



**Erie County Industrial Development Agency
Annual Meeting of the Membership
May 29, 2024
At 12:00 p.m.**

**ECIDA Offices
95 Perry Street, 4th Floor Conference Room
Buffalo, New York 14203**

1.0 Call to Order

1.1 Call to Order Meeting of the Membership

2.0 Approval of Minutes:

2.1 Approval of Minutes of the March 27, 2024 Meeting of the Membership (Action Item) (Pages 2-9)

3.0 Reports / Action Items / Information Items:

3.1 Financial Report (Informational) (Pages 10-13)

3.2 Re-Adoption of ECIDA By-Laws (Action Item) (Pages 14-23)

3.3 2024 Tax Incentive Induced/Closing Schedule (Informational) (Pages 24-25)

3.4 Nominating Committee Update

a) Election of Officers/Committee Appointments (Action Item) (Pages 26-28)

3.5 Erie County Grant Agreement - DL&W Railroad Bridge Capital Project (Action Item) (Pages 29-32)

3.6 Policy Committee Update (Informational) (Pages 33-34)

4.0 Inducement Resolutions:

**ECIDA
Incentives**

**Private
Investment**

Municipality

4.1 (None)

5.0 Special Resolution:

5.1 Skycatcher ECIDA Assignment Consent (Action Item) (Pages 35-40)

6.0 Management Team Reports:

6.1

7.0 Adjournment- Next Meeting - Meeting June 26, 2024

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

DATE AND PLACE: March 27, 2024, at the Erie County Industrial Development Agency, 95 Perry Street, 4th Floor Conference Room, Buffalo, New York 14203

PRESENT: Denise Abbott, Rev. Mark Blue, Hon. Joseph Emminger, Dottie Gallagher, Michael P. Hughes, Hon. Howard Johnson, Tyra Johnson, Hon. Brian Kulpa, Richard Lipsitz, Jr., Denise McGowan, Brenda McDuffie, Hon. Glenn R. Nellis, Hon. Brian Nowak, Kenneth A. Schoetz and Paul Vukelic

EXCUSED: Hon. Bryon W. Brown, James Doherty, Hon. Mark Poloncarz and Hon. Christopher Scanlon

OTHERS PRESENT: John Cappellino, President & CEO; Beth O’Keefe, Vice President of Operations; Mollie Profic, Chief Financial Officer; Grant Lesswing, Director of Business Development; Gerald Manhard, Chief Lending Officer; Atiqa Abidi, Accounting Manager; Soma Hawramee, Compliance Portfolio Manager; Michelle Moore, Compliance Associate; Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/Assistant Secretary; Andrew Pawenski, Esq., Harris Beach PLLC and Robert G. Murray, Esq., General Counsel/Harris Beach PLLC

GUESTS: Zachary Evans and Daniel Castle on behalf of Erie County; Michael Szukala, Chair of the Finance & Audit Committee; Mark Romanowski, Enrico D’Abate on behalf of BPS Commissary and Paul Lavoie on behalf of SL Evans

There being a quorum present at 12:04 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 November 29, 2023, meeting of the members were presented. Mr. Nellis 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 ended the month with total assets of \$36.1M [includes unrestricted cash of \$6.9M available for Agency operations] and net assets of \$19.9M. The monthly income statement shows a net loss of \$227,000 for February. Operating revenue of \$58,000 was below the monthly budget by \$150,000, due mainly to a lack of administrative fees received during the month. Operating expenses were \$237,000 were \$18,000 under budget, with most of that variance in salaries and benefits. Strategic initiatives included payments to ILDC for special district taxes on ILDC-owned properties. The year-to-date Income Statement shows operational revenues of \$232,000, including administrative fee revenue of \$112,000. Operating expenses of \$479,000 are \$32,000 below budget. Net special project grant expenses are \$26,000, and strategic initiatives year to date total \$80,000. After net non-operating revenue of \$69,000, there is currently a net loss of \$283,000 for the year. Ms. McDuffie directed that the report be received and filed.

Finance & Audit Committee Update. Ms. Profic introduced Michael Szukala, Chair of the Finance & Audit Committee. Ms. Profic provided a summary of the joint Finance & Audit Committee meeting held on March 21st. Our auditors from Lumsden McCormick presented draft 2023 audited financial statements. 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 #2-8 for approval or re-adoption: 2023 Public Authorities Report, 2023 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.

Ms. Profic reviewed the Committee's Self-Evaluation. She stated that 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 additional notes were provided. In 2023, the Committee officially convened a total of 5 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. She also reviewed 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. The most significant estimates for ILDC are the depreciation of capital assets and the allowance for uncollectible loans. She mentioned, an unmodified opinion was issued on the statements. The management letter noting no significant deficiencies or material weaknesses. The Representation Letter will be signed once the audit is approved by the board. Ms. Profic reviewed the draft financial statements. As a component unit of Erie County, the ILDC'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 \$36.2M at December 31, 2023, an increase of \$4.6M from 2022. Most of the Agency's assets are current, with cash being the largest portion at \$13.7M. This is a decrease of \$4.7M from 2022, which if you look down one line directly corresponds to a \$4.3M increase in receivables from affiliates. This is due to UDAG funds that have been "lent" to ILDC, which will be repaid once the ILDC obtains the applicable grant reimbursements. Ms. Profic also noted that the cash balance, \$7.5M is unrestricted. Aside from cash and affiliate receivables, Grants receivable also increased \$4.2M due to three new grants awarded in 2023 totaling \$4.4M (2 PFRAPs of \$3.8M and \$600K rail relocation grant). The new Grants also affect the unearned revenue line under Current Liabilities. Noncurrent Assets increased \$759,000 from 2022. The increase in restricted cash directly correlates to the increase in funds held on behalf of others under Noncurrent Liabilities. Moving to Liabilities, the largest reason for the increase in Current Liabilities is the Unearned Revenue as previously mentioned. Funds held on behalf of others at \$9.5M is an increase of about \$200,000 from 2022. Details of these funds which are held in restricted cash accounts.

The Agency's net position is allocated into three buckets: net investment in capital assets, restricted, and unrestricted. Total net position decreased from \$20.6M in 2022 to \$20.1M in 2023, 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. 2023 Operating revenues were \$2.5M, due mostly to \$1.75M of administrative fee revenue. Operating expenses were up slightly to \$3.1M in 2023. Salaries and benefits increased less than 2% overall as approved salary increases and a new employee hired in 2023 were offset by decreases in certain benefit costs. General and administrative expenses increased \$107,000 (26%) due to project fees of \$175,000 refunded during the year. Before special project grants, there was an operating loss of \$565,000. Special project grants in the middle of the page netted to \$337,000 of expense in 2023, and nonoperating revenue of \$404,000 reduced the decrease in net position to \$498,000. 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 21, and they recommended approval to the Board. Mr. Lipsitz moved and Mr. Blue seconded to approve of the audited financial statements. Ms. McDuffie called for the vote and the audited financial statements were unanimously approved.

Ms. McDuffie commended the staff for their excellent work as reflected in this clean independent audit report.

2023 Investment Report. Ms. Profic reviewed this report which is required by Public Authorities Law and includes, amongst other items, the results of the annual audit of the investment guidelines, and detail of investment income and fees for the year. \$591,000 of investment income was earned on the accounts during 2023, and no fees were paid. This report was reviewed by the Finance & Audit Committee at their March 21 meeting and recommended to the Board for approval.

Mr. Nellis moved and Ms. Gallagher seconded to approve of the 2023 Investment Report. Ms. McDuffie then called for the vote and the 2023 Investment Report was unanimously approved.

Governance Committee Update: Ms. O’Keefe provided the Committee with an update and reviewed the Committee’s self-evaluations. Ms. McDuffie also reviewed the summary results of the confidential Board performance evaluation. Ms. McDuffie directed that the report be received and filed.

2024 Tax Incentives Induced/Closing Schedule. Mr. Manhard provided this report to Committee 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 this resolution with Committee members.

Ms. Gallagher moved and Mr. Emminger seconded to approve of Board Certification of Loan Administration Plan-CARES Act RLF as proposed. 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

Buffalo Southern Railroad Capital Improvements Grant. Mr. Cappellino described this contemplated railroad improvement project related to a grant from Erie County to undertake the improvements as so described.

Mr. Johnson moved and Ms. Abbott seconded to approve of the Buffalo Southern Railroad Capital Improvements Grant as proposed. 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 NEGOTIATION AND EXECUTION OF A GRANT AGREEMENT BETWEEN THE COUNTY OF ERIE AND THE AGENCY RELATIVE TO CERTAIN RAILROAD REPAIR AND MAINTENANCE ACTIVITIES TO BE UNDERTAKEN AT THE BUFFALO SOUTHERN RAILROAD (THE “RAILWAY FACILITIES”) IN AN AMOUNT OF \$400,000

Policy Committee Update: Mr. Cappellino provided the Committee with an update on this month’s Policy Committee meeting. Ms. McDuffie directed that the report be received and filed.

