
<u>Loans in Closing Process</u>	<u>Municipality</u>	<u>Amount</u>
Johnson's Taphouse (brewery)	Hamburg	\$ 600,000
ABM Holdings 1 LLC dba Midland Machinery (Mfg.)	Tonawanda	\$ 475,000
Total: 2 loans		\$1,075,000
<u>Loans in the Pipeline</u>	<u>Municipality</u>	<u>Amount</u>
3 - Loans	Various	\$2,988,000

<u>2022 - Loans Closed</u>	<u>YTD Loan Total</u>	<u>Jobs to be Created</u>	<u>Retained Jobs</u>	<u>Dollars Leveraged</u>
4	\$3,050,000	19	74	\$16,120,000
MWBE Loans – 1				

Loan Portfolio Performance

Past Due Loans:

<u>Loan</u>	<u>Balance</u>	<u>Amount Past Due</u>	<u>Days Past Due</u>	<u>Comments</u>
Peterson Heating & Cooling, Inc.	\$100,000	\$100,000	116	Commenced Legal Action

Portfolio Delinquency Rate (Past Due Outstanding Loan Balance *divided by* Portfolio Balance):

\$100,000 / \$17,020,160 = 0.6% Delinquency Rate (65 Loans)

RDC Funds Available to Lend: \$4,714,312



RDC Loan Analysis

Borrower:	Perry's Ice Cream Company, Inc.	Structure:	S-Corp.	Year Established:	1918
Address:	1 Ice Cream Plaza	City:	Akron	Zip:	14001
Website:	perrysicecream.com	NAICS:	311520	SIC:	2024
Loan Amount:	\$2,000,000	Interest Rate:	4%	Term:	120 months
Monthly Payment:	\$20,249.23	Contact Name:	Brian Perry	Site Visit:	10/4/2022
Purpose:	Working Capital and Equipment	Jobs Existing:	431.5	Jobs to be created	15

SOURCES AND USES

Sources:	Amount	% of Project
ESL Federal Credit Union	\$6,400,000	36%
Wells Fargo	\$4,800,000	27%
Grocery retailer	\$3,000,000	17%
RDC	\$2,000,000	10%
Equity	\$1,800,000	10%
Total Sources	\$18,000,00	100%
Uses:	Amount	
ESL Federal Credit Union - Construction and Equipment	\$6,400,000	36%
Wells Fargo- Equipment	\$4,800,000	27%
Grocery retailer - Equipment	\$3,000,000	17%
RDC - W/C and Equipment	\$2,000,000	10%
Equity		
Soft Costs	\$1,800,000	10%
Total Uses	\$18,000,000	100%
Dollars Leveraged:	\$16,000,000	89%

COLLATERAL AND SECURITY

Collateral:	Subordinate lien on all business assets (behind Wells Fargo and ESL Credit Union)		
Guarantors:	Brian T. Perry and Gayle Perry Denning		
Fund Criteria:	Job Creation: <input checked="" type="checkbox"/>	Job Retention: <input checked="" type="checkbox"/>	Target Industry: <input checked="" type="checkbox"/> MWBE: <input type="checkbox"/>
Eligibility:	Bank Declination: <input type="checkbox"/>	Financing Gap: <input checked="" type="checkbox"/>	Target Area: <input checked="" type="checkbox"/>
Recommended By:	Gerald Manhard and Daryl Spulecki		
Loan Committee Vote:	Approved: <input checked="" type="checkbox"/>	Declined: <input type="checkbox"/>	Date: 11/9/2022
Board of Directors Vote:	Approved: <input type="checkbox"/>	Declined: <input type="checkbox"/>	Date:

I. Background:

Perry's Ice Cream was founded in 1918 when H. Morton Perry purchased a milk route in Akron, NY – a small suburb just east of Buffalo. The business, known as Perry's Dairy at the time, operated as a home delivery and wholesale dairy business until 1932 when the Akron High School cafeteria manager asked Morton if he could supply ice cream to the school. Using a family recipe for ice cream given to him by his mother, Morton began mixing small batches of ice cream on the kitchen stove with his son, Marlo. As demand increased, the Perry family began delivering bulk ice cream to local stores and restaurants around Akron, and thus began Perry's Ice Cream as we know it today.

Flash forward to the present day, Perry's Ice Cream is a 4th generation owned and operated business. Using the same recipe passed down for generations, Perry's Ice Cream is still slow cooked, and delivered throughout Akron, NY and beyond. Staying true to their roots, nearly 100% of their milk comes from farms in the surrounding Akron communities.

