

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

DATE AND PLACE: March 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. Joseph Emminger, Dottie Gallagher, Hon. Howard Johnson, Tyra Johnson, Richard Lipsitz, Jr., Denise McCowan, Brenda W. McDuffie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz and Kenneth A. Schoetz

EXCUSED: Rev. Mark E. Blue, Hon. Bryon W. Brown, James Doherty, Michael P. Hughes, Hon. Brian Kulpa, Hon. Darius G. Pridgen and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; 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; Robbie Ann McPherson, Director of Marketing & Communications and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans, Andrew McLaren and Daniel Castle on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Connie Buynacek, Heather Chudzik, Laurie Eden and Matthew Bradley on behalf of Moog, Inc.; Bukola Mallia on behalf of Buffalo & Erie County Workforce Investment Board; Dale Shoemaker on behalf of Investigative Post; Jonathan Epstein on behalf of the Buffalo News and Jim Fink on behalf of Business First

There being a quorum present at 12:06 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 February 22, 2023 meeting of the members were presented. Ms. Abbott moved and Mr. Johnson 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 the February financial reports. The balance sheet shows that the IDA finished the month with total assets of \$31.5M which includes unrestricted cash of \$7.3M available for Agency operations and net assets of \$20.5M. The monthly income statement shows a net loss of \$73,000 for February. Operating revenue of \$155,000 was below the monthly budget by \$68,000, due mainly to timing of administrative fees received during the month. Operating expenses of \$218,000 were \$15,000 under budget. The year-to-date Income Statement shows revenues of \$394,000, including administrative fee revenue of \$188,000. Ms. Profic advised we are at about 63% of our budget for the first two months of the year. Expenses of \$437,000 are \$25,000 below budget. After depreciation, there is currently a net loss of \$62,000 for the year. Ms. McDuffie directed that the report be received and filed.

Finance & Audit Committee and Committee Self-Evaluation. Ms. Profic introduced Michael Szukala, Chair of Finance & Audit Committee. Mr. Szukala summarized the memorandum regarding the joint Finance & Audit Committee meeting held on March 16. Our auditors from Lumsden McCormick presented the draft 2022 audited financial statements, which will be reviewed shortly. The three main points of the presentation were an unmodified (clean) opinion on the financial statements, there were no uncorrected audit adjustments, and there were no material weaknesses or significant deficiencies noted (no management letter comments). The Committee also reviewed and recommend the items listed under #2-#7 for approval or re-adoption: 2022 Public Authorities Report, 2022 Investment Reports, Investment & Deposit Policy, Committee Charter, Committee Self-Evaluation, Management's Assessment of the Effectiveness of Internal Controls, and Corporate Credit Card Policy with no suggested changes.

The Committee Self-Evaluation was presented. Each year the Committee completes a self-evaluation, as required by the Committee Charter. Essentially, did the Committee fulfill its duties per the Committee Charter? Comments in the rightmost column give some detail of the Committee activity throughout the year, and there are additional notes in the Board package. In 2022, the Committee convened a total of five times and fulfilled its duties as documented. Ms. McDuffie directed that the report be received and filed.

Audited Financial Statements. Ms. Profic reviewed the draft 2022 audited financial statements, required communications, and management letter. Lumsden's required communications with those charged with governance, which documents the auditors' responsibility related to the financial statement audit, notes that there were no matters of concern that arose related to the significant risks identified, a summary of accounting estimates made within the financials, that there were no uncorrected audit adjustments, and no disagreements with management. Ms. Profic mentioned, an unmodified opinion was issued on the statements. Significant estimates for ECIDA include depreciation of capital assets, and valuation of leases receivable/payable and other assets. GASB Statement No. 87 regarding Leases went into effect for