INDUCEMENT RESOLUTION

SL Evans / Solar Liberty Energy Systems, Inc., 7612 & 7690 Southwestern Blvd., Evans, New York. Ms. O’Keefe reviewed this proposed sales and use tax and real property tax abatement benefits project consisting of the ground mounted installation of 2 solar arrays producing a

combined 8.25 MW of AC power that will be located on approximately 33 acres of undeveloped land.

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

The Project's cost benefit ratio was reviewed, 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 must covenant and agree 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, 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 \$17,653,650 (which represents the product of 85% multiplied by \$20,769,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Local Labor Commitment – except as specifically provided for herein, that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iii) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (iv) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Mr. Blue moved and Mr. Johnson seconded to approve the Project as proposed. 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 SL EVANS, 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 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

AMENDATORY INDUCEMENT RESOLUTION

1016 East Delavan, LLC / BPS Commissary Kitchen, 1016-1044 East Delavan Avenue, Buffalo, New York. Ms. O'Keefe described the proposed amendment to this already approved project. General discussion ensued, including a discussion regarding the amended increases in sales tax and mortgage recording tax exemption benefits, and the elimination of the real property tax abatement benefit.

Ms. McDuffie asked if all approvals have been obtained. Mr. Romanowski spoke on behalf of the Company and confirmed all construction permits have been obtained, however, the Company is waiting for City of Buffalo Common Council approval to take title to the property which is anticipated to be obtained within the next three months.

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.

Mr. Johnson moved and Mr. Blue seconded to approve the amendment. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

AMENDATORY RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF (i) A REVISED SALES TAX EXEMPTION BENEFIT AND A REVISED MORTGAGE RECORDING TAX EXEMPTION BENEFIT, (ii) THE ELIMINATION OF A REAL PROPERTY TAX ABATEMENT BENEFIT, AND (iii) CERTAIN REVISED MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE 1016 EAST DELAVAN, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

SPECIAL RESOLUTION

Calspan Corporation / TransDigm, Inc., 4455 Genesee Street and 40 Sonwil Drive, Cheektowaga, New York. Mr. Cappellino described this consent request from TransDigm company which has acquired all of the outstanding equity interest of certain membership interests related to Calspan Corporation thus requiring the Agency's consent of same.

Ms. Gallagher moved and Mr. Blue seconded to approve the Project as proposed. Ms. McDuffie then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY CONSENTING TO THE MERGER OF CALSPAN CORPORATION INTO CALSPAN, LLC (THE "MERGER") AS REQUIRED PURSUANT TO CERTAIN PROJECT AGREEMENTS BY AND BETWEEN CALSPAN CORPORATION AND THE AGENCY RELATED TO CERTAIN FACILITIES RECEIVING FINANCIAL ASSISTANCE FROM THE AGENCY

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS.

2023 Mission Statement, Performance Measures and Results; 2024 Mission Statement and Performance Measures and 2023 Public Authorities Report. Ms. O’Keefe reviewed the 2023 Mission Statement, the 2024 Mission Statement and performance measures and the 2023 Public Authorities Annual Report.

Mr. Johnson moved and Mr. Nellis seconded to approve of the 2023 Mission Statement, Performance Measures and Results and 2024 Mission Statement and Performance Measures. Ms. McDuffie called for the vote and the 2023 Mission Statement, Performance Measures and Results and 2024 Mission Statement and Performance Measures were unanimously approved.

2023 Public Authorities Report. Ms. Profic stated 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 and was updated for 2023 to update the work underway at ILDC-owned properties, the RDC’s lending activity, and the approval of the Economic Inclusion Policy. 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, the certification will be signed by Mr. Cappellino and Ms. Profic and the report will be posted to the website. This report was reviewed by the Governance Committee at their meeting on March 20th and the Finance & Audit Committee at their meeting on March 21st and has been recommended to the Board for approval.

Mr. Emminger moved and Mr. Schoetz seconded to approve of the 2023 Public Authorities Report. Ms. McDuffie called for the vote and the 2023 Public Authorities Report was unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Ms. McDuffie noted that Items 4-23 on the agenda were reviewed by counsel, the appropriate Board Committees recommended no changes, and as such, the staff recommends that

the policies and charters items numbered 4-23 within the agenda, and as identified below, be approved without any changes. Ms. Gallagher moved and Mr. Blue seconded to approve of the various polices and charters as itemized below. Ms. McDuffie called for the vote and the following policies and charters were then unanimously approved:

- Airborne Infectious Disease Policy
- Board Member Compensation, Reimbursement & Attendance Policy
- Code of Ethics & Conflict of Interest Policy
- Defense & Indemnification Policy
- Corporate Credit Card Policy
- ECIDA 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
- Video Conferencing Policy
- Whistleblower Policy and Procedures

MANAGEMENT TEAM REPORT

Mr. Cappellino noted the ECIDA 2023 Annual Report is contained in the board package and thanked R. McPherson for preparing the report.

Mr. Cappellino noted annual Financial Disclosure Statements must be submitted by mid-May.

There being no further business to discuss, Ms. McDuffie adjourned the meeting of the Agency at 12:57 p.m.

Dated: March 27, 2024

Elizabeth A. O'Keefe, Secretary

Erie County Industrial Development Agency
Financial Statements
As of April 30, 2024

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")

Balance Sheet

April 30, 2024

	April 2024	March 2024	December 2023
ASSETS:			
Cash *	\$ 6,942,858	\$ 7,200,979	\$ 7,476,867
Restricted Cash & Investments *	17,111,511	15,385,887	16,004,625
Due from Affiliates	3,803,472	5,505,302	4,819,702
Due from Buffalo Urban Development Corp.	47,363	39,986	125,210
Other Receivables	187,863	152,979	88,321
Total Current Assets	<u>28,093,067</u>	<u>28,285,134</u>	<u>28,514,725</u>
Grants Receivable	4,858,276	4,869,218	4,869,218
Lease Receivable	754,178	771,953	824,838
Venture Capital Investments, net of reserves	506,886	506,886	506,886
Capital Assets	1,583,929	1,606,037	1,506,504
Total Long-Term Assets	<u>7,703,270</u>	<u>7,754,094</u>	<u>7,707,447</u>
TOTAL ASSETS	<u><u>\$ 35,796,337</u></u>	<u><u>\$ 36,039,228</u></u>	<u><u>\$ 36,222,172</u></u>
LIABILITIES & NET ASSETS			
Accounts Payable & Accrued Exp.	\$ 177,399	\$ 191,936	\$ 455,331
Lease Payable	476,955	488,197	521,642
Deferred Revenues	4,593,251	4,642,844	4,764,541
Funds Held on Behalf of Others	9,886,807	9,889,571	9,516,218
Total Liabilities	<u>15,134,412</u>	<u>15,212,548</u>	<u>15,257,732</u>
Deferred Inflows of Resources Related to Leases	754,178	771,953	824,838
Net Assets	19,907,747	20,054,727	20,139,601
TOTAL LIABILITIES & NET ASSETS	<u><u>\$ 35,796,337</u></u>	<u><u>\$ 36,039,228</u></u>	<u><u>\$ 36,222,172</u></u>

* Cash and restricted cash is invested in checking accounts at M&T Bank. The maximum FDIC insured amount = \$250,000 with the remainder of the cash balance collateralized with government obligations by the financial institution.

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")

Income Statement

Month of April 2024

	Actual vs. Budget		
	Actual	Budget	Variance
REVENUES:			
Administrative Fees	\$ 63,341	\$ 150,000	\$ (86,659)
Management Fees - Affiliates and Others	39,033	39,100	(67)
Rental Income	17,846	18,433	(588)
Other Income	-	250	(250)
Total Revenues	120,220	207,783	(87,563)
EXPENSES:			
Salaries & Benefits	\$ 201,344	\$ 188,823	\$ 12,521
General Office Expenses	31,371	24,008	7,362
Building Operating Costs	2,663	4,533	(1,870)
Professional Services	13,435	5,833	7,602
Public Hearings & Marketing	4,869	5,417	(547)
Travel, Mileage & Meeting Expenses	4,078	3,083	994
Depreciation and amortization	22,107	22,500	(393)
Other Expenses	1,002	1,396	(394)
Total Expenses	280,869	255,594	25,275
SPECIAL PROJECT GRANTS:			
Revenues	\$ 86,148	\$ 41,129	\$ 45,019
Expenses	(78,148)	(35,446)	(42,702)
	<u>8,000</u>	<u>5,683</u>	<u>2,317</u>
NET INCOME/(LOSS) BEFORE OTHER STRATEGIC INVESTMENTS :	<u>(152,649)</u>	<u>(42,127)</u>	<u>(110,522)</u>
OTHER STRATEGIC INVESTMENTS AND INITIATIVES:			
Bethlehem Steel Industrial Park Grant	(18,101)	(8,333)	(9,767)
Angola Ag Park Grant	(12,545)	(4,167)	(8,379)
	<u>(30,646)</u>	<u>(12,500)</u>	<u>(18,146)</u>
NET OPERATING INCOME/(LOSS) :	<u>(183,295)</u>	<u>(54,627)</u>	<u>(128,668)</u>
NON-OPERATING REVENUE:			
Interest Income	38,349	13,208	25,140
Interest Expense	(2,034)	(5,000)	2,966
	<u>36,315</u>	<u>8,208</u>	<u>28,106</u>
NET INCOME/(LOSS):	<u>\$ (146,980)</u>	<u>\$ (46,419)</u>	<u>\$ (100,562)</u>