What started as a small milk route now employs over 400 team members throughout New York, Ohio, and Pennsylvania, and our products are distributed across New York, New Jersey, Ohio, Pennsylvania, Massachusetts, North Carolina, Washington DC, Maryland, and Virginia.

The fourth generation continues building on the history of Perry's through growing our three business segments: the Perry's brand, contract manufacturing, and our partner brands, while ensuring that they support what matters most: the people and the community.

The fourth-generation owners are Brian Perry (49%), Gayle Perry Denning, and Bob Denning (49%). The three are actively involved in the business every day and leading this expansion project.

Key Management/Experience

- Bob Denning, President & CEO started in 1981
- Brian Perry, Executive Vice President, started in 1979
- Gayle Perry Denning, Chief Marketing Officer, started in 2003
- Robin Waite, Research & Quality Director, started in 1990
- Dave Hodgson, CIO, started in 1991
- Jodi Perry, Chief People Officer, started in 2001
- Steve Helms, CFO, started in 2006
- Joe Zwirecki, VP of Operations, started in 2022

Description of Products

Products include ice cream and frozen treats in all shapes and sizes: the company creates amazing flavors in 3-gallon tubs, half gallons, family sizes, quarts, pints, ice cream sandwiches, and stick/bar novelties. They produce 100% of the Perry's Ice Cream brand and make some grocery and other name brand ice creams as well. As mentioned above, the company also buys and resells other ice cream brands, pizzas, and frozen foods while out delivering to their customers.

Description of Facility

Perry's corporation HQ is where all the ice cream is made, right in Akron, NY. The company has been located at 1 Ice Cream Plaza Akron NY since 1971, for about half of their existence. The 130,000-sf facility is capable of producing about 12 million gallons of ice cream annually.

Customers

Customers are mostly in New York and Perry's is the #1 ice cream brand in Western New York. About half of what they produce ends up beyond the New York State borders. The company has co-pack customers that sell outside the USA, and in many corners of the country. Customers include grocery stores, convenience stores, local schools and sports arenas, and national brand companies (for co-packing).

Target Market

Perry's is targeting the expansion of its market share Perry's Ice Cream by attracting more consumers in the geographic markets we serve and continuing to offer consumers. The primary focus of this project for which they are applying for funding is to introduce a new product: high-end extruded novelties which will be produced for many brands, with Perry's of course being the first.

Competition

Manufacturers and brands that compete with Perry's include Nestle and Unilever at a national level, whose brands include Nestle, Good Humor, Haagen-Dazs, Ben & Jerry's, Klondike, Edy's, Dreyers, Breyers, among others. Other regional brands include store brands, Tillamook, Turkey Hill, Van Leeuwen, and many others.

Searches of the Erie County Clerks website, the Erie County Real Property Tax Services website, the NYS Unified Court System website, New York Department of State website, and Google resulted in no negative findings or red flags on either business or guarantor.

II. Project Description:

The business has applied for a \$2,000,000 RDC Business Loan to assist with expanding their existing facility to accommodate a new Extruded Novelty Production Line and Ammonia refrigeration system and related expenses associated with hiring and training new employees, inventory, equipment, and various soft costs. The specialized equipment is being manufactured by Tetra Pak, a company located in Denmark, and will take approximately one year to build, require a \$1.8 million deposit, and require several months of delivery and set up time. The company has retained Food Tech LLC for the engineering and construction portion of the project to maximize production capabilities, efficiencies, and economies of scale.

The total project cost will be \$18M. ESL Federal Credit Union has approved a \$2.2M mortgage, a \$4M construction loan and \$400k equipment loan. Wells Fargo has approved a \$4.8M equipment loan and will be increasing their LOC from \$20 million to \$30 million. A grocery retailer will be investing \$3 million into the project for future benefits related to new product offerings and preferential production scheduling and pricing. The company is injecting \$1.8M into the project to cover some of the soft costs and working capital associated with the expansion project. The RDC has been asked to assist with providing a \$2 million term loan to help provide the GAP financing needed to complete the project.