the 2022 reporting year, which resulted in an approximately \$37,000 restatement of 2021's net position. The management letter noting no significant deficiencies or material weaknesses. The Representation Letter will be signed once the audit is approved by the board. As a public authority, the Agency's financial statements are prepared based on Governmental Accounting Standards and include a Management's Discussion and Analysis section, which provides a condensed overview of the statements. The balance sheets show total assets of \$31.6M at December 31, 2022, a decrease of \$493,000 from 2021. Most of the Agency's assets are current, with cash being the largest portion at \$18.4M. This is consistent with 2021, and Ms. Profic noted of that cash balance, \$7.5M is unrestricted. The largest increase from year-to-year was restricted cash under noncurrent assets. The \$654,000 increase reflects the contribution of PILOT payments into PIF funds, with ECIDA acting as the administrator of these funds. This increase in restricted cash directly correlates to the increase in funds held on behalf of others, which at \$9.3M is an increase of \$600,000 from 2021. These funds are held in restricted cash accounts. New on the balance sheet this year are Leases Receivable (under Noncurrent Assets), Lease Payable (under current & noncurrent liabilities) and Deferred Inflows of Resources Related to Leases, which are the result of implementing GASB Statement No. 87. There are three leases deemed material that ECIDA must recognize on the balance sheet. The lease for our office space at 95 Perry is recorded as a right to use asset (capital asset) and lease payable, and is amortized over the life of the lease. Our current lease expires in September 2023, so the entire portion is shown in current liabilities as of 12/31/22. The leases in which ECIDA is the lessor which are 143 Genesee Street and the portion of office space subleased to BUDC are recorded as Leases Receivable and deferred inflows of resources at their present value when entered into. The receivable and deferred inflow is reduced with each payment collected.

The Agency's net position is allocated into three buckets: net investment in capital assets, restricted, and unrestricted. Total net position decreased from \$20.9M in 2021 to \$20.6M in 2022, with decreases in each category. The statements of revenues, expenses and changes in net position (income statements) shows how we arrived at the decrease in net position. Operating revenues for 2022 were \$2.6M, due mostly to \$1.6M of administrative fee revenue. Operating expenses were up slightly to \$2.9M in 2022. Salaries and benefits increased \$94,000 (5%) due to approved salary increases and performance incentives paid in 2022. General & administrative expenses increased \$123,000 (22%) due to a project fee refunded during the year. Before special project grants, there was an operating loss of \$386,000. Special project grants in the middle of the page netted to \$70,000 of revenue in 2022, and non-operating revenue of \$88,000 reduced the decrease in net position to \$228,000. The cash flows statements detail the changes in cash from year to year. The remainder of the financials are the notes, and also supplementary information. The balance sheet and income statement are broken out between the general and UDAG funds. These drafts were reviewed and discussed in detail with the Finance & Audit Committee on March 16, and they recommended approval to the Board.

Ms. Gallagher moved and Mr. Poloncarz seconded to approve of the 2022 Audited Financial Statements. Ms. McDuffie then called for the vote and the 2022 Audited Financial Statements were unanimously approved.

Investment Report. Ms. Profic advised this report is required by Public Authorities Law and includes ECIDA's investment guidelines, the results of our annual audit of these guidelines,

and detail of investment income and fees for the year. The majority of cash accounts are restricted for the purposes listed in the rightmost column. There was \$89,000 of interest income earned on these accounts during 2022, and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 16th meeting and recommended to the Board for approval.

Mr. Nellis moved and Mr. Lipsitz seconded to approve of the 2022 Investment Report. Ms. McDuffie then called for the vote and the 2022 Investment Report was unanimously approved.

Governance Committee Update: Ms. McDuffie provided the Committee with an update on the most recent Governance Committee meeting which carried out its several meetings _____ to review ECIDA 2022 Performance and establishing amended 2023 Performance metrics, reviewed and readoption of ECIDA policies and the Governance Committee performance evaluation.

Ms. McDuffie then reviewed the Governance Committee self-evaluation and the ECIDA Board Member evaluation of board performance. Ms. McDuffie encouraged any member to provide their feedback or suggestions to improve the board's performance to her. Ms. McDuffie directed that the report be received and filed.