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("ECIDA")

Income Statement

Year to Date: April 30, 2024

	Actual vs. Budget			Actual vs. Prior Year		
	Actual	Budget	Variance	Actual	Prior Year	Variance
REVENUES:						
Administrative Fees	\$ 582,231	\$ 600,000	\$ (17,769)	\$ 582,231	\$ 992,360	\$ (410,128)
Affiliate Management Fees	156,758	157,025	(267)	156,758	171,758	(15,000)
Rental Income	71,665	73,733	(2,068)	71,665	74,617	(2,952)
Other Income	10,723	13,250	(2,528)	10,723	14,014	(3,291)
Total Revenues	821,377	844,008	(22,631)	821,377	1,252,749	(431,371)
EXPENSES:						
Salaries & Benefits	737,751	817,267	(79,517)	737,751	670,034	67,717
General Office Expenses	107,788	96,033	11,755	107,788	103,623	4,165
Building Operating Costs	13,418	18,133	(4,715)	13,418	14,409	(991)
Professional Services	36,971	51,333	(14,362)	36,971	44,368	(7,396)
Public Hearings & Marketing	23,862	21,667	2,195	23,862	15,957	7,905
Travel, Mileage & Meeting Expenses	11,898	12,333	(435)	11,898	6,696	5,202
Depreciation and amortization	88,430	90,000	(1,570)	88,430	89,161	(731)
Other Expenses	5,024	5,583	(559)	5,024	16,835	(11,811)
Total Expenses	1,025,143	1,112,351	(87,208)	1,025,143	961,083	64,060
SPECIAL PROJECT GRANTS:						
Revenues	213,580	164,516	49,064	213,580	162,561	51,019
Expenses	(230,587)	(141,783)	(88,804)	(230,587)	(161,694)	(68,893)
	(17,007)	22,733	(39,741)	(17,007)	867	(17,875)
NET INCOME/(LOSS) BEFORE OTHER STRATEGIC INVESTMENTS:						
	\$ (220,773)	\$ (245,609)	\$ 24,836	\$ (220,773)	\$ 292,533	\$ (513,306)
OTHER STRATEGIC INVESTMENTS AND INITIATIVES:						
Bethlehem Steel Industrial Park Grant	\$ (98,064)	\$ (100,000)	\$ 1,936	\$ (98,064)	\$ (79,328)	\$ (18,736)
Angola Ag Park Grant	(12,545)	(50,000)	37,455	(12,545)	(43,001)	30,456
Bethlehem Steel Industrial Park Grant Reimb	-	300,000	(300,000)	-	-	-
Buffalo Urban Development Corporation	-	(100,000)	100,000	-	-	-
Other Strategic Initiatives	(40,525)	(75,000)	34,475	(40,525)	(28,975)	(11,550)
	(151,134)	(25,000)	(126,134)	(151,134)	(151,304)	170
NET OPERATING INCOME/(LOSS):	(371,907)	(270,609)	(101,298)	(371,907)	141,229	(513,136)
NON-OPERATING REVENUE:						
Interest Income	148,468	52,833	95,635	148,468	124,191	24,277
Interest Expense	(8,416)	(5,000)	(3,416)	(8,416)	(2,804)	(5,612)
	140,052	47,833	92,219	140,052	121,387	18,666
NET INCOME/(LOSS):	\$ (231,855)	\$ (222,776)	\$ (9,079)	\$ (231,855)	\$ 262,616	\$ (494,471)

BY-LAWS
of the
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ARTICLE I

THE AGENCY

Section 1. Name. The name of the Agency shall be "Erie County Industrial Development Agency".

Section 2. Seal of Agency. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. Office of the Agency. The office of the Agency shall be at 95 Perry Street, Suite 403, Buffalo, New York 14203, but the Agency may have other offices at such other places as the Agency from time to time designates by resolution.

Section 4. Members of the Agency. The membership of the Agency shall consist of those individuals designated as members, pursuant to Section 891-a of the General Municipal Law of the State of New York, as the same may be amended from time to time. The members who serve by virtue of their office, either private or public, shall enjoy a term of office on this Agency congruent with the term of office by virtue of which they derive their membership on this Agency.

ARTICLE II

OFFICERS

Section 1. Officers. The Officers of the Agency shall be: a Chair, a Vice-Chair, the President/Chief Executive Officer, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers. The officers of the Agency shall enjoy a term of office of one (1) year or until their successors are appointed. Notwithstanding the provisions set forth in this Article, the powers to perform and exercise the duties and functions of any of the officers of the Agency may be limited from time to time via resolution of the Agency.

Section 2. Chair. The Chair shall be a member of the Agency and preside at all meetings of the Agency and its Executive Committee. The Chair shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Agency. The Chair shall submit his/her recommendation and such information as he/she shall deem pertinent concerning the business, affairs, and policies of the Agency at each meeting. In the event of a vacancy on a committee of the Agency, the Chair may designate a successor to fill the unexpired portion of the term. In the event of a vacancy in the chair of a committee of the Agency, the Chair will designate a successor to fill the unexpired portion of the term.

Section 3. Vice-Chair. The Vice-Chair shall be a member of the Agency and perform the duties of the Chair in the absence or incapacity of the Chair. In the event of the resignation or death of the Chair, the Vice-Chair shall become acting Chair and perform the duties of the Chair until such time as the Agency shall appoint a new Chair.

Section 4. President/Chief Executive Officer (CEO). The President/CEO shall be the chief executive officer of the Agency. The President/CEO may not be a member of the Agency. He/She shall attend all meetings of the Agency and its committees with the right to take part in discussions and to recommend such measures as he/she may deem necessary or expedient, and he/she shall perform such other duties and shall have such other powers as may be prescribed for him/her by law or by the Agency. The President/CEO shall have the authority to sign all agreements, contracts, deeds and any other instruments on behalf of the Agency. The President/CEO shall have all necessary incidental powers to perform and exercise any of the duties and functions as specified above or lawfully delegated to him/her. He/She shall exercise supervision and control of all administrative functions of the Agency, including personnel budgeting, program and policy implementation. He/She shall be responsible to the Agency for the implementation of all resolutions, orders, programs or projects of the Agency.

Section 5. Vice Presidents. Any one or more of the Vice Presidents may be designated by the Agency as an Executive Vice President. The Vice Presidents or Executive Vice President may not be a member of the Agency. The Executive Vice President shall have such powers and perform such duties as the members may from time to time prescribe. In the absence or inability of the President/CEO to perform his/her duties or exercise his/her powers, the Executive Vice President, or, if there be more than one, a Vice President designated by the Agency, shall exercise the powers and perform the duties of the President/CEO subject to the direction of the Agency.

Section 6. Secretary. The Secretary may or may not be a member of the Agency. He/She shall keep all records of the Agency, shall act as a Secretary at the meetings of the Agency, shall keep a record of all votes thereat. He/She shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose. He/She shall perform all duties incident to this office. He/She shall have custody of the seal of the Agency, and shall have the power to affix such seal to all contracts and other instruments authorized by the Agency to be executed.

Section 7. Assistant Secretary. The Assistant Secretary may or may not be a member of the Agency. During the absence or disability of the Secretary, the Assistant Secretary, or if there are more than one, the one so designated by the Chair, shall perform the duties of the Secretary. In the event of the resignation or death of the Secretary, the Assistant Secretary, or if there are more than one, the one so designated by the Chair, shall become the Acting Secretary and perform the duties of the Secretary until such time as the Agency shall appoint a new Secretary.

Section 8. Treasurer. The Treasurer may not be a member of the Agency. He/She shall have the care and custody of all funds of the Agency and shall deposit all such funds in the name of the Agency in such bank or banks as the Agency may designate. The Treasurer shall sign all instruments of indebtedness, orders, and checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such instruments of indebtedness, orders and checks shall be countersigned by the Chair, the President/CEO, or a Vice President. The Treasurer shall keep regular books of accounts showing all receipts and expenditures. He/She shall render to the Agency at each regular meeting an account of the financial transactions and the current financial conditions of the Agency. The Treasurer, as well as the Chair, Vice-Chair, the President/CEO, a Vice President, or the Assistant Treasurer(s), shall also have the power to sign and execute on behalf of the Agency all contracts, agreements, deeds, notes, bonds or other evidence of

indebtedness and to affix and attest to the seal of the Agency when it is so authorized by resolution of the Agency. If the Treasurer, notwithstanding anything herein to the contrary, is not a full time employee of the Agency, the aforementioned duties under this section may be delegated to one or more of the Assistant Treasurers by a resolution of the Agency.

