

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

DATE AND PLACE: June 28, 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. Bryon W. Brown, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Denise McCowan, Brenda W. McDuffie, Hon. Glenn R. Nellis and Hon. Mark C. Poloncarz

EXCUSED: Rev. Mark E. Blue, James Doherty, Hon. Joseph Emminger, Dottie Gallagher, Michael P. Hughes, Hon. Darius G. Pridgen, Kenneth A. Schoetz and Paul Vukelic

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations/Secretary; Mollie Profic, Chief Financial Officer; Atiqah Abidi, Accounting Manager; Gerald Manhard, Chief Lending Officer; Grant Lesswing, Director of Business Development; Andrew Federick, Property and 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: Alex Carducci on behalf of the City of Buffalo; Zachary Evans on behalf of Erie County; Josh Veronica on behalf of Buffalo Niagara Partnership; Quinn Bushen on behalf of Empire State Development; Dale Shoemaker on behalf of Investigative Post; Jonathan Epstein on behalf of the Buffalo News; Jacob Tierney on behalf of Business First; Rebecca Brady and William Brady on behalf of Top Seedz; David Chiazza on behalf of Iskalo Development; Chris Ahlers, Lisa Polizzi, Keith Sernick, Jill Szpylman on behalf of Stark Tech; and Greg Setter, Michael Driscoll, Randy Bernick on behalf of Rosina Roods

There being a quorum present at 12:09 p.m., the meeting of the members of the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), was called to order by the Chair, Ms. McDuffie.

MINUTES

The minutes of the May 31, 2023, meeting of the members were presented. Mr. Lipsitz moved, and Mr. Nellis seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic presented the May financial reports. The balance sheet shows that the IDA finished the month with total assets of \$33.2M and net assets of \$20.8M. Assets and liabilities all remained relative flat from April to May. The monthly income statement shows a net loss of \$59,000 for May. Operating revenue of \$148,000 was below our monthly budget by \$75,000, due mainly to timing of administrative fees received during the month. Operating expenses of \$234,000 were under our monthly budget by \$5,000. Under Special Project Grants, \$50,000 of railroad fund revenue was received in May for an easement and depreciation/amortization of \$22,000. The year-to-date Income Statement shows revenues of \$1.5M, including administrative fee revenue of \$1.05M. We are at about 58% of our annual administrative fee budget through May. Expenses of \$1.1M are \$66,000 below budget. Special project grant revenue nets to \$51,000. Net income before strategic initiatives and depreciation was \$467,000. After strategic initiatives of \$151,000 and depreciation/amortization of \$111,000, there is currently net income of \$204,000 for the year. Ms. McDuffie directed that the report be received and filed.

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

Policy Committee Update. Mr. Lipsitz updated members and confirmed the Rosina and Stark projects were reviewed by the committee and the committee resolved to send these two projects to the Board with unanimous recommendations for Board approval. The Iskalo project was vigorously discussed and the committee requested that the company amend its application to reflect the current number of retained and created employees, and Mr. Lipsitz also noted the Policy Committee made no determination about the project, sending the project to the Board with no recommendation. Ms. McDuffie directed that the report be received and filed.

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

INDUCEMENT RESOLUTION

Rosina Food Products Inc., 75 Empire and 130 Empire Drive, West Seneca, New York. Ms. O'Keefe reviewed this proposed sales and use tax, mortgage recording tax and real property tax abatement benefits project involving the expansion of the pasta manufacturing plant by 12,000 sq. ft. to accommodate a new ravioli production line, the renovation of existing office space to create more welfare areas for manufacturing associates, and the renovation of a vacant building at 130 Empire Drive into an office building to accommodate pasta facility office associates displaced as a result of the expansion and improvements of the pasta manufacturing facility, consolidation of office space and to allow for future growth of administrative staff. 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, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment made with respect to the Project at the time of Project completion equals or exceeds \$13,600,000 (which represents the product of 85% multiplied by \$16,000,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 275 existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the “Baseline FTE”); and
 - the number of current FTE employees in the then current year at the Facility; and
 - that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 287 FTE employees [representing the sum of (x) 275 Baseline FTE and (y) 12 FTE employees, being the product of 85% multiplied by 15 (being the 15 new FTE employee positions proposed to be created by the Company as stated in its Application)]. 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. Poloncarz confirmed Rosina has met all its prior ECIDA project commitments.

Ms. McDuffie asked the company to describe the proposed project to the board. Mr. Setter spoke on behalf of the company about the project.

Mr. Brown thanked Rosina for utilizing MWBE businesses and confirmed Rosina will be able to use MWBE contractors.

Mr. Poloncarz then moved, and Mr. Brown seconded to approve the Project. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF ROSINA FOOD PRODUCTS, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT, AND (C) 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

Stark Tech, 91 Sawyer Avenue, Tonawanda, New York. Ms. O'Keefe reviewed this proposed sales and use tax and mortgage recording tax benefits project involving the major renovation of an existing 125,000 sq. ft. facility that contains high bay ceilings and high-capacity cranes. This new production facility will allow Stark to build larger and more complex equipment at a much higher capacity rate to serve the growing Renewable Natural Gas market demand.

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 \$13,812,500 (which represents the product of 85% multiplied by \$16,250,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 50 existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the “Baseline FTE”); and
 - the number of current FTE employees in the then current year at the Facility; and
 - that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 156 FTE employees [representing the sum of (x) 50 Baseline FTE and (y) 106 FTE employees, being the product of 85% multiplied by 125 (being the 125 new FTE employee positions proposed to be created by the Company as stated in its Application)]. 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. Ahlers spoke on behalf of the company and described the proposed project.