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

Approval of Board Certification of Loan Administration Plan-CARES ACT RLF. Mr. Manhard reviewed the CARES ACT Resolution related to the CARES Act revolving loan fund, requiring ECIDA to certify that the fund was operating and is operating consistent with the loan policy. Mr. Poloncarz moved and Ms. Abbott seconded to approve of the CARES ACT Resolution. Ms. McDuffie then called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "RLF BOARD" OR "AGENCY") IN CONNECTION WITH AN ANNUAL CERTIFICATION TO BE MADE UNDER THE STANDARD TERMS AND CONDITIONS AND ADMINISTRATIVE MANUAL REQUIREMENTS OF THE FEDERAL ECONOMIC DEVELOPMENT ADMINISTRATION

PFRAP Grant Approval. Mr. Cappellino reviewed the PFRAP Grant Award of \$2,021,740 to make railroad track improvements. Ms. Benczkowski moved and Mr. Poloncarz seconded to approve of the PFRAP Grant. Ms. McDuffie then 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 NEGOTIATE AND ENTER INTO A GRANT AGREEMENT BETWEEN THE AGENCY AND THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION (THE "DOT") RELATIVE TO CERTAIN RAILROAD INFRASTRUCTURE IMPROVEMENTS, CONSTRUCTION

AND MAINTENANCE ACTIVITIES TO BE UNDERTAKEN AT
THE DEPEW LANCASTER AND WESTERN RAILWAY IN AN
AMOUNT OF \$2,021,740

Policy Committee Update. Mr. Lipsitz provided a report and confirmed that the Policy Committee unanimously approved the Moog project for recommendation to the Board for approval.

INDUCEMENT RESOLUTION

Moog, Inc., 400 Jamison Road, Elma, New York. Ms. O’Keefe reviewed this proposed sales tax exemption and real property tax benefit project which consists of the construction of a new 150,000 sq. ft. standalone building to expand the Elma campus manufacturing footprint. The new facility will be dedicated to machining capabilities in support of Moog’s current Aircraft Group which is primarily military aerospace content. This project includes a significant investment in new manufacturing equipment that will help improve the Aircraft Group’s operational performance by reducing lead times and improving product quality.

Mr. Cappellino addressed the members about the ECIDA’s long history with Moog dating back 50 years to 1973 and just for some perspective, Mr. Cappellino stated he was in elementary school in 1973. In those days the Agency provided Industrial Revenue Bonds which were similar to mortgages that helped to lower the cost of investing in capital improvements at the facility.

And invest they did, from their founding in 1951 to today Moog has a proven track record of investment and job creation in our community. Investing hundreds of millions of dollars in our community and creating thousands of jobs, with an annual payroll of hundreds of millions of dollars.

For some recent perspective in 2006 the ECIDA approved incentives for a \$6.7 million expansion at their Elma Facility, they reported 1937 jobs, today they have over 3400 at their Elma Facility. Just in the last 5 years they have created 1,000 new jobs in New York state.

Our most recent project approved in 2017, an investment of \$44.3 million in a new building for the aircraft division, the job goal was 330 jobs, presently they employ 622 people at the facility.

Moog is a global leader in the aerospace, aviation and advanced manufacturing technology applications, headquartered right here in Elma, New York. Research shows that companies that are headquartered in your communities are more likely to invest, grow and create jobs locally. Just this week there was a story in the Buffalo News about a local company with out of town ownership, that is closing and taking 66 jobs out of state.

The Regional Economic Development Council plan identifies, advanced manufacturing companies as one of the regional targeted industry priorities. Advanced manufacturing companies have some of the highest economic spinoff, multiplier benefits, and support local universities by providing opportunities locally for graduates in the STEM field.

Other states and communities do reach out to companies located in our community with incentive offers to relocate or make investments in their communities. Our incentives do help to level the playing field and encourage companies to invest and grow jobs here as Moog has a proven track record of doing.

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 actually made with respect to the Project at the time of Project completion equals or exceeds \$65,237,500 (which represents the product of 85% multiplied by \$76,750,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that, within two years of Project completion, there are at least 180 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. 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.

Ms. Abbott commented on Moog's commitment to the use of local labor and their outstanding apprenticeship and internship programs.

Mr. Poloncarz commented that he recently met with Moog at their facility and noted that Moog has strong DEI commitment. Mr. Poloncarz noted this project could lead to adding two additional phases of new investment, which will not be possible without this first phase being undertaken. Mr. Poloncarz expressed support for the project and moved to approve the project.

Mr. Emminger and Mr. Johnson stated their support for the project.

Ms. Gallagher commented on the significant amount of investment being made and commented on Moog's outstanding civic leadership in our county.