Section 9. Assistant Treasurer. The Assistant Treasurer may not be a member of the Agency. During the absence or disability of the Treasurer, the Assistant Treasurer designated by the Chair shall perform the duties of the Treasurer. The Assistant Treasurer shall also have the power to sign and execute on behalf of the Agency all contracts, agreements, deeds, notes, bonds or other evidence of indebtedness and to affix and attest to the seal of the Agency when it is so authorized by resolution of the Agency. In the event of the resignation or death of the Treasurer, the Assistant Treasurer, or if there are more than one, the one so designated by the Chair, shall become Acting Treasurer and perform the duties of the Treasurer until such time as the Agency shall appoint a new Treasurer.

Section 10. Additional Duties. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its by-laws, or by its rules and regulations.

Section 11. Appointment of Officers. All officers of the Agency shall be appointed at the annual meeting of the Agency. Officers shall hold office for one (1) year or until their successors are appointed. Should the term of an Agency member expire, or should the term of employment with the Agency of an officer who is not a member of the Agency expire, his/her term as an officer shall simultaneously expire.

Section 12. Vacancies. Should any office become vacant, the Agency shall appoint a successor at the next regular meeting, and such appointment shall be for the unexpired term of said office.

ARTICLE III

RESERVED

ARTICLE IV

COMMITTEES

Section 1. Executive Committee. There shall be an Executive Committee which shall consist of the President/CEO, the Chair, the Vice-Chair, and at least three other members of the Agency, designated by the Agency, plus the Mayor of the City of Buffalo and the County Executive of the County of Erie as ex-officio voting members. The President/CEO shall be an ex-officio non-voting member of the Executive Committee, and shall not be counted for quorum purposes. The Executive Committee shall function as a steering committee and shall advise and direct the membership of the Agency in said Agency's accomplishment of its purposes. A majority of the members shall constitute a quorum of the Executive Committee.

Section 2. Nominating Committee. There shall be a nominating committee which shall consist of such members of the Agency selected by the Agency to nominate such candidates as they deem appropriate for the offices of Chair, Vice-Chair, President/CEO, Executive Vice President, Vice President(s), Secretary, Assistant Secretary(ies), Treasurer, Assistant Treasurer(s), and such other officer positions as the Agency may establish, the other members of the Agency to serve upon the Executive

Committee, and such members of the Agency to serve upon its Committees, and the Chairs of such Committees.

Section 3. Policy Committee.

- (a) The Policy Committee shall be comprised of the following:
 - (i) Not less than three (3) members of the Agency appointed by the Chair with the consent of the Agency at its annual meeting, and
 - (ii) Such other individuals as the Agency may designate, from time to time.
- (b) The committee chair for the Policy Committee shall be designated by the Agency.
- (c) The Policy Committee shall:
 - (i) have the authority to review applications for Agency Financial Assistance and propose to the Agency recommendations related to any such provision of Agency Financial Assistance; and
 - (ii) have the power to call for such reports and documentation as it deems necessary to properly monitor the Agency's operation; and
 - (iii) propose to the Agency guidelines and policy statements appropriate to the Agency and its mission; and
 - (iv) perform such other duties as may be delegated to them by the Agency, from time to time.

Section 4. Finance & Audit Committee.

- (a) The Finance & Audit Committee shall be comprised of the following each of whom, to the extent practicable, shall be familiar with corporate financial and accounting practices:
 - (i) Not less than three (3) members of the Agency appointed by the Chair with the consent of the Agency at the annual meeting of the Agency; and
 - (ii) Such other individuals as the Agency may designate from time to time.
- (b) The committee chair for the Finance & Audit Committee shall be designated by a majority of the members of the Agency.
- (c) The Finance & Audit Committee shall be responsible:
 - (i) To provide assistance to the members of the Agency in fulfilling its fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices;
 - (ii) To maintain a direct line of communication between the members of the Agency and the Agency's independent accountants and auditors to provide for exchanges of views and information;

(iii) To maintain, as appropriate, a direct line of communication between the members of the Agency and the governmental authorities having audit authority or fiscal oversight of the Agency; and

(iv) To approve the budget of the Agency for submission to the Agency.

Particularly, and without limiting the generality of the foregoing, the Finance & Audit Committee shall be responsible for recommending to the members of the Agency the level of cash reserves and the level of fund balances. The Finance & Audit Committee shall also recommend to the Agency the hiring of a certified independent accounting firm, establish the compensation to be paid to such accounting firm, provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes and receive reports from such accounting firm. The Finance & Audit Committee shall report to the members of the Agency on a periodic basis, at least annually, the findings of its independent accountants and auditors. These reports shall include careful consideration of the actions taken by management on the independent accountants' and auditors' suggestions for correcting weaknesses, if any, in the Agency's internal controls, regulatory compliance, organizational structure and operations. These reports may include the adequacy of the audit effort by the Agency's independent accountants and auditors, the financial and regulatory compliance reporting decisions of management, the adequacy of disclosure of information essential to a fair presentation of the financial affairs and regulatory compliance efforts of the Agency, and the organization and quality of the Agency's system of management and internal accounting controls.

(d) The Finance & Audit Committee shall be comprised of not less than three independent members, within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as amended from time to time. In the event that the Agency has less than three independent members, the Agency may appoint non-independent members to the Finance & Audit Committee, provided that the independent members must constitute a majority of the members of the Finance & Audit Committee.

Section 5. Governance Committee.

(a) The Governance Committee shall be comprised of the following:

(i) Not less than three (3) members of the Agency appointed by the Chair with the consent of the Agency at the annual meeting of the Agency; and

(ii) Such other individuals as the Agency may designate, from time to time.

(b) The committee chair for the Governance Committee shall be designated by a majority of the members of the Agency.

(c) The Governance Committee shall be responsible to:

(i) Keep the Agency informed of current best governance practices;

(ii) Review corporate governance trends;

(iii) Update the Agency's corporate governance principles; and

(iv) Advise those responsible for appointing members to the Agency of the skills and experience required of potential Agency members.

(d) The Governance Committee shall be comprised of not less than three independent members, within the meaning of, and to the extent required by, Section 2825 of the New York Public Authorities Law, as amended from time to time. In the event that the Agency has less than three independent members, the Agency may appoint non-independent members to the Governance Committee, provided that the independent members must constitute a majority of the members of the Governance Committee.

Section 6. Compensation Committee. There shall be a Compensation Committee which shall consist of not less than three (3) members of the Agency selected by the Agency. The Compensation Committee shall, in consultation with the President/CEO, review and determine the compensation of the employees of the Agency such that said compensation shall be fair and reasonable to the Agency.

Section 7. Investment Review Committee. There shall be an Investment Review Committee which shall consist of not less than three (3) individuals selected by the Agency. The Investment Review Committee shall have general responsibility for supervision and management of project expenditure activities and implementation of the Agency's Project Expenditure Fund Guidelines, as amended from time to time. Such responsibilities shall include reviewing and recommending for Agency approval, such project expenditures.

Section 8. Loan Write-Off Committee.

(a) The Loan Write-Off Committee shall be comprised of the following:

(i) Not less than three (3) members of the Agency appointed by the Chair with the consent of the members at the annual meeting of the Agency, at least one of whom shall have a financial and/or banking background; and

(ii) Such other individuals as the Agency may designate from time to time.

(b) The committee chair for the Loan Write-Off Committee shall be designated by a majority of the Agency.

(c) The Loan Write-Off Committee shall:

(i) have the power to call for such reports and documentation as it deems necessary to properly monitor the Agency's write-off amounts;

(ii) have the authority to direct the President/CEO to initiate requests from regulatory authorities, if applicable, to modify existing loan administration plans pertinent to revolving loan funds and other loan programs operated by the Agency, if any;

(iii) have responsibility for reviewing closed loans and delinquent accounts and to make appropriate determinations with regard to the same;

(iv) make recommendations, if any, to the Agency relative to the types of loan transactions to be given emphasis in the future; and

(v) perform such other duties as may be delegated to them by the Agency, from time to time.

Section 9. Special Committees. The Agency at any time, and from time to time, by resolution, may create such special committees as may be deemed desirable, to serve at the pleasure of the Agency, and members of which shall be appointed by the Chair with the consent of the Agency. Such special committees shall have only the lawful powers specifically delegated to them by the Agency.

Section 10. Term of Office of Committee Members. Except as otherwise provided in these By-laws, the chairs and all members of the committees shall be appointed by the Board at the annual meeting of the Board, and shall serve until the next annual meeting and until their successors are duly appointed and qualified. Committee members appointed to fill vacancies shall serve until the next annual meeting of the Board and until their successors are appointed and qualified.

