

Meeting Agenda – Audit and Finance Committee
 Genesee County Economic Development Center
 Tuesday, November 29, 2022 – 8:30 a.m.
 Location: 99 MedTech Drive, Innovation Zone

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	M. Gray	
	Presentation – Tompkins Insurance	J. Teresi	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: 1. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. 1b. Enter Public Session	M. Gray	
2-4	2. Chairman’s Report & Activities 2a. Agenda Additions / Other Business 2b. Minutes: October 25, 2022	M. Gray	Vote
	3. Discussions / Official Recommendations to the Board:		
5-8	3a. October 2022 Financial Statements	L. Farrell	Disc / Vote
9	3b. Insurance Renewal	L. Farrell	Disc / Vote
10-11	3c. Audit Services	L. Farrell	Disc / Vote
12-26	3d. Apple Tree Acres PSA & Authorizing Resolution	M. Masse	Disc / Vote
27-42	3e. Leroy PSA, Authorizing Resolution & Commission Agreement	M. Masse	Disc / Vote
43	3f. Consulting Assistance on Local Labor Policy Reporting (Hecate / Cider Solar)	M. Masse	Disc / Vote
44-49	3g. e3communications Contract	J. Krencik	Disc. / Vote
50-51	3h. Greater Rochester Enterprise Contract	J. Krencik	Disc / Vote
52-56	3i. Invest Buffalo Niagara Contract	J. Krencik	Disc / Vote
57-60	3j. Workforce Consulting Agreement	C. Suozzi	Disc / Vote
	4. Adjournment	M. Gray	Vote



GCEDC Audit & Finance Committee Meeting
Tuesday, October 25, 2022
Location: 99 MedTech Drive, Innovation Zone
8:30 a.m.

MINUTES

ATTENDANCE

Committee Members: P. Zelif, P. Battaglia, M. Gray, T. Bender
Staff: L. Farrell, L. Casey, M. Masse, J. Krencik, P. Kennett
Guests: D. Cunningham (GGLDC Board Member), T. Felton (GGLDC Board Member)
Absent:

1. CALL TO ORDER / ENTER PUBLIC SESSION

M. Gray called the meeting to order at 8:33 a.m. in the Innovation Zone.

Enter Executive Session

P. Zelif made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:34 a.m. for the following reasons:

- 1. The proposed acquisition, sale, or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by P. Battaglia and approved by all members present.

Enter Public Session

P. Battaglia made a motion to enter back into public session at 8:38 a.m., seconded by T. Bender and approved by all members present.

2. Chairman's Report & Activities

2a. Agenda Additions / Other Business – Nothing at this time.

2b. Minutes: October 4, 2022

T. Bender made a motion to approve the October 4, 2022 minutes; the motion was seconded by P. Zelif. Roll call resulted as follows:

P. Battaglia - Yes
M. Gray - Yes
T. Bender - Yes
P. Zelif - Yes

2b

2

The item was approved as presented.

3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS OF THE COMMITTEE:

3a. September 2022 Financial Statements- L. Farrell reviewed with the Committee the significant items of the September 2022 long form financial statements.

- On the balance sheet, Restricted Cash: LeRoy increased. We received the final payment of \$50,000 from the Town of Leroy to be used for improvements made to Leroy Food & Tech Park. In 2018, the Town of LeRoy signed an Intermunicipal Agreement with the GCEDC that committed to four annual payments of \$50,000. The Town of Leroy deferred payment in 2020 due to the pandemic. We have received 4 of 4 payments.
- Accounts receivable increased by the monthly amounts for the payments due from the GGLDC for the Economic Development Program Support Grant and the MedTech Centre Property Management Fee.
- Prepaid expenses increased for 1) October health insurance premiums and 2) the MedTech Centre lease payment.
- At this time, we should be at 75% of budget. In the operating fund, there are a few line items that are over budget related to expenditures that are front loaded, but they are beginning to level-out.
- Origination fees are close to budget at about 94%. We project to exceed budgeted fees at year-end.
- In the Real Estate Development fund, we made a payment to DDS Engineering for a gas feasibility study for LeRoy Food & Tech Park.
- The activity in the STAMP fund was covered by Plug Power land sale proceeds.
- Other than the above-mentioned items, there is normal monthly activity on the income statements for all funds.

P. Battaglia made a motion to recommend to the full Board the approval of the September 2022 Financial Statements as presented; the motion was seconded by P. Zelif. Roll call resulted as follows:

- P. Battaglia - Yes
- M. Gray - Yes
- T. Bender - Yes
- P. Zelif - Yes

The item was approved as presented.

3b. Batavia Home Fund Agreement – The Town and City of Batavia have approved the Batavia Home Fund Agreement. The agreement is that the GCEDC can utilize Host Benefit Agreements on housing projects (such as the one proposed at MedTech) to put money into the fund. The GCEDC would be the custodian of the funds, and any project would complete an application to request the money and there would be a three-person committee (GCEDC, Town and City) that would review the applications and make approvals/disapprovals. The allowable uses of the funds are as follows:

- i. Extraordinary development costs related to hazardous material abatement, remediation, flood hazard areas, etc.
- ii. Demolition / rehabilitation of vacant residential structures that cause

- community and neighborhood blight.
- iii. Provide incentives to the conversion of rental properties to single family homes.
 - iv. Infrastructure modernization and improvements including all costs related to planning, design and constructing roadways, multi-modal, water, sewer, gas, electric, telecommunication enhancements, storm water management facilities and related green infrastructure including landscaping and streetscape improvements related to redevelopment projects.
 - v. Expansion of sewer capacity at Wastewater Treatment Plant for Studies, Engineering, Construction and Expansion.
 - vi. Matching funds to secure other grant resources to further capitalize redevelopment projects in the BOA area.
 - vii. Land assemblage, property acquisition and due diligence for Agency Projects consistent with Section 2 of this Agreement.
 - viii. Marketing expenses for existing programs such as 421-F, 485-R and Core Housing Owner Incentive Exemption (CHOICE).
 - ix. Grants to support CHOICE program.

Fund Commitment: None.

T. Bender made a motion to recommend to the full Board the approval of the Batavia Home Fund Agreement as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

P. Battaglia - Yes
M. Gray - Yes
T. Bender - Yes
P. Zelif - Yes

The item was approved as presented.

3c. Greater Rochester Enterprise – Additional Support – This agenda item was tabled. Committee members requested more information to be provided at the GCEDC Board meeting.

4. ADJOURNMENT

As there was no further business, P. Battaglia made a motion to adjourn at 8:51 a.m., seconded by P. Zelif and passed unanimously.

Genesee County Economic Development Center
October 2022 Dashboard
Balance Sheet - Accrual Basis

DRAFT

[Per Audit]
12/31/21

	<u>10/31/22</u>	<u>9/30/22</u>	
ASSETS:			
Cash - Unrestricted	\$ 6,605,391	\$ 6,850,917	\$ 7,339,508
Cash - Restricted (A)(1)	9,416,135	9,659,149	11,674,315
Cash - Reserved (B)	794,162	793,962	792,739
Cash - Subtotal	<u>16,815,688</u>	<u>17,304,028</u>	<u>19,806,562</u>
Grants Receivable (2)	60,728	59,968	65,327
Accounts Receivable (3)	33,249	97,190	337,456
Deposits	2,832	2,832	2,832
Prepaid Expense(s) (4)	21,361	24,393	42,651
Loans Receivable - Current	55,832	56,758	52,489
Total Current Assets	<u>16,989,690</u>	<u>17,545,169</u>	<u>20,307,317</u>
Land Held for Dev. & Resale (5)	22,060,953	21,542,006	19,467,282
Furniture, Fixtures & Equipment	71,257	71,257	71,257
Total Property, Plant & Equip.	<u>22,132,210</u>	<u>21,613,263</u>	<u>19,538,539</u>
Less Accumulated Depreciation	(69,074)	(69,020)	(68,528)
Net Property, Plant & Equip.	<u>22,063,136</u>	<u>21,544,243</u>	<u>19,470,011</u>
Loans Receivable- Non-current (Net of \$47,429 Allow. for Bad Debt)	147,749	152,581	195,885
Other Assets	<u>147,749</u>	<u>152,581</u>	<u>195,885</u>
TOTAL ASSETS	<u>39,200,575</u>	<u>39,241,993</u>	<u>39,973,213</u>
DEFERRED OUTFLOWS OF RESOURCES			
Deferred Pension Outflows (10)	597,836	597,836	597,836
Deferred Outflows of Resources	<u>597,836</u>	<u>597,836</u>	<u>597,836</u>
LIABILITIES:			
Accounts Payable (6)	6,423	4,416	548,813
Loan Payable - Genesee County - Current (7)	305,000	305,000	295,000
Accrued Expenses	66,618	62,564	29,545
Unearned Revenue (8)	9,198,382	9,450,169	10,993,355
Total Current Liabilities	<u>9,576,423</u>	<u>9,822,149</u>	<u>11,866,713</u>
Loans Payable - ESD (9)	5,196,487	5,196,487	5,196,487
Loan Payable - Genesee County - Noncurrent (7)	2,825,000	2,825,000	3,130,000
Aggregate Net Pension Liability (10)	2,612	2,612	2,612
Total Noncurrent Liabilities	<u>8,024,099</u>	<u>8,024,099</u>	<u>8,329,099</u>
TOTAL LIABILITIES	<u>17,600,522</u>	<u>17,846,248</u>	<u>20,195,812</u>
DEFERRED INFLOWS OF RESOURCES			
Deferred Pension Inflows (10)	791,742	791,742	791,742
Deferred Inflows of Resources	<u>791,742</u>	<u>791,742</u>	<u>791,742</u>
NET ASSETS	<u>\$ 21,406,147</u>	<u>\$ 21,201,839</u>	<u>\$ 19,583,495</u>

Significant Events:

1. Restricted Cash - Includes cash deposited by ESD into imprest accounts related to the \$8M and \$33M STAMP grants. Expenditures out of these accounts are pre-authorized by ESD. Also included are funds received from the County per a Water Supply Agreement, to be put towards water improvements located in the Town of Alabama and the Town of Pembroke and other Phase II improvements as identified by the County. These funds were used to pay for qualifying expenditures; Zero balance at 10/31/22.
2. Grants Receivable - National Grid grants support marketing and development activities for STAMP and the LeRoy Food & Tech Park.
3. Accounts Receivable - Econ. Dev. Program Support Grant, MedTech Centre Property Management, etc.
4. Prepaid Expense(s) - General Liability, Cyber, D&O, Life, long-term and short-term disability insurance, property insurance, etc.
5. Land Held for Dev. & Resale - Additions are related to STAMP development costs.
6. Accounts Payable - e3communications expenses, dental insurance and interest earned on imprest accounts that will be remitted to ESD.
7. Loan Payable - Genesee County (Current & Noncurrent) - Per a Water Supply Agreement with Genesee County, the County remitted \$4M to the GCEDC to put towards water improvements located in the Town of Alabama and the Town of Pembroke and other Phase II improvements as identified by the County. GCEDC started making annual payments to the County of \$448,500 beginning in January 2020.
8. Unearned Revenue - Interest received in advance; Genesee County contribution received in advance; Funds received from municipalities to support park development; Funds received to support workforce development; ESD Grant funds to support STAMP development, not actually earned until eligible expenditures are incurred.
9. Loans Payable - ESD - Loans from ESD to support STAMP land acquisition and related soft costs.
10. Deferred Pension Outflows / Aggregate Net Pension Liability / Deferred Pension Inflows - Accounts related to implementation of GASB 68.

(A) Restricted Cash = GAIN! Loan Funds, Municipal Funds, Grant Funds Received in Advance.

(B) Reserved Cash = RLF #1 Funds (defederalized).

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**Genesee County Economic Development Center
October 2022 Dashboard
Profit & Loss - Accrual Basis**

	Month to Date		YTD		2022	2022
	10/31/22	10/31/21	2022	2021	Board Appr. <u>Budget</u>	YTD % <u>of Budget</u>
<u>Operating Revenues:</u>						
Genesee County	\$ 19,459	\$ 19,459	\$ 194,592	\$ 194,591	\$ 233,513	83%
Genesee County - WFD	2,083	-	20,832	-	-	N/A
Fees - Projects	750	2,908,874	382,843	3,379,749	411,500	93%
Fees - Services	7,099	6,961	70,991	69,611	85,192	83%
Interest Income on Loans	215	262	2,329	2,799	2,744	85%
Rent	-	-	16,393	16,806	21,071	78%
Common Area Fees - Parks	-	-	373	355	360	104%
Grants (1)	252,582	523,015	4,148,557	6,323,616	8,891,710	47%
GGLDC Grant- Econ. Dev. Program Support	25,000	25,000	250,000	250,000	300,000	83%
GCFC Grant - Econ. Dev. Program Support	-	-	328,388	-	-	N/A
Land Sale Proceeds	-	2,091,880	67,500	2,091,880	-	N/A
BP ² Revenue	14,096	641	22,693	1,342	27,454	83%
Other Revenue	-	-	1,390	2,159	5,000	28%
Total Operating Revenues	321,284	5,576,092	5,506,881	12,332,908	9,978,544	55%
<u>Operating Expenses</u>						
General & Admin	93,987	93,469	1,124,057	1,049,234	1,506,112	75%
Professional Services	5,859	15,281	60,163	44,900	108,500	55%
Site Maintenance/Repairs	1,147	426	5,171	4,832	39,500	13%
Property Taxes/Special District Fees	-	(10)	3,518	5,850	2,690	131%
PIF Expense	-	67,132	43,296	102,174	143,157	30%
Site Development Expense (2)	17,945	31,029	2,456,204	4,392,139	2,393,289	103%
Cost of Land Sales	-	611,303	5,775	611,303	-	N/A
Real Estate Development (3)	518,947	440,025	2,593,671	2,580,573	6,060,211	43%
Balance Sheet Absorption	(518,947)	(440,025)	(2,593,671)	(2,580,573)	-	N/A
Total Operating Expenses	118,938	818,630	3,698,184	6,210,432	10,253,459	36%
Operating Revenue (Expense)	202,346	4,757,462	1,808,697	6,122,476	(274,915)	
<u>Non-Operating Revenue</u>						
Other Interest Income	1,962	623	13,955	6,672	5,500	254%
Total Non-Operating Revenue	1,962	623	13,955	6,672	5,500	254%
Change in Net Assets	204,308	4,758,085	1,822,652	6,129,148	\$ (269,415)	
Net Assets - Beginning	21,201,839	13,246,818	19,583,495	11,875,755		
Net Assets - Ending	\$ 21,406,147	\$ 18,004,903	\$ 21,406,147	\$ 18,004,903		

Significant Events:

1. Grants - YTD includes \$448K Community Benefit Agreement payment dedicated to STAMP by sourcing debt service payments to the County; PIF from RJ Properties (Liberty Pumps) supports Apple Tree Acres Infrastructure improvements; PIF from Yancey's Fancy supports Infrastructure Fund Agreement with the Town of Pembroke; National Grid grant supports marketing and development activities for STAMP; ESD \$33M & \$8M Grants support STAMP engineering, environmental, legal, infrastructure, etc.
2. Site Development Expense - Installation of, or improvements to, infrastructure that is not owned by the GCEDC, or will be dedicated to a municipality in the foreseeable future, is recorded as site development expense when costs are incurred.
3. Real Estate Development Costs - Includes STAMP development costs.

Genesee County Economic Development Center
October 2022 Dashboard
Statement of Cash Flows

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	October 2022	YTD
CASH FLOWS USED BY OPERATING ACTIVITIES:		
Genesee County	\$ 21,542	\$ 236,967
Fees - Projects	750	699,243
Fees - Services	21,297	63,892
Interest Income on Loans	250	2,143
Rent	-	18,802
Common Area Fees - Parks	-	373
Grants	-	2,356,326
BP ² Revenue	14,096	22,693
GGLDC Grant - Economic Development Program Support	75,000	225,000
GCFC Grant - Economic Development Program Support	-	328,388
Land Sale Proceeds - Net	-	61,725
Other Revenue	-	1,390
Repayment of Loans	5,758	44,793
General & Admin Expense	(87,032)	(1,085,109)
Professional Services	(5,859)	(70,980)
Site Maintenance/Repairs	(1,147)	(5,171)
Site Development	(17,945)	(2,595,129)
Property Taxes/Special District Fees	-	(3,518)
PIF Expense	-	(43,296)
Improv/Additions/Adj to Land Held for Development & Resale	(518,947)	(2,970,311)
Net Cash Used By Operating Activities	(492,237)	(2,711,779)
CASH FLOWS USED BY NONCAPITAL FINANCING ACTIVITIES:		
Principal Payments on Loan	-	(295,000)
Net Cash Used By Noncapital Financing Activities	-	(295,000)
CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:		
Interest Income (Net of Remittance to ESD)	3,897	15,905
Net Change in Cash	(488,340)	(2,990,874)
Cash - Beginning of Period	17,304,028	19,806,562
Cash - End of Period	\$ 16,815,688	\$ 16,815,688
RECONCILIATION OF NET OPERATING REVENUE TO NET CASH USED BY OPERATING ACTIVITIES:		
Operating Revenue	\$ 202,346	\$ 1,808,697
Depreciation Expense	54	546
Decrease in Operating Accounts/Grants Receivable	63,181	308,806
Decrease in Prepaid Expenses	3,032	21,290
Decrease in Loans Receivable	5,758	44,793
Increase in Land Held for Development & Resale	(518,947)	(2,593,671)
Increase (Decrease) in Operating Accounts Payable	72	(544,340)
Increase in Accrued Expenses	4,054	37,073
Decrease in Unearned Revenue	(251,787)	(1,794,973)
Total Adjustments	(694,583)	(4,520,476)
Net Cash Used By Operating Activities	\$ (492,237)	\$ (2,711,779)

GCEDC

Lezlie Farrell – Finance & Operations
Audit & Finance Committee Report
November 29, 2022

Insurance Renewal

Joe Teresi from Tompkins continues to work on options for our 2023 general liability insurance. Renewal terms and costs are not yet available from Selective but should be in the next few days. Tompkins is also working with two municipal markets in an effort to get them to consider covering our entities.

Joe will attend the Audit & Finance Committee to discuss the status of this. We will share information prior to the meeting if it becomes available.

GCEDC

Lezlie Farrell – Finance & Operations
Audit & Finance Committee Report
November 29, 2022

Audit Services

Discussion: The GCEDC and its affiliated corporations issued a joint Request for Proposals (RFP) for Professional Auditing Services on October 17, 2022. The RFP requested services for three audit years from January 1, 2022 to December 31, 2024, with an option of contracting for an additional two years (2025-2026). Requesting for this length of time is customary.

The RFP was submitted directly to five accounting firms. These firms were chosen based on research and consultation with Laura Landers, former Freed Maxick government services director. A notice was also published in the Batavia Daily News stating that the GCEDC and affiliated corporations issued an RFP for these services. The RFP responses were due by November 16th. Three proposals were received.

Proposals were reviewed and evaluated by:

Lezlie Farrell, CFO

Mark Masse, Sr. VP of Operations

Penny Kennett, Operations Manager

The proposals were evaluated based on:

- 1) Qualifications and experience of the audit firm
- 2) Qualifications and experience of the partners and staff.
- 3) Quoted fee rates for each year of the potential five-year engagement.
- 4) Compliance with local, state, and federal statutes and regulations.
- 5) Anticipated potential audit problems (if any).

Mostert, Manzanero & Scott, LLP is the firm being recommended by staff. Along with the firm's experience with the GCEDC and affiliated entities, they have listed references including three other Industrial Development Agencies and a Local Development Corporation. The proposed fee schedule has been included here for your review.