Mr. Poloncarz spoke in favor of the project, noting the significant number of jobs to be created, bringing new total annual salaries of almost \$13,000,000 a year, and comparing that figure to the Agency's contemplated approximately \$500,000 of sales tax exemption and mortgage tax exemption benefits.

Mr. Lipsitz spoke in favor of the project.

Mr. Poloncarz then moved, and Mr. Lipsitz seconded to approve the Project. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF STARK REAL ESTATE HOLDINGS, LLC, 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 MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; 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

Iskalo 101 Oak LLC, 101 Oak Street, Buffalo, New York. Ms. O'Keefe reviewed this proposed sales and use tax benefits project involving the renovation of the existing 67,385 sq. ft. facility for a new food manufacturing-based tenant which includes constructing a vault to house new transformers and new switchgear inside the building, new electric service panels and metering for each tenant space, installation of water, gas and sanitary lines to serve tenant production areas, demolition of a low bay section of the building and the addition of windows on the building exterior to provide natural light to office areas. The proposed tenant is Top Seedz which is a woman owned business and producer of seed-based crackers and other related seed-based products. 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 made with respect to the Project at the time of Project completion equals or exceeds \$2,975,000 (which represents the

product of 85% multiplied by \$3,500,000, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment – that there are at least 42 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 Employment”) and that within two (2) years of Project completion, the Company has maintained the Baseline FTE Employment at the Facility. 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. Chiazza spoke on behalf of the company and described the proposed project.

Mrs. Brady then spoke on behalf of the tenant, Top Seedz, to describe the project and its operations within the facility, described its history as a start-up company including being a 43North grant award winner, its projected growth and its use of and reliance upon immigrants who currently occupy about 75% of the company's workforce.

Mr. Brown then moved to approve the Project.

Mr. Poloncarz queried as to the timing of the building's occupancy. Mr. Poloncarz noted that the Buffalo and Erie County Regional Development Corporation has recently already loaned \$750,000 to Top Seedz, and questioned the company's requests for additional incentives for a facility that it is already committed to occupy?

Mr. Chiazza confirmed there are unexpected costs associated with fitting out the facility for the food making operations.

Mr. Poloncarz stated the Agency has a rule that if a project has confirmed that it is moving forward without IDA benefits, then there is no need to provide an incentive. He also expressed concern for that standard, if this is approved, as it would set a bad precedent. Mr. Poloncarz further confirmed that there are plenty of projects that are proposed to Agency staff for initial review that are not ultimately presented to the board for consideration because of this same issue.

Mr. Lipsitz stated he cannot recall the Agency ever approving a project when an applicant stated it would move forward even without the incentives and the Policy Committee believed the issues should be fully discussed by the Board.

Mr. Kulpa queried as to when the \$750,000 RDC loan closed? Mr. Cappellino advised it closed in February of 2023.

Mr. Kulpa further queried if the company knew it needed the electric upgrades at that time?

Mr. Cappellino advised the issue was not raised at the time of the RDC loan approval. Mr. Kulpa discussed how projects typically evolve over time, so that it is not fair to give a loan to a company to buy equipment, and when it is later discovered that there is a need to improve the electric supply to operate such equipment, to then deny additional assistance for the power needs. Mr. Kulpa concluded by stating that projects evolve and it is not unusual for additional needs to arise.

Mr. Brady then spoke on behalf of Top Seedz, and confirmed that its operations are expanding and its power usage is growing beyond its original estimates.

Mr. Brown noted that Mr. Poloncarz and Mr. Kulpa are raising good issues and Top Seedz is stating it does need the incentives to move forward.

Mrs. Brady stated the company needs incentives to grow and grow faster.

Ms. McDuffie stated benefits are being claimed by the landlord.

Mr. Kulpa confirmed that the lease structure typically requires that all costs and benefits would pass through to the tenant.

Mr. Poloncarz queried if this project is not approved, as to whether it would still move forward. If the answer is yes, Mr. Poloncarz stated that the project has then failed the but-for test.

Mr. Chiazza claimed it is near impossible for Top Seedz to stop, so its compelled to proceed and this will be a hardship to Top Seedz.

Ms. McDuffie asked Mr. Murray to read the New York General Municipal Law Section provisions governing this “but-for” analysis.

Mr. Murray cited to Section 859-a(4)(d) of the New York General Municipal Law stating that the law requires the Agency’s application for assistance to contain “a statement that there is a likelihood that the project would not be undertaken but for the financial assistance provided by the agency or, if the project could be undertaken without financial assistance provided by the agency, a statement indicating why the project should be undertaken by the agency”.

Mr. Murray confirmed that this is just one piece of information, in addition to many other statutorily required pieces of information, that the board is required to consider in its determination

to provide financial assistance. Mr. Brown stated, and Mr. Murray confirmed, that this statute gives discretion to the Board.

Mr. Chiazza stated the company has provided an honest response to this question as presented on its application.

Mr. Kulpa then seconded to approve the Project. He also asked Mr. Murray if the company has met the legal standard as provided for within the statute. Mr. Murray stated this is not a legal standard, it is merely a confirmation/statement the Board must and can consider in its deliberation process as it considers providing financial assistance.

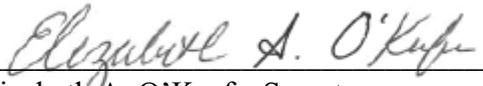
Ms. McDuffie then called for the vote and the motion failed by a vote of 8 to 3 with Mr. Lipsitz, Mr. Poloncarz, and Ms. Abbott voting against the motion, as the minimum number of 10 affirmatives votes was not obtained.

MANAGEMENT TEAM REPORTS

Mr. Cappellino provided a general report to the board members.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 1:14 p.m.

Dated: June 28, 2023


Elizabeth A. O'Keefe, Secretary