Ms. McDuffie stated her support for the project, confirming the quality of opportunities and employment positions and net wealth creation related to Moog's products being sold outside of New York.

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 MOOG 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, AND (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

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.

2022 Mission Statement, Performance Measures and Results. Ms. O'Keefe reviewed the 2022 Mission Statement and related results. Mr. Lipsitz moved and Mr. Nellis seconded to approve of the 2022 Mission Statement and results. Ms. McDuffie called for the vote and the 2022 Mission Statement and results were unanimously approved.

2023 Mission Statement and Performance Measures. Ms. O'Keefe reviewed the 2023 Mission Statement and performance measures. Mr. Lipsitz moved and Ms. Gallagher seconded to approve of the 2023 Mission Statement and performance measures. Ms. McDuffie called for the vote and the 2023 Mission Statement and Performance Measures were unanimously approved.

2022 Public Authorities Report. Ms. Profic reviewed 2022 Public Authorities Annual Report. As a Public Authority of the State of New York, ECIDA and its affiliates are required to

comply with the NYS Public Authorities Law and submit a comprehensive annual report including information on several topics. Several of the items are covered by other documents, like the operations and accomplishments and financial statements, which are noted throughout the document. The third item, Mission Statement & Performance Measurements, is updated each year with actual results (and was just reviewed). Many of the items included are standard from year to year and are also approved or re-adopted by the Board annually. Section 13 was updated for 2022 to update the work underway at ILDC-owned properties, the UTEP and CEDS updates during the year, and RDC's lending activity. Attachments include outstanding bond information, salary & benefit information, projects undertaken by each entity, our Property Report, Board Member attendance, and the Procurement Reports for each entity. Once approved, Mr. Cappellino and I will sign the certification and the report will be posted to our website. This report was reviewed by the Governance Committee at their March 13th meeting and the Finance & Audit Committee at their March 16th meeting and has been recommended to the Board for approval.

Mr. Nellis moved and Mr. Johnson seconded to approve of the 2022 Public Authorities Report. Ms. McDuffie called for the vote and the 2022 Public Authorities Report was unanimously approved.

Airborne Infectious Disease Policy. Ms. Profic stated this is a required policy under the NYS HERO Act. The Agency chose to use the DOL's template to establish the plan, which includes overall responsibilities, exposure controls, housekeeping, infection response, and the like. While the exposure prevention plan is not currently in effect, this is a policy the Agency must have in place should it be necessary to implement the plan in the future. It will be reviewed at least annually to ensure that it is kept up to date with applicable guidance. This policy was reviewed by the Governance Committee on March 13th and recommended to the Board for approval.

Ms. Abbott moved and Ms. Johnson seconded to approve of the Airborne Infectious Disease Policy. Ms. McDuffie called for the vote and the Airborne Infectious Disease Policy was unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Ms. Profic noted that Items 5-22 on the agenda were reviewed by counsel, the Board Committees recommended no changes, and as such, the staff recommends that the policies and charters items numbered 5-22 be approved without any changes. Mr. Lipsitz moved and Ms. Gallagher seconded to approve of the various policies and charters as itemized below. Ms. McDuffie called for the vote and the following policies and charters were then unanimously approved:

- Board Member Compensation, Reimbursement & Attendance Policy
- Code of Ethics & Conflict of Interest Policy
- Corporate Credit Card Policy
- Defense & Indemnification Policy
- Employee Compensation Program
- Fee Structure Policy
- Finance & Audit Committee Charter

- Governance Committee Charter
- Investment & Deposit Policy
- Procurement Policy
- Professional Services RFP Process and Policy
- Property Disposition Guidelines
- Real Property Acquisition Policy
- Sexual Harassment Policy
- Statement of Duties & Responsibilities of the Board of Directors
- Statement of the Competencies & Personal Attributes Required by Board Members
- Travel, Conferences, Meals & Entertainment Policy
- Whistleblower Policy and Procedures

MANAGEMENT TEAM REPORTS

Mr. Cappellino reviewed the ECIDA 2022 Annual Report.

Mr. Poloncarz commented that 8 Dona Street building is now fully leased and thanked ECIDA for its excellent work.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:59 p.m.

Dated: March 22, 2023



Elizabeth A. O'Keefe, Secretary