Action Requested: Staff is requesting the Committee recommend selection of Mostert, Manzanero & Scott, LLP to provide professional auditing services for the 2022-2024 audits with an option of contracting with the firm for the 2025-2026 audits.

30

Exhibit A

**Genesee County Industrial Development Agency d/b/a
Genesee County Economic Development Center &
Affiliates**

Format for Schedule of Professional Fees and Expenses

Entity	Services Required	2022 Fee	2023 Fee	2024 Fee	2025 Fee	2026 Fee
1) GCEDC	a) Audit of Financial Statements (including internal controls, compliance with Investment Guidelines and Supplemental Project Information)	\$ 10,300 -	\$ 10,700 -	\$ 10,700 -	\$ 11,000	\$ 11,000 -
	b) Single Audit of Federal award expenditures (if required)	2,500 -	2,500 -	2,500 -	2,500 -	2,500 -
2) GGLDC	a) Audit of Financial Statements (including internal controls and compliance with Investment Guidelines)	10,000 -	10,300 -	10,300 -	10,700 -	10,700 -
	b) Single Audit of Federal Award Expenditures (if required)	2,500 -	2,500 -	2,500 -	2,500 -	2,500 -
3) GCFC	a) Audit of Financial Statements (including internal controls, compliance with Investment Guidelines and Supplemental Project Information)	3,000 -	3,000 -	3,000 -	3,100 -	3,100 -
4) SWWC	Audit of Financial Statements; specific requirements TBD ***	1,500 -	2,000 -	2,000 -	2,100 -	2,100 -
4) SSWC	Audit of Financial Statements; specific requirements TBD ***	1,500 -	2,000 -	2,000 -	2,100 -	2,100 -
Total		\$ 31,300 -	\$ 33,000 -	\$ 33,000 -	\$ 34,000	\$ 34,000 -
Add: Out-of-Pocket Costs (if any) / Other						
Grand Total		\$ -	\$ -	\$ -	\$ -	\$ -

***Preliminary information related to these entities as follows:

SWWC – Formed to provide onsite water services to tenants at WNY STAMP (Science and Technology Advanced Manufacturing Park). SWWC is contracting with the Town of Batavia for Operations and Maintenance. This entity will be collecting fees from STAMP tenants and submitting payments for water and contracted services. STAMP currently has one tenant that will be buying water prior to year-end. Minimal activity for 2022.

SSWC – Formed to provide onsite sewer services to tenants at WNY STAMP. It is anticipated to begin providing sewer services to one WNY STAMP tenant in 2023.

Review of Purchase and Sale Agreement for AppleTree Acres Property

Discussion: The GCEDC has received a Purchase and Sale Agreement from a potential project to acquire approximately 32.08 acres of tax parcel 13.-1-65 for \$850,000.

Fund Commitment: Legal fees to Harris Beach for the transaction as listed in the resolution.

Committee Action Request: Recommend approval of Purchase and Sale Agreement and payment of legal fees in connection with closing.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and executed this ____ day of December, 2022 (the "Effective Date"), by and between **Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center**, located at 99 MedTech Drive, Batavia, New York 14020 ("Seller") and **Jacob Berardi**, on behalf of a to-be-formed New York limited liability company, located at 5885 Transit Road, East Amherst, New York 14051 ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of the real property and improvements located at AppleTree Avenue, in the Town of Bergen, County of Genesee, State of New York; and

WHEREAS, Seller desires to sell approximately 32.08 acres in the Town of Bergen, County of Genesee, State of New York known as tax account no. 13.-1-65, to Purchaser, and Purchaser desires to purchase the real property and improvements thereon upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Property.** The real property to be conveyed consists of unimproved property identified in red on the diagram attached hereto as **Exhibit A** consisting of approximately 32.08 ± acres ("Land") situated on AppleTree Avenue, Town of Bergen, County of Genesee, State of New York, together with all right, title, and interest of Seller in and to (a) any and all easements and rights-of-way appurtenant to the Land; (b) any and all lands lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining the Land; and (c) any and all strips and gores adjacent to or abutting the Land, and also together with the existing parking areas and driveways on the Land ("Property").

2. **Condition of Property.** The Property shall be conveyed free of any and all liens, encumbrances, security agreements or other financing devices except as provided in Paragraph 8 of this Agreement (such exceptions in Paragraph 8 constituting "Permitted Encumbrances").

3. **Purchase Price and Deposit.** The purchase price for the Property (the "Purchase Price") shall be **EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$850,000.00)** payable to Seller in cash or a bank check, or by wire, at Closing (as such term is hereinafter defined). Within two (2) days of the Effective Date, Purchaser shall deposit with Seller's attorney in the attorney's noninterest bearing IOLA trust account the sum of Twenty Thousand and No/100 Dollars (**\$20,000.00**) (the "Deposit") to be credited towards the Purchase Price at Closing. The Deposit shall be refundable until the expiration of the Initial Due Diligence Period or the 90 Day Extension Period (as such terms are hereinafter defined), as applicable, at which time the Deposit shall become nonrefundable, but applicable to the Purchase Price in the event the transaction closes.

4. **Purchaser's Contingencies.** This Agreement, and Purchaser's obligations hereunder, shall be expressly contingent upon the following:

(a) Purchaser shall have the right, to conduct at its sole cost and expense within the initial ninety (90) day period after the Effective Date ("Initial Due Diligence and Contingency"), Phase I

and Phase II environmental assessments on the Property by an environmental engineer acceptable to Purchaser and Purchaser's lender, which reports shall be certified to Purchaser, and the results of which shall be satisfactory to Purchaser in its sole discretion. The Purchaser shall also receive from Seller within five (5) business days after the Effective Date, copies of all written reports for Phase I, Phase II, and Phase III environmental assessments for the Property in the possession of Seller, if any, which results shall be satisfactory to Purchaser in its sole discretion. Nothing herein shall require Purchaser to conduct a Phase I or Phase II environmental site assessment or assume responsibility for any existing environmental contamination which is found to be present on or under the Property. Notwithstanding the foregoing, Purchaser shall, upon completion of its environmental assessments, be responsible for restoring the Property to substantially the same condition as existed on the Property prior to the undertaking of such assessments.

(b) This offer is contingent upon: (i) Purchaser being able to obtain financing for the purchase of the Property on terms satisfactory to Purchaser in Purchaser's sole discretion on or before the expiration of the Initial Due Diligence and Contingency Period and (ii) upon Purchaser's receipt of such funds at Closing.

(c) On or before the expiration of the Initial Due Diligence and Contingency Period, Purchaser shall have received, at its sole cost and expense, all necessary governmental approvals, including zoning approvals, permits, consents, site plan approvals, subdivision or land separation approval, variances, and certificates of occupancy required from governmental authorities, if any are required, to construct a warehouse and office for its business on the Property on such terms and conditions as may be satisfactory to Purchaser. Seller agrees to timely execute any and all necessary applications and consents required by Purchaser to obtain the governmental approvals required pursuant to this Section 4(c). Seller also agrees to provide Purchaser with any preexisting permits, surveys, and other documents relating to the Property in Seller's possession which may be required by the Purchaser to obtain the governmental approvals required in this Section 4(c).

Notwithstanding the foregoing, provided Purchaser is utilizing commercially reasonable efforts to complete the due diligence and contingencies in this Paragraph 4(a) through (d), and if Purchaser is unable to complete such due diligence and/or obtain all necessary approvals and consents within the Initial Due Diligence and Contingency Period, then upon written notice to the Seller, the Purchaser shall have the option to extend the Initial Due Diligence and Contingency Period and also simultaneously extend the date of Closing under Paragraph 5 of this Agreement for one additional 90 day extension period ("90 Day Extension Period") without additional cost, provided such notice is given to Seller prior to the expiration of the Initial Due Diligence and Contingency Period. If the Initial Due Diligence and Contingency Period and/or the 90 Day Extension Period expires, then either Purchaser or Seller may terminate this Agreement by written notice of the other.

If any of the contingencies and due diligence requirements in this Paragraph 4 have not been satisfied or are found to be unsatisfactory to Purchaser in Purchaser's sole discretion on or before the expiration of the Initial Due Diligence and Contingency Period or the 90 Day Extension Period (i.e., 180 days after the Effective Date), as applicable, then this Agreement may be terminated by Purchaser upon the giving of written notice of such termination to Seller provided such notice is given on or before the expiration of the Initial Due Diligence and Contingency Period. Upon receipt of such termination, Purchaser's Deposit shall be promptly refunded without set off or deduction. If Purchaser does not terminate this Agreement in accordance with this paragraph prior to the expiration of the Initial Due Diligence and Contingency Period, as the same may be extended by the 90 Day Extension Period, then the Deposit shall become entirely non-refundable to Seller.

It is understood that the contingencies set forth herein are for Purchaser's benefit and may be waived by Purchaser in writing at any time.

Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including but not limited to reasonable attorneys' fees) arising from: (i) any personal injury or property damage caused by Purchaser's negligence during the inspection of the Property; (ii) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from the Purchaser's foregoing inspections; and (iii) Purchaser's present (or that of Purchaser's representatives, agents, employees, lenders, contractors, appraisers, architects and engineers) on or at the Property during the term of this Agreement, which indemnity shall survive Closing or the earlier termination of this Agreement.

5. **Closing and Possession.** The closing and transfer of title to the Property ("Closing") shall occur on or about March 1, 2023, unless Purchaser elects in writing to Seller to close on its purchase of the Property on a sooner date. The date of Closing shall also be extended for an additional 90 day period (i.e., until on or about May 31, 2023) if Purchaser elects to extend the Initial Due Diligence and Contingency Period in Paragraph 4 of this Agreement. Closing shall take place at Purchaser's attorneys' office or at a location selected by Purchaser's lender. Purchaser shall have possession and occupancy of the Property from and after the date of Closing, free and clear of any leases, tenancies or rights of occupancy.