ARTICLE V

MEETINGS

Section 1. Monthly Meeting. Monthly meetings of the Agency shall be held at such time and place as directed by the Chair. Written notice of each regular meeting of the members shall be given, personally or by mail or by electronic mail, not less than ten (10) days nor more than fifty (50) days before the date of the meeting, to each member. One such monthly meeting per year shall be designated by the Agency as its Annual Meeting. The Secretary shall cause to be mailed, via U.S. mail or electronic mail, not less than ten (10) days nor more than fifty (50) days before the annual meeting, to every member in good standing, at his or her address as it appears on the membership roll book of the Agency or his or her e-mail address, a notice stating the time and place of the meeting.

Section 2. Special Meeting. The President/CEO, and/or the Executive Vice President, and/or the Chair of the Agency may, when he/she deems it desirable, and shall, upon the written request of seven (7) members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be given personally to each member of the Agency or may be mailed to the business or home address of each member of the Agency, or sent via electronic mail, not less than ten (10) days nor more than fifty (50) days prior to the date of special meeting. Waivers of notice may be signed by any members failing to receive a proper notice. At such special meeting no business shall be considered other than as designated in the call, but if all members of the Agency are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.

Section 3. Executive Session. When a subject falls within one of the enumerated purposes for an executive session pursuant to Section 105 of the Open Meetings Law, the Agency may, upon its own motion, establish an executive session and exclude non-members from such session, to the extent permitted by the Open Meetings Law.

Section 4. Quorum. At all meetings of the Agency a majority of the members shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time when a quorum is obtained. The non-voting members shall not be considered for the purpose of quorum requirements.

Section 5. Order of Business. At the regular meeting of the Agency, the order of business, under the direction and discretion of the Chair, shall include:

- (a) Roll call;
- (b) Reading and approval of the minutes of previous meeting;

- (c) Report of the Treasurer;
- (d) Reports of Committees;
- (e) Unfinished business;
- (f) New business; and
- (g) Adjournment.

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

Section 6. Manner of Voting. The voting on all questions coming before the Agency may be by roll call or voice vote, and yeas and nays shall be entered in the minutes of such meeting, except as in the case of appointments when the vote may be by ballot. Unless otherwise provided for in these by-laws, any action of the Agency shall require the affirmative vote of a majority of the members of the Agency.

ARTICLE VI

PURPOSES

Section 1. Purposes. Purposes of the Agency are as follows:

- (a) to integrate and strengthen the planning and promotion of industrial, commercial and economic development in Erie County, on a unified, county-wide basis; and to that end to seek the cooperation and coordinate the operations of public and private organizations to such planning and promotion;
- (b) to advertise and promote industrial, commercial and economic opportunities in Erie County, and to publicize the advantages of the County;
- (c) to conduct research into business and industrial conditions in the County, to study the needs and conditions of the County, and to prepare plans or elements of plans relating to the industrial, commercial and economic development of the County or any part of the County;
- (d) to study, recommend, plan, coordinate, and evaluate projects and programs relating to industrial, commercial, and economic development in Erie County; and
- (e) to achieve the purposes set forth in Section 858 of the General Municipal Law of the State of New York and in furtherance of those purposes, to execute, as necessary, the powers set forth in Section 858 and Section 891-a(2), of the General Municipal Law of the State of New York.

ARTICLE VII

POLICIES AND PROCEDURES

Section 1. Projects to be considered by this Agency. It is the policy of this Agency that any project shall be considered by it which shall conform to the Laws of the State of New York, Chapter 1030, Article 18-A, and the policy statements of this Agency as enunciated from time to time by resolution of this Agency.

Section 2. Audit of Records and Accounts. Within ninety (90) days after the close of the Agency's fiscal year, the Agency shall annually secure a certified audit of its financial records and accounts and shall file a copy of such certified audit with the Legislature of the County of Erie within thirty (30) days after its completion, and to such other entities as required by law.

Section 3. Conveyance of Property – Conduit Transactions. The Agency may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Agency will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract and that the additional consideration for such conveyance may be nominal.

Section 4. Rules and Procedures. The Agency by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these by-laws as they may be amended from time to time, nor to any applicable State or Federal law.

Section 5. Membership Meeting Action. All propositions requiring the expenditure of money or affecting contract rights or property, shall be presented to the members as a formal written resolution, except such expenditure(s) items or action(s) affecting contract rights or property where said authority to make such expenditure or action has been delegated to an officer of the Agency by the members of the Agency, identifying the date the meeting took place, a description of the decision made and a record of the vote.

ARTICLE VIII

ETHICAL STANDARDS

Section 1. Disclosure and Abstention. Except for any Prohibited Conflict as defined under State Law and as expressed within the Agency's Code of Ethics, as amended from time to time, all members, officers or employees of the Agency shall adhere to the following procedures:

(a) All real and potential conflicts of interest shall be disclosed in writing to the Ethics Officer as soon as practicable after learning of the real or potential conflict of interest. The written disclosure must (i) identify the matter before the Agency, (ii) identify the Standard of Conduct in question and (iii) contain sufficient facts and circumstances in order to accurately convey the extent of the member's, officer's or employee's interest in such matter. In addition, in the event a member of the Agency has a conflict, he or she shall verbally disclose the conflict during a public session of an Agency meeting at which the matter creating the conflict appears on the agenda. Such verbal disclosure shall be recorded in the minutes of the meeting and be made part of the public record.

(b) The member, officer or employee with the conflict of interest shall refrain from participating in discussions or decisions on the matter creating the conflict. In addition, in the event a member of the Agency has a conflict, he or she shall recuse him or herself from any deliberations and abstain from voting on such matter creating the conflict.

(c) The member, officer or employee with the conflict of interest shall refrain from directly or indirectly attempting to influence the discussions, decisions, deliberations or vote on the matter giving rise to such conflict.

Section 2. The members of the Agency are bound by, and shall conduct themselves in accordance with, any ethical standards imposed upon members of industrial development agencies generally under all applicable State and Federal laws, as the same may be amended from time to time.

Section 3. In addition to any other ethical standards applicable to any member of the Agency pursuant to these by-laws or other applicable law, a majority of the members of the Agency, other than those who serve by virtue of holding a civil office of the State of New York, shall, to the extent required by law, be “independent members,” as defined in Section 2825 of the New York Public Authorities Law, as amended from time to time.

ARTICLE IX

INDEMNIFICATION OF MEMBERS, OFFICERS, AND EMPLOYEES

Section 1. Indemnification. Any person made a party to any action, suit or proceeding by reason of the fact that he or she is or was a member or officer or employee of the Agency, or any corporation which he or she served as such at the request of this Agency, shall be indemnified by this Agency against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with the defense of such action, suit or proceeding or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that (i) such member or officer or employee acted in bad faith, (ii) liability resulted from the active and deliberate dishonesty of such individual, or (iii) such individual gained in fact a financial profit or other advantage to which he or she was not legally entitled. Such right of indemnification shall not be exclusive of any other rights to which such member or officer or employee may be entitled to apart from the provisions of this Article.

ARTICLE X

AMENDMENTS

Section 1. Amendments to By-Laws. The by-laws of the Agency may be amended with the approval of a majority of all voting members of the Agency at a regular meeting or a special meeting called for that purpose; but no such amendment shall be adopted unless written notice thereof has been previously given to all members of the Agency, via mail or electronic mail, not less than ten (10) days nor more than fifty (50) days before the scheduled date of the meeting.

ARTICLE XI

MISCELLANEOUS

Section 1. Compliance with Laws. It shall be the policy of the Agency to adopt by-laws, rules, regulations, policies, procedures and conduct its operations in accordance with all applicable State, Federal and local laws.