The project will enable Perry's to offer an additional 30 different stick-based products both dairy and non-dairy (see last page). They would have the capability of producing 22,000 bars per hour. The project will result in the creation of a minimum of 15 full-time employment positions

Market:

Nationally, the extruded novelty ice cream production is estimated to be \$5.5 billion industry with Zero capacity to manufacture any additional products. There are only 81 of these machines operating in the US with all these manufacturers stating there is no capacity for private labeling or meeting current demand. In the frozen yogurt bar, private label segment, Perry's is estimating a \$30 million shortfall annually. The Frozen stick, bars, and cones private label segments opportunity is estimated to be \$500 million and growing. Perry's will only have to operate their machine at 16% of capacity to break even (\$8 million in sales). Their existing customer base projected demand will already exceed the break-even requirement.

Based on market trends, the extruded novelty industry and the frozen yogurt-based products will continue to grow for the foreseeable future due to shifts in consumer behaviors. Today's consumers are busier and more health conscious when feeding their families and desire more portion control and options for feeding their family. Thus, pre-packaged, single serve ice cream bars, sticks, cups, etc. are in high demand and grocery stores are unable to stock sufficient inventory to meet the growing demand. The new manufacturing line will be able to capitalize on the market shortfall.

VII. Job Creation:

The loan will assist Perry's Ice Cream with the retention of its 431 full time equivalent employment positions and will create an additional 15 full time positions upon completion of the project. The new positions are estimated to pay \$60,000 annually. Approximately 42%, or 181 employees are part of the union and a new collective bargaining agreement that will expire in 4 years and included a 10% raise in 2022.

VIII. Strengths and Weaknesses:

Strengths:

- Perry's Ice Cream is a 4th generation business that has been in existence since 1918 and has successfully navigated many economic downturns and world events. The owners and management are experienced and have shown the ability to adapt and grow the business.
- Regionally, Perry's has established an iconic brand name and loyal customer base.
- Both historically and over the past decade, sales have continued to steadily increase as their private brand ice cream and co-packaging arrangements have continue to grow.
- Industry Demand for extruded novelty products exceeds capacity in the US and creates an opportunity to diversify their product offerings and grow market share.
- The new product Line is estimated to have a payback timeframe of 48 months given current market demand. The equipment will also give the company a competitive advantage over their industry peers and help solidify their presence in Akron, NY.
- Projection assumptions appear to be reasonable and generate sufficient cash flow to service the RDC loan and all projected debt.
- Overall, the company has been profitable and able to service all their debt requirements.
- The company has paid in full two other RDC loans for similar amounts.
- The project will help create 15 full time positions as well as help solidify the employment of the other 431 employees, and further entrench the company in the Akron community.
- Guarantors have excellent personal credit and net worth.

Weaknesses:

- The extent of the impact of COVID-19 on the company’s operational and financial performance will depend on further developments, including the duration and spread of the outbreak and its impact on clients, employees, and other related businesses, all of which cannot easily be predicted.
- RDC is in a subordinate collateral position.
- Competition from other regional ice cream manufacturers.

IX. Recommendation:

Based on the loan case analysis, it is recommended the \$2,000,000 RDC Term Loan be approved with the following loan terms:

Loan Amount: \$2,000,000
Interest Rate: 4%
Loan Amortization: 120 months. (1-year interest only, 9-year (108-month) loan amortization)
Loan Term: 120 months. Loan draws, not to exceed four, will be permitted during the first 12 months of the loan term with monthly interest only payments being required on the then outstanding loan balance. Starting in year 2, the then outstanding loan balance will be termed out into a 9-year (108-month) term loan.
Monthly P&I payment: \$22,081.94

Security/Collateral:

- Subordinate lien position on all business assets
- The unlimited personal guarantees of Brian T. Perry and Gayle Perry Denning

Loan Conditions:

- Annually, receipt of audited consolidated financial statements containing all schedules within 120 days of Year End.
- Annually, receipt of personal Federal Tax Returns with all schedules for each guarantor(s) within 120 days of Year End.
- Receipt of annual Personal Financial Statements for all guarantor(s).
- Commitment Fee of \$10,000.00 (1/2 percent of loan amount)
- Annual receipt of employment survey.
- Annual site visit by RDC staff.
- Closing costs to be paid by the borrower.