6. **Deed/Title Search/Survey.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with lien covenant. At least ten (10) business days prior to Closing, Seller will furnish and pay for fully guaranteed tax, title and United States Court searches for the Property, dated or redated subsequent to the date of this Agreement (the "Searches"). Purchaser shall be responsible for and shall pay the cost of redating and continuation of the Searches to and including the Closing. Seller shall also prepare, at Seller's sole cost and expense, an instrument survey of the Property dated or redated after the date of this Agreement for use by the Purchaser in conjunction with its proposed site approvals and for obtaining good and marketable title to the Property. The instrument survey shall prepared or re-dated and certified to meet the standards and requirements of the Genesee County Bar Association, Purchaser's lender, and of the responsible agency for subdivision, if applicable.

7. **Closing Costs.** At Closing, Seller shall pay any required transfer tax as well as any recording charges necessary to render good and marketable title as provided herein. Purchaser shall pay for any fees incurred for recording the deed and the mortgage and shall pay any mortgage recording taxes except as otherwise provided in Paragraph 8 below. Except as otherwise provided herein, each party shall bear its own costs, legal fees and expenses incurred hereunder without any claim against the other.

8. **Seller's Title.**

(a) Within ten (10) business days after the Purchaser's receipt of all of the title documents for the Property, including an updated survey and redated abstract, Purchaser's attorneys shall deliver to Seller's attorneys a written notice of any defects, encumbrances or other objections to title other than those to which this sale is subject. If it should appear that the Property is affected by any outstanding interest, or questions of title which render title unmarketable, or the intended use of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction), and as to which Purchaser is not obliged to take subject to in accordance with the terms of this Agreement, Seller shall have the option of either: (i) removing such outstanding interest or questions of title rendering title unmarketable or discharging such interest, for which purpose Seller

shall have a reasonable time from the receipt of Purchaser's written notice, but in no event beyond the date of the Closing as set forth in Paragraph 5 above, or alternatively, (ii) promptly terminating this Agreement. Notwithstanding the foregoing, if the Property shall be affected by any lien or encumbrance which may be discharged by the payment of an ascertainable amount, then it shall be Seller's obligation to discharge such lien or encumbrance. If Seller shall be unable to convey a good and marketable title, subject to and in accordance with the provisions hereof, Purchaser shall have the right to cancel this Agreement by giving written notice of such cancellation to the Seller whereupon all liability by reason of this Agreement shall cease; provided, however, if either party secures a commitment for title insurance containing standard exceptions only and provided that Purchaser agrees to accept title insurance as the solution to Seller's title problems, then Seller shall pay the cost thereof and in such event this Agreement shall remain and continue in full force and effect. Purchaser may, nevertheless, at its option, accept such title as Seller may be able to convey, without reduction of the purchase price or any credit or allowance against the same and without any other liability on the part of the Seller.

(b) Purchaser agrees to accept title to the Property subject to: (i) restrictions and easements of record common to the tract or subdivision in which the Property is located, provided the same have not been violated and do not prohibit the Purchaser's intended use of the Property for its warehouse and office uses; (ii) the lien of current real estate taxes not due and payable; and (iii) public utility easements along lot lines, provided Purchaser has determined such easements do not interfere with Purchaser's intended use of the Property for its warehouse and office uses.

(c) WITH THE EXCEPTION OF THE REPRESENTATIONS CONTAINED IN PARAGRAPHS 2, 8 AND 9, PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, THAT PURCHASER IS FULLY FAMILIAR WITH THE CONDITION OF THE PROPERTY, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS SECTION SHALL SURVIVE CLOSING.

9. Representations and Warranties of Seller. Seller represents and warrants to Purchaser that:

(a) This Agreement constitutes the legal and binding obligation of Seller, enforceable in accordance with its terms.

(b) Seller represents that the Property is not currently subject to any leases. Seller will not enter into any leases, contracts, agreements, or other arrangements affecting the Property or its tenants without the prior written consent of Purchaser. Purchaser's ownership of the Property is not to be subject to any agreements, contracts, or leases. ¹

¹ Seller to confirm this is true.

(c) Seller represents and warrants that Seller has not received any written notice from state or local authorities that the Property will be subject to any other eminent domain proceedings, appropriate, or other construction which would require the loss of any portion of the Property.

(d) Seller has no actual knowledge of: (i) the presence of any underground storage tanks on the Property or (ii) the presence of any actual or threatened environmental contamination or Hazardous Substances on or under the Property. Seller has not received any written notices from federal, state, or local regulatory authorities of any violation of the Property of any federal, New York State, or local laws, rules, regulations or ordinances, including any Environmental Laws and regulations. For purposes of this paragraph 9(d), "Environmental Laws" shall mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance and the rules, regulations, and orders with respect thereto. "Hazardous Substance" means, without limitation, any flammable, explosive or radioactive material, asbestos, polychlorinated biphenyl, petroleum or petroleum product, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Appendix Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law, the New York Navigation Law, or any other Environmental Laws and the regulations promulgated thereunder whether now or hereafter adopted.

(e) To the best of Seller's knowledge, the Property meets all applicable federal, state, and local governmental laws and regulations.

10. Deliveries and Closing Condition

(a) At Closing, Seller shall deliver to Purchaser the following:

(i) Duly executed and acknowledged Bargain and Sale Deed with full covenants conveying title to the Property free and clear of all liens and encumbrances;

(ii) Affidavits or other certificates or documents reasonably required by the Purchaser or the title insurance company, if any, in order to insure title in the condition required by this Agreement;

(iii) All other certificates, affidavits, warranty assignments, bills of sale, and other documents or instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof, if any.

(b) At Closing, Purchaser shall deliver to Seller the following:

(i) Payment of \$850,000.

(ii) such other certificates, documents and instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof.

11. **Condemnation.** If during the pendency of this Agreement Seller receives written notice pursuant to the Eminent Domain Procedure Law of the State of New York that any portion of the Property is to be taken by condemnation or purchased in lieu thereof, Seller shall give Purchaser written notice thereof and, if such portion to be condemned is material (i.e., remaining property cannot be used for the purposes contemplated under this Agreement), Purchaser shall have the right to terminate this Agreement or confirm that this Agreement shall continue in full force and effect within ten (10) days of Seller's notice of the condemnation. In the absence of such timely notice, Purchaser will not be deemed to have waived any such right of termination. If Purchaser does not exercise its right to terminate, Seller shall assign to Purchaser any claim for compensation to such condemned portion of the Property. If an immaterial portion of the Property is taken (i.e. the Property can still be used for Purchaser's intended use), Purchaser shall be required to proceed under this Agreement and accept an assignment of the compensation for such portion of the Property condemned.

12. **Adjustments.** Real property taxes shall be adjusted and prorated between the parties at Closing. Any past due real estate taxes, assessments, and related interest and penalties shall be paid by Seller.

13. **Notices.**

(a) Any notice, communication, approval, disapproval, request or reply (hereinafter called "Notice") provided for in this Agreement or permitted to be given, made or accepted by either party to the other, must be in writing, and shall be given or served by delivery in person, by Federal Express or similar overnight courier service or by postpaid certified or registered mail addressed to the party notified. For purposes of Notice, the addresses for the parties, unless changed as hereinafter provided, shall be:

Purchaser: Jacob Berardi
c/o J. Rental, Inc.
5885 Transit Road
East Amherst, New York 14051

with a copy to: E. Adam Leyens, PLLC
1534 Monroe Avenue
Rochester, New York 14618

Seller: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
c/o Mark A. Masse
99 MedTech Drive
Batavia, New York 14020

with a copy to: Harris Beach PLLC
Russ Gaenzle
99 Garnsey Road
Pittsford, New York 14534
Tel: 585.419.8718
E-mail: rgaenzle@harrisbeach.com

(b) Each party hereto shall have the right from time to time to change its address, by giving Notice in writing of no less than five (5) business days to the other party as herein provided.

Any Notice delivered hereunder shall be deemed delivered upon personal delivery or, if by mail, on the third day after mailing or, if by nationally recognized overnight courier service, on the next business day.

14. **Broker's Commission.** Seller and Purchaser agree that no broker brought about the sale of the Property. Any party making a misrepresentation or misstatement of fact hereunder shall indemnify and hold the other party harmless from any claim, liability and expense including attorney's fees, resulting from such misrepresentation or misstatement of fact.

15. **Miscellaneous.**

(a) This Agreement, and the terms, covenants and conditions herein contained, shall inure to the benefit of and be binding upon the respective heirs, beneficiaries, successors and assigns of the parties hereto. Neither party may assign its rights hereunder to any other person or entity without the prior written consent of the other party, provided, however, Purchaser shall be permitted to assign this Agreement to an affiliate, parent or subsidiary without obtaining Seller's consent so long as Purchaser remains fully responsible for Purchaser's obligations hereunder and Purchaser provides Seller with a notice of assignment, together with a copy of the applicable assignment and assumption agreement. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, PURCHASER MAY ASSIGN ITS RIGHTS HEREUNDER TO A NEW YORK LIMITED LIABILITY COMPANY OR OTHER ENTITY, PROVIDED THAT PURCHASER PROVIDES SELLER NOTICE OF SUCH ASSIGNMENT AT LEAST 5 DAYS PRIOR TO CLOSING.**

(b) All personal pronouns used in this Agreement shall include the other genders, and the singular shall include the plural, whenever and as often as may be appropriate.

(c) This Agreement shall be governed by and construed and enforced under the laws of the State of New York without regard to principles of conflicts of laws. The parties hereto agree to the jurisdiction of the New York State Supreme Court and to venue in Genesee County.

(d) No variation, modification or alteration of this Agreement shall be binding on either party hereto unless set forth in a document executed by such party or a duly authorized agent, officer or representative thereof.

(e) The captions contained in this Agreement are for the convenience of the parties only and shall not be deemed a part of the context of this Agreement.