As of April 22, 2015
Re-adopted May 29, 2024

Tax Incentives Approved - 2024

Approval Date	Project Name	Project City/Town	Private Investment/Project Amount	Minimum Investment Commitment	FT Jobs Retained	PT Jobs Retained	FT Jobs to be Created	PT Jobs to be Created	Job Creation	Const Jobs	Spillover Jobs	Length of Term	Incentive Amount	Cost Benefit Ratio
1	Mar-24 BPS Commissary ²	Buffalo	\$34,135,084	85% threshold \$29,014,821	16	35	0	15	85% - New 12PT	156	141	project completion date + 2 yrs	\$1,479,997	1.22
1	Mar-24 SL Evans	Evans	\$20,769,000	85% threshold \$17,653,650	0	0	0	0	0	90	79	Period of PILOT 20 Years	\$4,238,447	1.4

Totals:	Totals:	Private Investment/Project Amount	FT Jobs Retained	PT Jobs Retained	FT Jobs Created	PT Jobs Created	Const Jobs	Spillover Jobs	Incentive Amount
Adaptive Reuse Subtotal									
2023 Total	2	\$54,904,084	16	35	0	15	246	220	\$5,718,444

¹ Adaptive Reuse
² Amendatory Inducement

2024 - 2025 ECIDA/RDC/ILDC Board Committees & Officers

Executive Committee ECIDA/RDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
7 Board members, President & CEO, as specified in By-Laws	Chair - Brenda McDuffie (Chair)	Chair - Brenda McDuffie (Chair)
	Vice Chair - Richard Lipsitz	Vice Chair - Richard Lipsitz
	County Executive - Hon Mark Poloncarz	County Executive - Hon Mark Poloncarz
	Mayor Buffalo – Hon. Byron Brown	Mayor Buffalo – Hon. Byron Brown
	Hon. Joseph Emminger (Chair, RDC Loan Committee)	Hon. Joseph Emminger (Chair, RDC Loan Committee)
	Glenn Nellis - (Representing the Finance & Audit Committee)	Glenn Nellis - (Representing the Finance & Audit Committee)
	Hon. Darius Pridgen (Chair, Loan Write-Off)	Ken Schoetz (Chair, Loan Write-Off Committee)
	President & CEO John Cappellino [non-voting]	President & CEO John Cappellino [non-voting]

Finance & Audit Committee ECIDA/RDC/ILDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws. Not less than 3 independent members per PAL. 3-4 Meetings a Year	Michael Szukala (Chair)	Michael Szukala (Chair)
	Penny Beckwith (M&T)	Penny Beckwith (M&T)
	Allison DeHoney	Allison DeHoney
	Denise McCowan*	Denise McGowan
	Glenn Nellis*	Glenn Nellis*
	Paul Vukelic*	Hon. Brian Nowak*
	William Witzleben (M&T)	Paul Vukelic*
		William Witzleben (M&T)

Governance Committee ECIDA/RDC/ILDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws. Not less than 3 independent members per PAL. 1-2 Meetings a Year	Brenda McDuffie* (Chair)	Brenda McDuffie* (Chair)
	Thomas Baines	Thomas Baines
	Zachary Evans	Zachary Evans
	Michael Hughes	Hon. Howard Johnson
	Hon. Brian Kulpa	Tyra Johnson*
	Hon. Howard Johnson	Hon. Brian Kulpa
	Tyra Johnson*	Hon. Christopher Scanlon
	Ken Schoetz*	Ken Schoetz*
	David State	David State

*Board members who fill seats required by By-laws

Nominating Committee Approved Date – March 22, 2024 Board Approved Date – May 29, 2024

2024 - 2025 ECIDA/RDC/ILDC Board Committees & Officers

Loan Committee ECIDA/RDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
By-Laws specify no more than 5 members of the Policy Committee plus 2 City members and 1 County member 6-12 Meetings a Year	Hon. Joseph Emminger (Chair)	Hon. Joseph Emminger (Chair)
	Denise Abbott	Denise Abbott
	[City 2] Rebecca Gandour	[City 2] Rebecca Gandour
	[Other] Nancy LaTulip	[Other] Nancy LaTulip
	[County 1] David McKinley (Community Bank N.A.)	[County 1] David McKinley (Community Bank N.A.)
	[Other] Michael Taylor (Pursuit Lending)	[Other] Michael Taylor (Pursuit Lending)
	[City 1] Royce Woods (Evans Bank)	[City 1] Royce Woods (Evans Bank)

Loan Write-off Committee ECIDA/RDC/ILDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws 1 Meeting a Year	Hon. Darius Pridgen* (Chair)	Ken Schoetz*(Chair)
	Penny Beckwith (M&T)	Penny Beckwith (M&T)
	Tyra Johnson*	Tyra Johnson*
	Ken Schoetz*	Brian Nowak*
	William Witzleben (M&T)	William Witzleben (M&T)

Compensation Committee ECIDA	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
No by-law requirement 1-2 Meetings a Year	Hon. Mark Poloncarz (Chair)	Hon. Mark Poloncarz (Chair)
	Rev. Mark Blue	Rev. Mark Blue
	Dottie Gallagher	Michael Hughes
	Michael Hughes	Richard Lipsitz
	Richard Lipsitz	Brenda McDuffie
	Brenda McDuffie	Ken Schoetz
	Ken Schoetz	

Nominating Committee ECIDA/RDC/ILDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
No by-law requirement 1 Meeting a Year	Hon. Mark Poloncarz (Chair)	Hon. Mark Poloncarz (Chair)
	Zachary Evans	Rev. Mark Blue
	Richard Lipsitz	Zachary Evans
	Ken Schoetz	Richard Lipsitz
	*Vacant	Ken Schoetz

*Board members who fill seats required by By-laws

Nominating Committee Approved Date – March 22, 2024 Board Approved Date – May 29, 2024

2024 - 2025 ECIDA/RDC/ILDC Board Committees & Officers

Policy Committee ECIDA/RDC	<u>Current Committee Members</u>	<u>Proposed Committee Members</u>
At least 3 Board members specified in By-Laws 10-12 Meetings a year	Richard Lipsitz* (Chair)	Richard Lipsitz* (Chair)
	Denise Abbott	Denise Abbott
	Hon. April Baskin	Hon. April Baskin
	A.J. Baynes	A.J. Baynes
	Rev. Mark Blue*	Rev. Mark Blue*
	Hon. Byron Brown	Hon. Byron Brown
	Zachary Evans	Zachary Evans
	Susan McCartney	Susan McCartney
	Brenda McDuffie*	Brenda McDuffie*
	Glenn Nellis	Glenn Nellis
	Laura Smith	Laura Smith
	David State	David State
	Lavon Stephens	Lavon Stephens
	Hon. John Tobia	Paul Vukelic
Paul Vukelic	*Vacant	

OFFICERS	<u>Current Officers</u>			<u>Proposed Officers</u>		
	<u>ECIDA</u>	<u>RDC</u>	<u>ILDC</u>	<u>ECIDA</u>	<u>RDC</u>	<u>ILDC</u>
Chair	Brenda McDuffie		Hon. Mark Poloncarz	Brenda McDuffie		Hon. Mark Poloncarz
Vice Chair	Richard Lipsitz			Richard Lipsitz		
President & CEO	John Cappellino			John Cappellino		
Vice President	Mollie Profic, Beth O'Keefe			Mollie Profic, Beth O'Keefe		
Treasurer	Mollie Profic			Mollie Profic		
Assistant Treasurers	Jerry Manhard, Atiqa Abidi, Daryl Spulecki			Jerry Manhard, Atiqa Abidi, Daryl Spulecki		
Secretary	Beth O'Keefe			Beth O'Keefe		
Assistant Secretaries	Jerry Manhard, Carrie Hocieniec			Jerry Manhard, Carrie Hocieniec		

OTHER DESIGNATED POSITIONS	<u>Designated Positions</u>	<u>Designated Positions</u>
Chief Financial Officer	Mollie Profic	Mollie Profic
Accounting Manager	Atiqa Abidi	Atiqa Abidi
Chief Lending Officer	Jerry Manhard	Jerry Manhard
Contracting Officer (required in Property Disposition Policy)	Mollie Profic	Mollie Profic
Electronic Records Retention Officer	Brian Krygier	Brian Krygier
Ethics Officer (required in Conflict of Interest Policy)	John Cappellino	John Cappellino
FOIL Officer	Robbie Ann McPherson	Robbie Ann McPherson
FOIL Appeals Officer	John Cappellino	John Cappellino
Human Resources Officers	Mollie Profic, Pat Smith	Mollie Profic, Pat Smith
Non-electronic Records Retention Officer	Carrie Hocieniec	Carrie Hocieniec

*Board members who fill seats required by By-laws

Nominating Committee Approved Date – March 22, 2024 Board Approved Date – May 29, 2024



MEMO:

To: Board of Directors

Date: May 29, 2024

RE: Erie County Capital Grant – Rail Line 1242 (Depew Lancaster & Western Railroad)

Background:

On September 21st, 2023, the Erie County Legislature approved a grant of up to \$150,000 for the Depew Lancaster & Western Railroad Improvement project. The project includes funding for design, engineering, and maintenance costs for railroad bridge rehabilitation., Rail line 1242, the Depew Lancaster & Western Railroad operates from Buffalo/Cheektowaga to Lancaster, as a short line railroad serving industries along the rail line.

The railroad line is owned by Erie County and managed by ECIDA through a management contract with the county.

Requested Action:

Seeking authorization to enter into contract with Erie County for funding not to exceed \$150,000 for the Depew Lancaster & Western Railroad Improvement project, and the approval to take all actions necessary to complete the project.