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**BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT CORPORATION
RESOLUTION**

The meeting of the Buffalo and Erie County Regional Development Corporation was convened on Wednesday, November 30, 2022 at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

**RESOLUTION OF THE BUFFALO AND ERIE COUNTY REGIONAL
DEVELOPMENT CORPORATION (“RDC”) APPROVING THE USE OF
VIDEO CONFERENCING UNDER EXTRAORDINARY CIRCUMSTANCES
PURSUANT TO SECTION 103-A OF THE NEW YORK PUBLIC OFFICERS
LAW**

WHEREAS, the RDC was incorporated as an affiliate of the Erie County Industrial Development Agency for the purpose of making direct loans to existing and new companies utilizing the resources from various Revolving Loan Funds; and

WHEREAS, Section 103-a of the New York Public Officers Law (“POL”), as enacted by Part WW of Chapter 56 of the Laws of 2022, permits public bodies such as the RDC to authorize their members to attend meetings by videoconference from locations that are not open to the public (“private locations”), when necessitated by “extraordinary circumstances,” provided that (i) the number of members of the public body who attend the meeting at location(s) where the public can attend is at least equal to the number required to satisfy the public body’s quorum requirement, (ii) the public body has established written procedures governing member and public attendance consistent with Section 103-a of the POL, (iii) such written procedures are conspicuously posted on the public website of the public body, and (iv) the other criteria specified in Section 103-a of the POL are satisfied; and

WHEREAS, RDC staff, in consultation with the RDC’s general counsel, have prepared a draft policy in compliance with Section 103-a of the POL entitled “Videoconferencing Participation Pursuant to Public Officers Law Section 103-a” (the “Videoconferencing Policy”), attached hereto as Exhibit A; and

WHEREAS, Section 103-a(2)(a) of the POL requires that the RDC must adopt a resolution after a public hearing in order to authorize videoconferencing from a private location and as described within the Videoconferencing Policy; and

WHEREAS, the hearing so required was conducted on Monday, November 21, 2022, and the report thereon has been received and considered by the RDC; and

WHEREAS, the RDC deems it appropriate that the RDC and any and all committees or subcommittees of the RDC now existing or hereafter established be authorized to use videoconferencing to conduct meetings in the manner contemplated by Section 103-a of the POL.

NOW, THEREFORE, BE IT RESOLVED BY THE BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. The RDC hereby approves and adopts the Videoconferencing Policy and authorizes the RDC and any and all committees or subcommittees of the RDC now existing or hereafter established to use videoconferencing to conduct meetings in the manner authorized by Section 103-a of the POL, including meetings where a member who is unable to be physically present at any such meeting location due to extraordinary circumstances is permitted to attend and participate in the meeting by videoconferencing from a remote location that is not open to the public.

Section 2. The RDC directs that the Videoconferencing Policy be conspicuously posted on the public website of the RDC in compliance with Section 103-a of the POL.

Section 3. Any and all actions heretofore taken or authorized by the RDC and/or its members, officers, employees and agents with respect to this Resolution are hereby ratified, approved and confirmed in all aspects.

Section 4. This Resolution shall take effect immediately.

ADOPTED: November 30, 2022

EXHIBIT A

Videoconferencing Policy

(See Attached)

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“ECIDA”),
BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT
CORPORATION (“RDC”),
AND
BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT
CORPORATION (“ILDC”)**

**PROCEDURES FOR VIDEOCONFERENCING PARTICIPATION
PURSUANT TO PUBLIC OFFICERS LAW SECTION 103-A**

This Videoconferencing Participation Policy (“Policy”) shall apply to the Erie County Industrial Development Agency (“ECIDA”) and its affiliated corporations: Buffalo and Erie County Regional Development Corporation (“RDC”), Buffalo and Erie County Industrial Land Development Corporation (“ILDC”), and any other affiliated entities that may be established by the ECIDA (hereinafter collectively referred to as the “Agency”) upon approval by the respective Board of Directors or Members of the Agency.

In compliance with New York Public Officer’s Law (“POL”) § 103-a(2)(a), the Agency, following a public hearing, authorized the use of videoconferencing as described in POL Section 103-a by resolution(s) dated November 30, 2022.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that “public bodies” must establish written procedures governing member and public attendance to permit its members to participate in Board and Committee meetings by videoconferencing from private locations, under Extraordinary Circumstances.

1. Agency Member Attendance:

A. All members of the Agency (“Members”) shall be physically present at the location(s) of the public meeting unless a Member cannot be physically present at the public meeting for one (1) or more of the circumstances enumerated in subsection B herein.