(f) The parties hereto agree to execute and deliver all other documents required, provide all necessary information, and take or forebear from all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) This Agreement contains the entire agreement between Seller and Purchaser, and except as otherwise set forth in the Agreement, no oral statements or prior written matter not specifically incorporated herein shall be of force or effect.

(h) The provisions of Paragraphs 9 and 14, and this Paragraph 15 of this Agreement shall survive the Closing and transfer of title to the Property.

(i) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one

and the same agreement. This Agreement shall be binding on the parties as soon as each party whose signature is required to make it effective has signed at least one copy of it, even if no copy has been signed by all parties. Delivery by a party of a copy of this Agreement containing that party's signature which is conveyed by facsimile, photostatic, or similar method to the party or its counsel shall be sufficient for purposes of execution and delivery of this Agreement by that party.

16. **Risk of Loss.** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Agreement without any further liability to Seller and Purchaser's deposit will be returned. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

17. **Cessation of Operations.** In the event Purchaser ceases operations at the Property or ceases the active use of the Property on or before the termination of a certain Tax Agreement to be entered into between Purchaser and Seller, Seller has the right to demand and collect an additional Ten Thousand Dollars (\$10,000) per acre purchase price. The parties acknowledge and agree that such purchase price increase terms shall be more formally set forth in the financial assistance documents to be entered into between Seller and Purchaser.

18. **Common Area Charges/Community Fees.** Purchaser shall pay subsequent to closing, common area fees in connection with the Apple Tree Acres Corporate Park of Four Hundred Dollars (\$400) annually for the first two years following Closing, and annual increases thereafter at the lesser of (i) five percent (5%) or (ii) increases in the Consumer Price Index for Urban Consumers from the preceding year. The deed of conveyance shall provide for the payment of such fee.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PURCHASER:

Dated: December __, 2022

Jacob Berardi on behalf of a to-be-formed
New York limited liability company)

SELLER:

Dated: December __, 2022

**Genesee County Industrial Development
Agency d/b/a Genesee County Economic
Development Center**

By: _____

ArcGIS Web Map

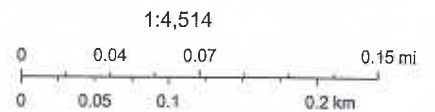


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Year 2021 Aerial Photos (Scale Dependent) 9in Year 2021 Aerial Photos (Scale Dependent) 3in

- Red: Band_1
- Green: Band_2
- Blue: Band_3
- City & Villages (Large Scale)
- Towns

- Water (Large Scale)
- 2022 Tax Parcels
- Streams (Large Scale)
- Active Railroads (Large Scale)
- Roads (Large Scale)
- Address Points



Province of Ontario, Ontario MNR, Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA, USDA

3d

22

AUTHORIZING RESOLUTION

(Purchase and Sale of Real Property – Jacob Berardi on behalf of an Entity to be Formed)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, _____, 2022.

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

Resolution No. __/2022 - _____

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF CERTAIN AGENCY OWNED REAL PROPERTY TO JACOB BERARDI ON BEHALF OF AN ENTITY TO BE FORMED, AND (ii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, A DEED, AN EASEMENT AGREEMENT, AND RELATED DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 32.10 acres of vacant land located on Apple Tree Avenue, in the Town of Bergen, Genesee County, New York known as tax account number 13.-1-65 (the "Land");

WHEREAS, **JACOB BERARDI on behalf of an entity to be formed** (the "Company") has offered to purchase the Land in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Land to the Company and (ii) the execution of the Purchase and Sale Agreement, a deed and related documents; and

WHEREAS, the Purchase and Sale Agreement, the deed, and related documents in connection therewith have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Agency is hereby authorized to sell the Land to the Company pursuant to the terms and conditions of the Purchase and Sale Agreement.

Section 2. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement, the deed, the easement agreement and related documents in connection therewith, if any.

Section 3. 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 execute and 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 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 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$8,000.00 subject to no substantive title issues, municipal approval issues and/or environmental issues arising in connection with the purchase and sale of the Land.

Section 5. These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>		<i>Nay</i>		<i>Absent</i>		<i>Abstain</i>	
Peter Zeliff	[]	[]	[]	[]
Matthew Gray	[]	[]	[]	[]
Paul Battaglia	[]	[]	[]	[]
Craig Yunker	[]	[]	[]	[]
Todd Bender	[]	[]	[]	[]
Chandy Kemp	[]	[]	[]	[]
Marianne Clattenburg	[]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION

(Purchase and Sale of Real Property – Bert Berardi)

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on March 29, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ____ day of _____, 2022.

Secretary

3d

EXHIBIT A

Form of Purchase and Sale Agreement

(Attached Next Page)

Review of Purchase and Sale Agreement for LeRoy Property

Discussion: The GCEDC has received a Purchase and Sale Agreement from a potential project to acquire approximately 20 acres out of tax parcel 25.-1-75 for \$1,107,150.

Fund Commitment: Legal fees to Harris Beach for the transaction as listed in the resolution.

Committee Action Request: Recommend approval of Purchase and Sale Agreement and payment of legal fees in connection with closing.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), is made and executed this ____ day of December, 2022 (the "Effective Date"), by and between **Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center**, located at 99 MedTech Drive, Batavia, New York 14020 ("Seller") and **Walden Development Group, LLC**, a New York limited liability company, located at 2721 Transit Road, Elma, New York 14059 ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of the real property and improvements located at Route 19 and West Bergen Road, in the Town of LeRoy, County of Genesee, State of New York; and

WHEREAS, Seller desires to sell approximately 20.13 acres in the Town of LeRoy, County of Genesee, State of New York known as part of tax account no. 25.-1-75, to Purchaser, and Purchaser desires to purchase the real property and improvements thereon upon the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Property**. The real property to be conveyed consists of unimproved property identified in red on the diagram attached hereto as **Exhibit A** consisting of approximately 20.13 ± acres ("Land") situated on West Bergen Road, Town of LeRoy, County of Genesee, State of New York, together with all right, title, and interest of Seller in and to (a) any and all easements and rights-of-way appurtenant to the Land; (b) any and all lands lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining the Land; and (c) any and all strips and gores adjacent to or abutting the Land, and also together with the existing parking areas and driveways on the Land ("Property").

2. **Condition of Property**. The Property shall be conveyed free of any and all liens, encumbrances, security agreements or other financing devices except as provided in Paragraph 8 of this Agreement (such exceptions in Paragraph 8 constituting "Permitted Encumbrances").

3. **Purchase Price and Deposit**. The purchase price for the Property (the "Purchase Price") shall be **ONE MILLION ONE HUNDRED THOUSAND ONE HUNDRED FIFTY DOLLARS AND NO/100 DOLLARS (\$1,107,150.00)** payable to Seller in cash or a bank check, or by wire, at Closing (as such term is hereinafter defined). Within two (2) days of the Effective Date, Purchaser shall deposit with Seller's attorney in the attorney's noninterest bearing IOLA trust account the sum of Twenty Thousand and No/100 Dollars (\$50,000.00) (the "Deposit") to be credited towards the Purchase Price at Closing. The Deposit shall be refundable until the expiration of the Initial Due Diligence Period or the 90 Day Extension Period (as such terms are hereinafter defined), as applicable, at which time the Deposit shall become nonrefundable, but applicable to the Purchase Price in the event the transaction closes.

4. **Purchaser's Contingencies.** This Agreement, and Purchaser's obligations hereunder, shall be expressly contingent upon the following:

(a) Purchaser shall have the right, to conduct at its sole cost and expense within the initial ninety (90) day period after the Effective Date ("Initial Due Diligence and Contingency"), Phase I and Phase II environmental assessments on the Property by an environmental engineer acceptable to Purchaser and Purchaser's lender, which reports shall be certified to Purchaser, and the results of which shall be satisfactory to Purchaser in its sole discretion. The Purchaser shall also receive from Seller within five (5) business days after the Effective Date, copies of all written reports for Phase I, Phase II, and Phase III environmental assessments for the Property in the possession of Seller, if any, which results shall be satisfactory to Purchaser in its sole discretion. Nothing herein shall require Purchaser to conduct a Phase I or Phase II environmental site assessment or assume responsibility for any existing environmental contamination which is found to be present on or under the Property. Notwithstanding the foregoing, Purchaser shall, upon completion of its environmental assessments, be responsible for restoring the Property to substantially the same condition as existed on the Property prior to the undertaking of such assessments.

(b) This offer is contingent upon: (i) Purchaser being able to obtain financing for the purchase of the Property on terms satisfactory to Purchaser in Purchaser's sole discretion on or before the expiration of the Initial Due Diligence and Contingency Period and (ii) upon Purchaser's receipt of such funds at Closing.

(c) On or before the expiration of the Initial Due Diligence and Contingency Period, Purchaser shall have received, at its sole cost and expense, all necessary governmental approvals, including zoning approvals, permits, consents, site plan approvals, subdivision or land separation approval, variances, and certificates of occupancy required from governmental authorities, if any are required, to construct a warehouse and office for its business on the Property on such terms and conditions as may be satisfactory to Purchaser. Seller agrees to timely execute any and all necessary applications and consents required by Purchaser to obtain the governmental approvals required pursuant to this Section 4(c). Seller also agrees to provide Purchaser with any preexisting permits, surveys, and other documents relating to the Property in Seller's possession which may be required by the Purchaser to obtain the governmental approvals required in this Section 4(c).

Notwithstanding the foregoing, provided Purchaser is utilizing commercially reasonable efforts to complete the due diligence and contingencies in this Paragraph 4(a) through (d), and if Purchaser is unable to complete such due diligence and/or obtain all necessary approvals and consents within the Initial Due Diligence and Contingency Period, then upon written notice to the Seller, the Purchaser shall have the option to extend the Initial Due Diligence and Contingency Period and also simultaneously extend the date of Closing under Paragraph 5 of this Agreement for one additional 90 day extension period ("90 Day Extension Period") without additional cost, provided such notice is given to Seller prior to the expiration of the Initial Due Diligence and Contingency Period. If the Initial Due Diligence and Contingency Period and/or the 90 Day Extension Period expires, then either Purchaser or Seller may terminate this Agreement by written notice of the other.