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
RESOLUTION

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, May 29, 2024, at 12:00 p.m.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE NEGOTIATION AND EXECUTION OF A GRANT AGREEMENT BETWEEN THE COUNTY OF ERIE AND THE AGENCY RELATIVE TO CERTAIN RAILROAD INFRASTRUCTURE IMPROVEMENTS, CONSTRUCTION AND MAINTENANCE ACTIVITIES TO BE UNDERTAKEN AT THE DEPEW LANCASTER & WESTERN RAILROAD (THE "RAILWAY FACILITIES") IN AN AMOUNT OF \$150,000

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act"), the Erie County Industrial Development Agency (the "Agency") was created as a public benefit corporation of the State with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act to prevent unemployment and economic deterioration; and

WHEREAS, the Agency currently holds a leasehold interest in certain railroad properties owned by the County of Erie ("County"), more commonly known as USRA Line 1242, located within the County and between Milepost 382.540, Town of Lancaster and Milepost 385.561, which is part of the Depew Lancaster & Western Railway (the "Railway Facilities"); and

WHEREAS, on October 5, 2023, the County Legislature approved a grant of up to \$150,000 for the purpose of undertaking certain capital improvements on and about the Railway Facilities, including, but not limited to those services and work described in **Exhibit A**, attached hereto and made part hereof (the "Railway Work"); and

WHEREAS, due to the Agency's experience in contracting for construction projects on behalf of the County, the County wishes to engage the Agency to assist the County in completing the Railway Work; and

WHEREAS, the County has requested that the Agency enter into an agreement to authorize the receipt and allocation of \$150,000 of County funds (the "Railway Grant") towards the Railway Work (the "Railway Grant Agreement"), which shall establish the terms and conditions upon which the Railway Grant will be provided to the Agency, and the Agency has determined it is in the best interest of the Agency to enter into the Railway Grant Agreement to facilitate the completion of the Railway Work; and

WHEREAS, in compliance with Article 8 of the New York Environmental Conservation Law and the regulations adopted thereto at 6 N.Y.C.R.R. Part 617 (collectively referred to as “SEQRA”), the Agency has reviewed the scope of the Railway Work and has determined that the Railway Work would be considered “conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action” as defined in 6 N.Y.C.R.R. Part 617.5(c)(27).

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that no further SEQR compliance is required pursuant to 6 N.Y.C.R.R. Section 617.5(a), as the contemplated Railway Work is considered a Type II Action pursuant to 6 N.Y.C.R.R. Part 617.5(c)(27).

Section 2. Subject to the terms of this Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, in consultation with Agency counsel, are hereby authorized, on behalf of the Agency, to negotiate and execute the Railway Grant Agreement, and to take all actions necessary to implement the project as described.

Section 3. The Agency hereby authorizes the President/Chief Executive Officer (the “Authorized Officer”) to do all acts and things required and to negotiate, execute the Railway Grant Agreement with such changes as may be required by the Authorized Officer in consultation with the Agency’s counsel, and to deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the Authorized Officer so acting, desirable and proper to effect the purposes of this Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. Any and all actions heretofore taken or authorized by the Agency and/or its members, officers, employees and agents with respect to this Resolution are hereby ratified, approved and confirmed in all aspects.

Section 5. These resolutions shall take effect immediately.

Dated: May 29, 2024

EXHIBIT A

SCOPE OF SERVICES

The Erie County Industrial Development Agency (the "Agency") agrees to act as Project Administrator, on behalf of the County of Erie (the "County"), for the DL&W Railroad Bridge Capital Project.

The Agency will solicit for and contract directly with the necessary, appropriate, and qualified construction firm and/or professional firm or firms to fulfill the Scope of Work.

The funding may be used for construction services, survey work, soil investigation, engineering design, bid review and analysis, construction administration, inspection and testing, field inspection services, site preparation work, and any other capital improvements to the identified bridge structures or railroad.

Expenditure of funds shall be in accordance with the requirements of the County.

TIMELINE

The Scope of Services described herein shall be completed in five (5) years from contract execution date.

**MINUTES OF A MEETING OF THE
POLICY COMMITTEE OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

- DATE AND PLACE:** May 2, 2024 at the Erie County Industrial Development Agency, 95 Perry Street, 4th Floor Conference Room, Buffalo, New York 14203
- PRESENT:** Denise Abbott, Rev. Mark Blue, Zachary Evans, Richard Lipsitz, Dr. Susan McCartney, Brenda W. McDuffie, Hon. Glenn Nellis, Laura Smith and David J. State
- EXCUSED:** Hon. April Baskin, A.J. Baynes, Hon. Byron W. Brown, Lavon Stephens and Paul Vukelic
- OTHERS PRESENT:** John Cappellino, President & CEO; Mollie Profic, Chief Financial Officer; Soma Hawramee, Compliance Portfolio Manager, Brian Krygier, Director of Information Technology; Carrie Hocieniec, Operations Assistant/ Assistant Secretary and Robert G. Murray, Esq., as General Counsel/Harris Beach PLLC
- GUESTS:** Yessica Vasquez on behalf of the City of Buffalo

There being a quorum present at 9:00 a.m., the Meeting of the Policy Committee was called to order by Chair McDuffie.

MINUTES

The minutes of the April 4, 2024 Policy Committee meeting were presented. Upon motion made by Ms. McDuffie to approve of the minutes, and seconded by Mr. Blue, the Policy Committee meeting minutes were unanimously approved.

PROJECT PRESENTATION

Mr. Cappellino provided a status report of 2024 project activity to the Committee. Mr. Lipsitz directed that the report be received and filed.

ADAPTIVE REUSE DISCUSSION

Mr. Cappellino reviewed the ECIDA's adaptive reuse policy and its unwritten requirement conditioning approval of projects that have a market rate housing component upon the project applicant confirmation to commit to a certain level of affordability. He discussed past

Policy Committee meetings and discussions related to this issue and confirmed the Committee's desire to "modify" its affordable housing component requirements for such projects.

Mr. Cappellino confirmed the purpose of the adaptive reuse policy is still focused on reuse of a building, but as presented in the draft affordable housing addendum, certain affordable/workforce housing rental rates will be required for residential market-rate housing adaptive reuse projects.

General discussion ensued.

Ms. Smith stressed that the Agency should require, in addition to the requirement of an affordable/workforce housing rental rate for the specified number of units, that the policy also mandate that the unit be rented to a person/family whose income falls within the same affordable/workforce housing income limit, and that Agency establish a procedure to confirm and monitor the tenant's income as a condition of providing Agency financial assistance.

The committee expressed a desire that staff develop language requiring certification of income levels of occupants, as an additional policy requirement, and that the dialogue continue at the next Policy Committee meeting.

There being no further business to discuss, the meeting was adjourned at 10:13 a.m.

Dated: May 2, 2024

Elizabeth A. O'Keefe, Secretary



MEMORANDUM

Date: May 29th, 2024

To: Erie County Industrial Development Agency Board of Directors

From: ECIDA Staff

Re: Consent Request from Skycatcher Holdings, LLC (“Skycatcher”) with respect to its transfer of the Facility located at 15 Cobham Drive, Orchard Park, New York

Summary:

Pursuant to resolution dated September 22, 2021, the Erie County Industrial Development Agency (“ECIDA”) approved an application submitted by Skycatcher Holdings, LLC (the “Company”) requesting the ECIDA’s assistance with a certain project (the “Project”) related to the purchase and improvement of a facility located at 15 Cobham Drive, Town of Orchard Park, Erie County, New York. In connection with the Project, the ECIDA provided a sales tax exemption benefit and mortgage recording tax exemption benefit to the Company.

The ECIDA received a consent request on or about April 9, 2024 from Skycatcher (the “Consent Request”) in relation to the Project. In the Consent Request, Skycatcher notified the ECIDA that it had transferred all of its interest in the Project to CPC Real Property, LLC (“CPC”) (the “Transfer”). The Transfer resulted in CPC assuming the obligations of Skycatcher.

Pursuant to Section 2(o) in that certain Agent and Financial Assistance Project Agreement dated as of September 27, 2021 in relation to the Project (the “Project Agreement”), to which both the ECIDA and Skycatcher are parties, the ECIDA’s consent to the Transfer is required.

Requested Action:

Seeking approval from the ECIDA Board of Directors to consent to the Transfer as described in the Consent Request and to take all actions necessary to effectuate the foregoing.