B. Members may be excused from physically attending any public meeting of the Agency, and may instead attend via videoconferencing from a private location, if any of the following circumstances (thereinafter “Extraordinary Circumstances”):

- (i) Disability of a Member.
- (ii) Illness of a Member.
- (iii) The Member has caregiving responsibilities for:
 - (a) one (1) or more dependents, or
 - (b) family member(s) with an illness or disability.

C. Notification of Agency.

- (i) In the event a Member is unable to be physically present at the designated public meeting location(s) and wishes to participate by videoconferencing from a private location due to an Extraordinary Circumstance, the Member must notify the Agency by submitting the form attached hereto as **Exhibit A** no later than ten (10) business days prior to the scheduled meeting to the President/CEO of the Agency to ensure proper notice of the meeting and related videoconference is given to the public.
- (ii) In the event an Extraordinary Circumstance arises within ten (10) business days of the scheduled meeting, the Member shall notify the President/CEO of the Agency immediately by submitting the form attached hereto as **Exhibit A** to provide the Agency with an opportunity to amend the notice of meeting.
- (iii) In the event an Extraordinary Circumstance arises within ten (10) business days of the scheduled meeting, and the Agency determines it would be impractical to amend the notice of meeting, the Agency may reschedule the meeting to a later date.

2. Public Attendance:

A. Members of the public shall be allowed to attend any public meeting conducted via videoconferencing at the physical location of the meeting, or via videoconferencing if a Member of the Agency attends via videoconferencing.

3. Rules and Procedures for Public Meetings Conducted Via Video Conference:

A. A quorum of Members participating in the meeting must be physically present at the meeting location(s) open to the public for the meeting to be properly convened. Members participating in the meeting via videoconferencing shall not count towards the Agency quorum requirements for the meeting but may participate and vote if a physical quorum of the Members exists.

B. Except in the case of executive sessions conducted pursuant to POL § 105, Members must be able to be seen, heard and identified by other Members and the public during any matter formally discussed or voted on, including, but not limited to, motions, proposals, and resolutions. This shall include the use of first and last name placards placed physically in front of the Members or, for Members participating by videoconferencing from a private location, such Members shall ensure their names appear on their videoconferencing screen or video feed.

C. If public comment or participation in the meeting is authorized or required, the video feed, and public participation therein, must be in real time, and the Agency shall ensure the meeting is conducted in a manner ensuring virtual public participation or testimony equal to in-person participation or testimony.

D. The meeting minutes for a meeting where a Member attends via videoconferencing shall include which Members participated remotely, and the meeting minutes shall be made available to the public pursuant to POL § 106.

E. The public notice for any meeting held via video conference shall include the following information:

- (i) Notification that videoconferencing will be used to conduct the meeting;
- (ii) Identification of where the public can view and/or participate in the meeting, including:
 - (a) the physical location(s) of the meeting; and
 - (b) any web addresses for video links; and
- (iii) Identification of the location(s) where any required documents and/or records will be posted or available for public viewing.

F. Each open portion of meetings held via videoconference must be recorded. The recording:

- (i) Must be posted or linked on the website of the Agency within five (5) business days of the meeting;
- (ii) Must remain available for a minimum of five (5) years after it is posted; and
- (iii) Shall be transcribed upon written request subject to any reasonable fees for the production thereof.

G. Meetings held via video conference must utilize technology to permit access by individuals with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and the corresponding guidelines thereto. For purposes of this section, the term “disability” shall have the meaning defined in New York Executive Law § 292.

4. Miscellaneous.

A. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state emergency proclaimed by the chief executive of a county, city village or town pursuant to Executive Law § 24 if the Agency determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the Agency to hold an in-person meeting.

B. These procedures shall be conspicuously posted on the Agency’s website.

EXHIBIT A

**REQUEST FOR VIDEOCONFERENCING PARTICIPATION
PURSUANT TO PUBLIC OFFICERS LAW SECTION 103-A**

Meeting Date:	
Name of Member:	
Agency Membership:	
Reason for Physical Absence (Check All That Apply):	<input type="checkbox"/> Disability of the Member. <input type="checkbox"/> Illness of the Member. <input type="checkbox"/> The Member has caregiving responsibilities for: <input type="checkbox"/> one (1) or more dependents, or <input type="checkbox"/> family members with an illness or disability.
Description of Absence: (Summarize)	

For Agency Use Only:

<u>Date Request Received:</u>	
<u>Date Request Approved:</u>	
<u>Request Approved By:</u> (Print Name)	
<u>Signature:</u>	