If any of the contingencies and due diligence requirements in this Paragraph 4 have not been satisfied or are found to be unsatisfactory to Purchaser in Purchaser's sole discretion on or before the expiration of the Initial Due Diligence and Contingency Period or the 90 Day Extension Period (i.e., 180 days after the Effective Date), as applicable, then this Agreement may be terminated by Purchaser upon the giving of written notice of such termination to Seller provided such notice is given on or before the expiration of the Initial Due Diligence and Contingency Period. Upon receipt of such termination, Purchaser's Deposit shall be promptly refunded without set off or deduction. If

Purchaser does not terminate this Agreement in accordance with this paragraph prior to the expiration of the Initial Due Diligence and Contingency Period, as the same may be extended by the 90 Day Extension Period, then the Deposit shall become entirely non-refundable to Seller.

It is understood that the contingencies set forth herein are for Purchaser's benefit and may be waived by Purchaser in writing at any time.

Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including but not limited to reasonable attorneys' fees) arising from: (i) any personal injury or property damage caused by Purchaser's negligence during the inspection of the Property; (ii) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from the Purchaser's foregoing inspections; and (iii) Purchaser's present (or that of Purchaser's representatives, agents, employees, lenders, contractors, appraisers, architects and engineers) on or at the Property during the term of this Agreement, which indemnity shall survive Closing or the earlier termination of this Agreement.

5. **Closing and Possession**. The closing and transfer of title to the Property ("Closing") shall occur on or about March 1, 2023, unless Purchaser elects in writing to Seller to close on its purchase of the Property on a sooner date. The date of Closing shall also be extended for an additional 90 day period (i.e., until on or about May 31, 2023) if Purchaser elects to extend the Initial Due Diligence and Contingency Period in Paragraph 4 of this Agreement. Closing shall take place at Purchaser's attorneys' office or at a location selected by Purchaser's lender. Purchaser shall have possession and occupancy of the Property from and after the date of Closing, free and clear of any leases, tenancies or rights of occupancy.

6. **Deed/Title Search/Survey**. Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with lien covenant. At least ten (10) business days prior to Closing, Seller will furnish and pay for fully guaranteed tax, title and United States Court searches for the Property, dated or redated subsequent to the date of this Agreement (the "Searches"). Purchaser shall be responsible for and shall pay the cost of redating and continuation of the Searches to and including the Closing. Seller shall also prepare, at Seller's sole cost and expense, an instrument survey of the Property dated or redated after the date of this Agreement for use by the Purchaser in conjunction with its proposed site approvals and for obtaining good and marketable title to the Property. The instrument survey shall prepared or re-dated and certified to meet the standards and requirements of the Genesee County Bar Association, Purchaser's lender, and of the responsible agency for subdivision, if applicable.

7. **Closing Costs**. At Closing, Seller shall pay any required transfer tax as well as any recording charges necessary to render good and marketable title as provided herein. Purchaser shall pay for any fees incurred for recording the deed and the mortgage and shall pay any mortgage recording taxes except as otherwise provided in Paragraph 8 below. Except as otherwise provided herein, each party shall bear its own costs, legal fees and expenses incurred hereunder without any claim against the other.

8. **Seller's Title**.

(a) Within ten (10) business days after the Purchaser's receipt of all of the title documents for the Property, including an updated survey and redated abstract, Purchaser's attorneys shall deliver to Seller's attorneys a written notice of any defects, encumbrances or other objections to title other than those to which this sale is subject. If it should appear that the Property is affected by any outstanding interest, or questions of title which render title unmarketable, or the intended use

of the improvements illegal (being in violation of any effective law, ordinance, regulation or restriction), and as to which Purchaser is not obliged to take subject to in accordance with the terms of this Agreement, Seller shall have the option of either: (i) removing such outstanding interest or questions of title rendering title unmarketable or discharging such interest, for which purpose Seller shall have a reasonable time from the receipt of Purchaser's written notice, but in no event beyond the date of the Closing as set forth in Paragraph 5 above, or alternatively, (ii) promptly terminating this Agreement. Notwithstanding the foregoing, if the Property shall be affected by any lien or encumbrance which may be discharged by the payment of an ascertainable amount, then it shall be Seller's obligation to discharge such lien or encumbrance. If Seller shall be unable to convey a good and marketable title, subject to and in accordance with the provisions hereof, Purchaser shall have the right to cancel this Agreement by giving written notice of such cancellation to the Seller whereupon all liability by reason of this Agreement shall cease; provided, however, if either party secures a commitment for title insurance containing standard exceptions only and provided that Purchaser agrees to accept title insurance as the solution to Seller's title problems, then Seller shall pay the cost thereof and in such event this Agreement shall remain and continue in full force and effect. Purchaser may, nevertheless, at its option, accept such title as Seller may be able to convey, without reduction of the purchase price or any credit or allowance against the same and without any other liability on the part of the Seller.

(b) Purchaser agrees to accept title to the Property subject to: (i) restrictions and easements of record common to the tract or subdivision in which the Property is located, provided the same have not been violated and do not prohibit the Purchaser's intended use of the Property for its warehouse and office uses; (ii) the lien of current real estate taxes not due and payable; and (iii) public utility easements along lot lines, provided Purchaser has determined such easements do not interfere with Purchaser's intended use of the Property for its warehouse and office uses.

(c) WITH THE EXCEPTION OF THE REPRESENTATIONS CONTAINED IN PARAGRAPHS 2, 8 AND 9, PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, THAT PURCHASER IS FULLY FAMILIAR WITH THE CONDITION OF THE PROPERTY, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS SECTION SHALL SURVIVE CLOSING.

9. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that:

(a) This Agreement constitutes the legal and binding obligation of Seller, enforceable in accordance with its terms.

(b) Seller represents that the Property is not currently subject to any leases. Seller will not enter into any leases, contracts, agreements, or other arrangements affecting the Property or its

tenants without the prior written consent of Purchaser. Purchaser's ownership of the Property is not to be subject to any agreements, contracts, or leases. ¹

(c) Seller represents and warrants that Seller has not received any written notice from state or local authorities that the Property will be subject to any other eminent domain proceedings, appropriate, or other construction which would require the loss of any portion of the Property.

(d) Seller has no actual knowledge of: (i) the presence of any underground storage tanks on the Property or (ii) the presence of any actual or threatened environmental contamination or Hazardous Substances on or under the Property. Seller has not received any written notices from federal, state, or local regulatory authorities of any violation of the Property of any federal, New York State, or local laws, rules, regulations or ordinances, including any Environmental Laws and regulations. For purposes of this paragraph 9(d), "Environmental Laws" shall mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance and the rules, regulations, and orders with respect thereto. "Hazardous Substance" means, without limitation, any flammable, explosive or radioactive material, asbestos, polychlorinated biphenyl, petroleum or petroleum product, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Appendix Sections 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, *et seq.*), Articles 15 and 27 of the New York State Environmental Conservation Law, the New York Navigation Law, or any other Environmental Laws and the regulations promulgated thereunder whether now or hereafter adopted.

(e) To the best of Seller's knowledge, the Property meets all applicable federal, state, and local governmental laws and regulations.

10. Deliveries and Closing Condition

(a) At Closing, Seller shall deliver to Purchaser the following:

(i) Duly executed and acknowledged Bargain and Sale Deed with full covenants conveying title to the Property free and clear of all liens and encumbrances;

(ii) Affidavits or other certificates or documents reasonably required by the Purchaser or the title insurance company, if any, in order to insure title in the condition required by this Agreement;

(iii) All other certificates, affidavits, warranty assignments, bills of sale, and other documents or instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof, if any.

(b) At Closing, Purchaser shall deliver to Seller the following:

(i) Payment of \$1,107,150.

¹ Seller to confirm this is true.

- (ii) such other certificates, documents and instruments reasonably requested and as required by this Agreement to effectuate the terms and conditions hereof.

11. **Condemnation.** If during the pendency of this Agreement Seller receives written notice pursuant to the Eminent Domain Procedure Law of the State of New York that any portion of the Property is to be taken by condemnation or purchased in lieu thereof, Seller shall give Purchaser written notice thereof and, if such portion to be condemned is material (i.e., remaining property cannot be used for the purposes contemplated under this Agreement), Purchaser shall have the right to terminate this Agreement or confirm that this Agreement shall continue in full force and effect within ten (10) days of Seller's notice of the condemnation. In the absence of such timely notice, Purchaser will not be deemed to have waived any such right of termination. If Purchaser does not exercise its right to terminate, Seller shall assign to Purchaser any claim for compensation to such condemned portion of the Property. If an immaterial portion of the Property is taken (i.e. the Property can still be used for Purchaser's intended use), Purchaser shall be required to proceed under this Agreement and accept an assignment of the compensation for such portion of the Property condemned.

12. **Adjustments.** Real property taxes shall be adjusted and prorated between the parties at Closing. Any past due real estate taxes, assessments, and related interest and penalties shall be paid by Seller.

13. **Notices.**

(a) Any notice, communication, approval, disapproval, request or reply (hereinafter called "Notice") provided for in this Agreement or permitted to be given, made or accepted by either party to the other, must be in writing, and shall be given or served by delivery in person, by Federal Express or similar overnight courier service or by postpaid certified or registered mail addressed to the party notified. For purposes of Notice, the addresses for the parties, unless changed as hereinafter provided, shall be:

Purchaser: Walden Development Group
c/o Andrew J. DeVincentis
2721 Transit Road, Suite 114
Elma, New York 14059

with a copy to:

Seller: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
c/o Mark A. Masse
99 MedTech Drive
Batavia, New York 14020

with a copy to: Harris Beach PLLC
Russ Gaenzle
99 Garnsey Road
Pittsford, New York 14534
Tel: 585.419.8718
E-mail: rgaenzle@harrisbeach.com

(b) Each party hereto shall have the right from time to time to change its address, by giving Notice in writing of no less than five (5) business days to the other party as herein provided. Any Notice delivered hereunder shall be deemed delivered upon personal delivery or, if by mail, on the third day after mailing or, if by nationally recognized overnight courier service, on the next business day.