SKYCATCHER HOLDINGS, LLC
810 HEIM ROAD
GETZVILLE, NEW YORK 14068

April 5, 2024

Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, New York 14203

Subject: Agency Consent Request Regarding Skycatcher Holdings, LLC Project

References: Agent and Financial Assistance Agreement, made as of September 27, 2021 (the "2021 Agent and Financial Assistance Agreement"), by and between the Erie County Industrial Development Agency (the "Agency") and Skycatcher Holdings, LLC ("Skycatcher")

To whom it may concern:

On or about September 22, 2021, Skycatcher requested the Agency's assistance with a certain project (the "Project") in connection with its purchase of a 25,250 sq. ft. building at 15 Cobham Drive, Town of Orchard Park, Erie County, New York (the "Land") and the conversion of same into office, manufacturing and research and the development of functional areas (the "Improvements"), and in connection with the acquisition in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility"). In furtherance of the Project, Skycatcher received certain Financial Assistance (as hereinafter defined) from Agency in the form of (a) a New York State and local sales and use tax exemption benefit and (b) an exemption benefit from mortgage recording tax (collectively, the "Financial Assistance")

In connection with the Project, Skycatcher leased to the Agency all of its right, title and interest in and to the Facility pursuant to a certain Lease Agreement (the "Lease Agreement"), dated as of October 1, 2021, by and between Skycatcher and the Agency, and a memorandum thereof was recorded in Erie County Clerk's Office on October 6, 2021, in Liber 11388 of Deeds at page 7045. The Agency and Skycatcher thereafter entered into a certain Leaseback Agreement setting forth the terms and conditions pursuant to which the Agency agreed to lease its interest in the Facility to Skycatcher, and Skycatcher agreed to rent the Facility from the Agency (the "Leaseback Agreement"), dated as of October 1 2021 and a memorandum thereof was recorded in the Erie County Clerk's Office on October 6, 2021 in Liber 11388 of Deeds at page 7049. The Lease Agreement and the Leaseback Agreement expired by their terms and a Termination Agreement between Agency and Skycatcher was recorded in the Erie County Clerk's Office on October 27, 2021 in Liber 11390 of Deeds at page 273.

Further, in connection with the Project, Skycatcher and Agency entered into the 2021 Agent and Financial Assistance Agreement, which set forth the terms and conditions under which

Financial Assistance was provided to Skycatcher. Pursuant to the 2021 Agent and Financial Assistance Agreement, Skycatcher is obligated to comply and adhere to certain requirements, including, but not limited to the Investment Commitment, Employment Commitment, Local Labor Commitment, Equal Pay Commitment, and Unpaid Real Property Tax Policy Commitment (collectively, the “Commitments,” as more fully defined and described in the 2021 Agent and Financial Assistance Project Agreement), in relation to the Project for a period expiring two (2) years following Project completion. The two (2) year period expires on September 30, 2024. Skycatcher has satisfied the Investment Commitment.

Prior to the termination of the Lease Agreement and Leaseback Agreement, Skycatcher subleased the Facility (the “Sublease”) to Sti-Co Industries, Inc. (“Sti-Co”). The owner of 100% of the membership interests of Skycatcher owned a majority of the stock of Sti-Co. At all times subsequent to the execution of the Sublease through November 30, 2023, Sti-Co complied with the Employment Commitment, Local Labor Commitment, Equal Pay Commitment and Unpaid Real Property Tax Policy Commitment.

Consent Request:

On December 1, 2023, Skycatcher sold its interest in the Facility to CPC Real Property, LLC (“CPC Real Property”). Concurrent with the sale of the Facility, Sti-Co was converted to Sti-Co Industries, LLC, a Delaware limited liability company (“New Sti-Co”) and the membership interests in New Sti-Co were transferred to Communication Power Companies, LLC, which entity owns all of the membership interests of CPC Real Property (collectively, the “Transfer”). A depiction of the organizational structure of the relevant entities is attached hereto as Schedule A.

Pursuant to Section 2.9 of the Interest Purchase Agreement by and among Kyle K. Swiat, KKS Private Holdings, Inc., a holding company wholly owned by Kyle K. Swiat, New Sti-Co, and Communication Power Companies, LLC, Communication Power Companies, LLC agreed to honor Skycatcher’s employee retention commitments corresponding with the Project. Subsequent to the Transfer, New Sti-Co, has continued to occupy and operate in the Facility and has complied with and continues to comply with the Employment Commitment, Local Labor Commitment and Equal Pay Commitment and CPC Real Property has complied with the Unpaid Real Property Tax Policy Commitment and no additional PILOT payments, special district charges, and/or fees will be due prior to the expiration of the two (2) year period following Project completion.

Pursuant to Section 2(o) of the 2021 Agent and Financial Assistance Agreement, the consent of the Agency shall be required in the event Skycatcher sells, assigns, or disposes of all or substantially all of its property. Accordingly, Skycatcher respectfully requests the consent of the Agency with respect to the Transfer, as required pursuant to Section 2(o) of the 2021 Agent and Financial Assistance Agreement.

Very truly yours,

Skycatcher Holdings, LLC

By: 

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
RESOLUTION**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, May 29, 2024, at 12:00 p.m.

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

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY CONSENTING TO THE TRANSFER OF
ALL OR SUBSTANTIALLY ALL OF THE PROPERTY OF
SKYCATCHER HOLDINGS, LLC (“SKYCTACHER”) TO CPC REAL
PROPERTY LLC (“CPC”)**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the “Act”), the Erie County Industrial Development Agency (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act; and

WHEREAS, Skycatcher Holdings, LLC (the “Company”) previously submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located on 15 Cobham Drive, Town of Orchard Park, Erie County, New York (the “Land”), (ii) the purchase of a 25,250 sq. ft. building at 15 Cobham Drive which will be converted into office, manufacturing and research and development functional areas (the “Improvements”), and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the “Equipment”; and, together with the Land and the Improvements, the “Facility”); and

WHEREAS, in furtherance of the Project and the delivery of financial assistance to the Company in the form of a sales tax exemption benefit and mortgage recording tax exemption benefit in connection therewith, the Agency and the Company entered into certain agreements, including a certain Agent and Financial Assistance Project Agreement dated as of September 27, 2021 (the “Agent Agreement”), as well as a lease agreement (the “Lease Agreement”) and a leaseback agreement (the “Leaseback Agreement”) dated as of October 1, 2021 and all by and between the Agency and the Company (collectively, the “Agency Documents”); and

WHEREAS, the Company subleased the Facility to Sti-Co Industries, Inc. (“Sti-Co”), which operated the Project and along with the Company complied with certain requirements in the Agent Agreement, including the Investment Commitment, Employment Commitment, Local Labor Commitment, Equal Pay Commitment and Unpaid Real Property Tax Policy Commitment (as defined in the Agent Agreement, and collectively, the “Commitments”); and

WHEREAS, on or about December 1, 2023 the Company sold the Facility to CPC Real Property, LLC (“CPC”) (the “Transfer”); and

WHEREAS, concurrent with the sale of the Facility, Sti-Co was converted to Sti-Co Industries, LLC (“New St-Co”), and the membership interests in New Sti-Co were transferred to Communication Power Companies, LLC (the “Holding Co.”), with New Sti-Co continuing to operate the Facility;

WHEREAS, the Company, by letter dated April 5, 2024, a copy of which is attached hereto as **Exhibit A** (the “Consent Request”), has requested the Agency’s consent to the Transfer pursuant to Section 2(o) of the Agent Agreement; and

WHEREAS, the Agency desires to consent to the Transfer, subject to the potential recapture of Financial Assistance as so related thereto and described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Subject to the terms and conditions contained within the Agency Documents and this Resolution, the Agency hereby approves the Transfer, along with the execution and delivery by the Agency of any and all documents necessary and incidental thereto; provided, however, that in all events, that the Facility and the operation thereof shall continue to constitute a "project" under the Act and in no way shall be materially changed or modified without the prior written consent of the Agency, and further provided that per the policies of the Agency, the Agency may recover or recapture from CPC any financial assistance taken or purported to be taken by CPC, if it is determined by the Agency that: (i) such local sales tax and use tax exemption benefits are taken by any such person to which the person is not entitled, and/or (ii) which are in excess of the amounts authorized as provided for in Section 2(h) of the Agent Agreements, and/or (iii) which are for property or services not authorized by the Agency in connection with the approval as so provided herein and as further described below (collectively, items (i) through (iii) hereby defined as a “Recapture Event”).

As a condition precedent of the Company receiving local sales tax and use tax exemption benefits, CPC must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any real property tax abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

As an additional condition precedent of the Company having received local sales tax and use tax exemption benefits, and as a material term or condition as approved by the Agency in connection with the Project, CPC covenants and agrees and understands that it must, subject to potential recapture of local sales tax and use tax exemption benefits for failure to meet and maintain the thresholds as described below, submit, on an annual basis or as otherwise indicated below through for two (2) years following the construction completion date or the termination of the Agent Agreement, being September 30, 2024, a certification, as so required by the Agency, confirming:

- (i) the total investment actually made with respect to the Project on its construction completion date;
- (ii) the number of current FTE employees in the then current year at the Facility; and
- (iii) that, through the term of the Agent Agreement, CPC has maintained and created, or caused to be maintained and created, FTE employment at the Facility equal to forty-six (46) FTE employees
- (iv) CPC adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Certification Policy and Local Labor Reporting Requirements on a quarterly reporting basis during the construction period;
- (v) CPC adheres to and undertakes or has undertaken activities in compliance with the Agency's Pay Equity Policy; and
- (vi) CPC is compliant with the Agency's Unpaid Real Property Tax Policy.

Section 3. Subject to the terms of this Resolution, the Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver an Assignment and Assumption of Agent Agreement, and any documents necessary and incidental to the Transfer as contemplated herein.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to negotiate, execute and deliver all such certificates, instruments and documents and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. This Resolution shall take effect immediately.

Dated: May 29, 2024