14. **Broker's Commission.** Seller and Purchaser agree that Pyramid Brokerage Company of Buffalo brought about the sale of the Property.

15. **Miscellaneous.**

(a) This Agreement, and the terms, covenants and conditions herein contained, shall inure to the benefit of and be binding upon the respective heirs, beneficiaries, successors and assigns of the parties hereto. Neither party may assign its rights hereunder to any other person or entity without the prior written consent of the other party, provided, however, Purchaser shall be permitted to assign this Agreement to an affiliate, parent or subsidiary without obtaining Seller's consent so long as Purchaser remains fully responsible for Purchaser's obligations hereunder and Purchaser provides Seller with a notice of assignment, together with a copy of the applicable assignment and assumption agreement. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, PURCHASER MAY ASSIGN ITS RIGHTS HEREUNDER TO A NEW YORK LIMITED LIABILITY COMPANY OR OTHER ENTITY, PROVIDED THAT PURCHASER PROVIDES SELLER NOTICE OF SUCH ASSIGNMENT AT LEAST 5 DAYS PRIOR TO CLOSING.**

(b) All personal pronouns used in this Agreement shall include the other genders, and the singular shall include the plural, whenever and as often as may be appropriate.

(c) This Agreement shall be governed by and construed and enforced under the laws of the State of New York without regard to principles of conflicts of laws. The parties hereto agree to the jurisdiction of the New York State Supreme Court and to venue in Genesee County.

(d) No variation, modification or alteration of this Agreement shall be binding on either party hereto unless set forth in a document executed by such party or a duly authorized agent, officer or representative thereof.

(e) The captions contained in this Agreement are for the convenience of the parties only and shall not be deemed a part of the context of this Agreement.

(f) The parties hereto agree to execute and deliver all other documents required, provide all necessary information, and take or forebear from all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

(g) This Agreement contains the entire agreement between Seller and Purchaser, and except as otherwise set forth in the Agreement, no oral statements or prior written matter not specifically incorporated herein shall be of force or effect.

(h) The provisions of Paragraphs 9 and 14, and this Paragraph 15 of this Agreement shall survive the Closing and transfer of title to the Property.

(i) This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement. This Agreement shall be binding on the parties as soon as each party whose signature is required to make it effective has signed at least one copy of it, even if no copy has been signed by all parties. Delivery by a party of a copy of this Agreement containing that party's signature which is conveyed by facsimile, photostatic, or similar method to the party or its counsel shall be sufficient for purposes of execution and delivery of this Agreement by that party.

16. **Risk of Loss.** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Agreement without any further liability to Seller and Purchaser's deposit will be returned. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

PURCHASER:

Dated: December __, 2022

Andrew J. DeVincentis, Assistant Manager
Walden Development Group
(A New York limited liability company)

SELLER:

Dated: December __, 2022

**Genesee County Industrial Development
Agency d/b/a Genesee County Economic
Development Center**

By: _____



Exhibit A to Letter of Intent

Seller: Genesee County Economic
Development Center

Purchaser: Walden Development Group, LLC

The Property is identified as the Subject Parcel

AUTHORIZING RESOLUTION

(Purchase and Sale of Real Property – Walden Development Group, LLC)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, _____, 2022.

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

Resolution No. __/2022 - _____

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF CERTAIN AGENCY OWNED REAL PROPERTY TO WALDEN DEVELOPMENT GROUP, LLC, AND (ii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, A DEED, AN EASEMENT AGREEMENT, AND RELATED DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 20.13 acres of vacant land located at Lake Street Road, in the Town of LeRoy, Genesee County, New York known as part of tax account number 25.-1-75 (the "Land");

WHEREAS, **WALDEN DEVELOPMENT GROUP, LLC and its permitted assigns** (the "Company") has offered to purchase the Land in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Land to the Company and (ii) the execution of the Purchase and Sale Agreement, a deed and related documents; and

WHEREAS, the Purchase and Sale Agreement, the deed, and related documents in connection therewith have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Agency is hereby authorized to sell the Land to the Company pursuant to the terms and conditions of the Purchase and Sale Agreement.

Section 2. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement, the deed, the easement agreement and related documents in connection therewith, if any.

Section 3. 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 execute and 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 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 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$13,000.00 subject to no substantive title issues, municipal approval issues and/or environmental issues arising in connection with the purchase and sale of the Land.

Section 5. These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[]	[]	[]	[]
Matthew Gray	[]	[]	[]	[]
Paul Battaglia	[]	[]	[]	[]
Craig Yunker	[]	[]	[]	[]
Todd Bender	[]	[]	[]	[]
Chandy Kemp	[]	[]	[]	[]
Marianne Clattenburg	[]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION

(Purchase and Sale of Real Property – Bert Berardi)

STATE OF NEW YORK)
COUNTY OF GENESEE) ss.:

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on _____, 2022, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ____ day of _____, 2022.

Secretary

3e

EXHIBIT A

Form of Purchase and Sale Agreement

(Attached Next Page)

November 22, 2022

Chris Suozzi, VP Business & Workforce Development
Genesee County Economic Development Center
99 MedTech Drive; Suite 106
Batavia, New York 14020
Chris Suozzi <csuozzi@gcedc.com>

RE: Walden Development Group, LLC – Genesee County Economic
Development Center

Property: Approximate address 8778 West Bergen Road (near the corner of
Lake St (Route 19) West Bergen Rd); Town of Leroy, New York
("Property")

Dear Chris:

This letter shall serve as registration of Walden Development Group, LLC ("Prospect") as a prospect of Pyramid Brokerage Company of Buffalo, Inc. ("Pyramid"). As you know, our Prospect has made an offer to buy your Property.

In the event a deal is consummated between our Prospects, any of their principals, affiliates, subsidiaries, partnerships, or related companies, and you/ Genesee County Economic Development Center ("Seller"), or any of your partnerships, or related companies, then you agree to pay Pyramid a commission of ten percent (10%) of the sale price at the closing and from the closing proceeds.

Assuming this is acceptable, please acknowledge by executing in the space provided below and returning one copy.

Sincerely,

Accepted:

PYRAMID BROKERAGE COMPANY


Richard J. Schechter
Associate Real Estate Broker

Seller

Date:

GCEDC
Audit & Finance Committee Meeting Report

Consulting assistance on local labor policy reporting and conformity for projects

Loewke Brill Consulting Group, Inc. has been the GCEDC's consultant who assists with the monitoring and reporting of company's compliance with the local labor policy. The Board has determined that companies need to provide the GCEDC with a deposit that will cover the costs of these services. Any amount not utilized will be returned to the company.

The following fee is based on the company's project description and timeline as provided in the application for incentives.

Project: Hecate (Cider Solar)

Fund Commitment: \$19,980.

Committee Action Request: Recommend to the full Board approval of the contract with Loewke Brill contingent upon receipt of the deposit from the project.

GCEDC

Jim Krencik, Marketing & Communications Director

Board Meeting Report

December 1, 2022

E3communications GCEDC Public Relations and Social Media Services Contract

Discussion: e3communications, a professional media and public relations firm/consultant, has submitted a proposal for 2023 services related to public relations and social media marketing for the Genesee County Economic Development Center (GCEDC).

In 2022, e3communications supported GCEDC staff with GCEDC planning, sales and marketing, and government/stakeholder relations; including support of the GLOW With Your Hands, Genesee CARES, and events/groundbreakings for Ellicott Station, New York Bus Sales, Brickhouse Commons, and related activities. e3communications also maintains an expanded social media presence to audiences in project development and the greater public.

Fund Commitment: \$24,000 fund commitment. Funding is available and budgeted in the 2023 GCEDC Marketing - Operations budget for the full contract.

Board Action Request: A renewal of services for the Jan. 1, 2023 to Dec. 31, 2023 period at \$24,000 per year.



November 18, 2022

Mr. Steve Hyde
President and CEO
Genesee County Economic Development Center
99 MedTech Drive, Suite 106
Batavia, NY 14020

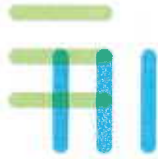
RE: 2023 Agreement for Public Relations, Social Media and Video Services

Dear Steve:

e3communications greatly appreciates the opportunity to continue our work on behalf of the Genesee County Economic Development Center (GCEDC) in 2023.

Please find below the proposed scope of services:

- Provide strategic public relations counsel regarding organizational messaging as issues develop; this would include participating in planning meetings and various other communications with staff e.g. conference calls, emails, etc.
- The writing and review of various materials, including press releases, statements, media alerts, letters, opinion pieces and other materials as determined necessary.
- Act as a liaison with media outlets in following up on the distribution of press releases and other materials; the facilitation of interview requests by reporters as well as editorial board meetings, pitching news editors for stories about organizational initiatives.
- Assist in the coordination and execution of special events such as news conferences, media briefings, etc. This would include developing a program/agenda, writing of scripts, invitations, logistics and other tactics.
- Development and implementation of a robust social media program focusing on Facebook and Twitter. This would include the writing of a monthly schedule of posts for both mediums.
- Shoot/record and edit video for producing content for social media.
- Monitor and track and distribute relevant news articles and placements and provide monthly report on public relations activities.



All work conducted by e3communications for the Genesee County Economic Development Center in 2023 will be budgeted at \$24,000 (monthly fee of \$2,000). There is no cap on the number of hours rendered on a monthly basis. A description of the services will be provided in each invoice for the work conducted in that month. **All terms are 30 days payment.**

The terms outlined in this agreement shall remain in effect from January 1, 2023 until December 31, 2023 or until modified or terminated by either party upon thirty (30) days written or verbal notice.

e3communications pledges its confidentiality to the Genesee County Economic Development Center for all work e3communications performs on behalf of the Genesee County Economic Development Center.

If you are in agreement with the terms and conditions outlined above please indicate by signing below. Thank you again for the opportunity to work on behalf of the Genesee County Economic Development Center.

Sincerely,

e3communications

Earl V. Wells III
President

For the Genesee County Economic Development Center

Steve Hyde
President and CEO

memo



To: Jim Krencik
From: e3communications
Date: November 18, 2022
Re: 2022 Public Relations and Social Media Report

As of November 18, 2022, e3communications has provided approximately 650 hours of public relations, public affairs and social media services on behalf of the Genesee County Economic Development Center. At a blended rate of \$150 per hour, this calculates to approximately \$97,500 worth of services to the GCEDC thus far in 2022 by e3communications.

Below is a recap and highlight of our activities to date:

e3communications has issued approximately 42 news releases and news alerts to media outlets in the GLOW region and the Buffalo and Rochester media markets.

Among some of the highlights from an earned media perspective included:

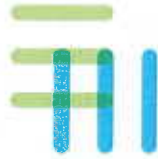
- The 4th annual GLOW With Your Hands event in September at the Genesee County Fairgrounds, including various news releases to promote and publicize the event. The day of event coverage included media outlets from Buffalo and Rochester and a live interview on a Buffalo television station for Chris Suozzi.
- e3communications provided media outreach on behalf of the GLOW YMCA and Rochester Regional Health's United Memorial Medical Center for a groundbreaking event for the \$33.5 million Healthy Living Campus in downtown Batavia.
- In April, e3communications provided assistance with GE Renewable Energy for the company's ribbon-cutting ceremony to unveil a new research and development facility in the town of Bergen that will conduct research on how to 3D print the concrete base of towers used in wind turbines.

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47



- In June, New York Bus Sales broke ground on a \$4.5 million multi-use 20,000 sq. ft. facility today in the town of Batavia. This event resulted in media coverage across the WNY and Finger Lakes region, including a live interview with a Buffalo television station.
- Also in June, e3communications coordinated a press event for the groundbreaking of J&R Fancher Property Holdings LLC 14,000 sq. ft. mixed use development in the town of Pembroke at Buffalo East Technology Park.

As it pertains to our management of content and graphics and design and analytics for GCEDC and STAMP social media platforms, we have tracked the following results:

- STAMP Facebook: 517 Followers, 20% growth
- STAMP Twitter: 332 Followers, 13% growth
- GCEDC Facebook: 836 Followers, 33% growth
- GCEDC Twitter: 1,283 Followers, 2% growth
- GCEDC LinkedIn: 775 Followers, 104% growth

Our end goal is to maximize our reach/engagement on LinkedIn, as it is the top-rated social media platform for lead generation, making it the premier source for B2B marketing.

Twitter and Facebook are utilized to create awareness among regional stakeholders. Other economic partners (GRE, IBN, NYSEDC) do a great job of collaborating with GCEDC/STAMP on their respective social media channels.

Among are some of the highlighted content that created the greatest reach among followers on these channels include:

- Periodic updates related to Plug Power and STAMP
- Liberty Pumps Expansion
- GE Renewables Open House
- Rochester Regional Health Project Updates
- Edward's Vacuum Announcement
- Ellicott Station Groundbreaking
- J&R Fancher Groundbreaking
- Genesee CARES Awareness Campaign
- WNY Tech Academy Greenhouse Ribbon Cutting

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memo



- Coach Swazz Corner, Workforce Development Program Highlights

Finally, from a public affairs perspective, we continue to provide assistance with regards to regulatory, labor and other issues impacting development at STAMP.

Please contact us with any questions regarding our public relations, social media and public affairs services on behalf of the GCEDC and STAMP.

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49

GCEDC

Jim Krencik, Marketing and Communications Director

Board Meeting Report

December 1, 2022

Greater Rochester Enterprise (GRE) – GCEDC Support

Greater Rochester Enterprise is our non-profit regional economic development organization supported by a team of private and public-sector leaders in the Finger Lakes region to grow the economy in Genesee County and our eastern neighbors.

This funding request supports GRE staff partnerships with the GCEDC's business development, sales and marketing efforts, site development, and talent attraction efforts. The GCEDC also receives an active role on Greater Rochester Enterprise's board of directors.

GRE staff directly enhance the GCEDC's active sales funnel at STAMP and our shovel-ready sites. Notably, GRE has provided critical regional connections that further company due diligence, including work that lead to Edwards Vacuum's \$319 million, 600-job project announced in November.

Please see the attached memo from GRE President & CEO Matt Hurlbutt for a full report of his organization's support to the GCEDC.

Board Request: An investment renewal of \$52,000 to Greater Rochester Enterprise for the 2023 calendar year. This expenditure is covered by available funds in the 2023 GCEDC budget.



Request for Support 2023

Greater Rochester Enterprise (GRE) is a not-for-profit economic development organization dedicated to improving economic performance in the region. GRE works to position the Greater Rochester/Finger Lakes, NY region as one of the most innovative regions in the world, attracting new private investment, new jobs and economic growth.

For many years, GRE has marketed the region, attended industry trades shows, Site Selector Guild, Industrial Asset Management Council, Semiconductor Industry Association, and visited site selectors at their offices to promote the region for investment, especially highlighting the unique attributes of STAMP for large technology based investments.

GRE acts as a business attraction lead generator for GCEDC, connecting business executives with the GCEDC team to provide assets for development – examples include Alpina, Muller Quaker, LaFermiere at the Agribusiness Park and Plug Power, Edwards Vacuum and several other business attraction prospects at STAMP.

More importantly, GRE has assisted each of those companies and other local companies with connectivity in the region. GRE assisted with important steps to secure Foreign Trade Zone designation to support the expansion of Liberty Pumps and is currently working with LaFermiere, Plug Power and Edwards Vacuum as they move forward with their building, innovation and hiring efforts. This is done with direct consultation with the company and GCEDC leadership to provide personal, unified support to company leadership.

GRE works with GCEDC to secure funding for site development, support talent development, assist in the creation and implementation of the FAST NY shovel ready site program, Green Chips Act and other programs that will be beneficial to Genesee County and economic development throughout Upstate New York.

GRE reports a significant increase in project wins, new projects secured, and total projects managed as a result of enhanced business development strategies, targeted marketing, focused and sustained outreach and relationship building with industry experts, business leaders and site selectors.

In recent years, GRE has submitted Genesee County sites for more than 39 individual business attraction opportunities, many that would mean several billion dollars of capital investment and thousands of new jobs.

GCEDC financial support of GRE is critical to increased project opportunities and our unified approach to the execution of the business attraction sales process and execution of business attraction deals as noted above. The GRE team is on call, on site and delivers daily for Genesee County throughout the business attraction process with business specific research, connectivity to local experts, unique company requests and timely execution for each individual prospect. This process is personnel intensive and unique to our region.

GRE respectfully requests support of \$52,000 for 2023 as we increase unique research tools in support of business attraction and expansion opportunities that will directly impact business growth and job opportunities throughout Genesee County.

Thank you for your partnership and support. Please feel free to call me at 585.749.1305 with any questions.

Matt Hurlbutt
President & CEO

GCEDC

Jim Krencik, Marketing and Communications Director

Board Meeting Report

December 1, 2022

Invest Buffalo Niagara (InBN) – GCEDC Support

Invest Buffalo Niagara (InBN) is our non-profit regional economic development organization supported by a team of private and public-sector leaders in the Western New York region to grow the economy in Genesee County and our western neighbors.

This funding request supports InBN staff partnerships with the GCEDC's business development, sales and marketing efforts, site development, and talent attraction efforts. The GCEDC also receives an active role on Invest Buffalo Niagara's board of directors.

InBN staff directly enhance the GCEDC's active sales funnel at STAMP and our shovel-ready sites. Notably, InBN has provided critical data analysis that further company due diligence, including work that lead to Edwards Vacuum's \$319 million, 600-job project announced in November.

Please see the attached memo from Invest Buffalo Niagara Chief Operating Officer Jenna Kavanaugh for a full report of her organization's support to the GCEDC.

Board Request: An investment renewal of \$25,000 to Invest Buffalo Niagara for the 2023 calendar year. This expenditure is covered by available funds in the 2023 GCEDC budget.

November 17, 2022

Mr. Steven G. Hyde
President & CEO
Genesee County EDC
99 MedTech Drive,
Batavia, NY

RE: Financial Support for Invest Buffalo Niagara in the 2023 GCEDC Budget

Dear Mr. Hyde,

I am writing to respectfully request that support from Genesee County EDC of \$25,000 for Invest Buffalo Niagara in the 2023 GCEDC Budget to further our efforts and help enable programs that will positively impact and encourage economic growth in Genesee County.

An investment in Invest Buffalo Niagara is an investment in our community. We believe that a proactive, regional effort to attract and retain business through intentional interaction with the site selector community, real estate developers, and expanding businesses is an essential undertaking to grow the economic pie in Western New York and bring additional wealth and work opportunities for the benefit of all residents.

Invest Buffalo Niagara, the region's private, non-profit economic development organization, has a 20+ year track record of success in attracting business to Western New York. Since 1999, Invest Buffalo Niagara has assisted 423 businesses to expand or start up in the region, attracting or retaining 46,491 jobs and \$6.6 billion in capital investment.

The Genesee County Center for Economic Development has been visionary with its detailed efforts in site preparation and infrastructure improvements. GCEDC has made tremendous progress on bold initiatives like Western New York STAMP, Buffalo East Technology Park, the Genesee Valley Agri-Business Park, and the Upstate Med & Tech Park & Commercialization Center. This is the type of available product that gets the attention of site selection professionals and corporate real estate executives. It a tremendous addition to the tool kit that our business development staff uses to promote our region, and well positions Genesee County to take advantage of opportunities across a wide array of our targeted industry clusters.

The strong working relationship between Invest Buffalo Niagara and GCEDC has enabled GCEDC staff to take full advantage of Invest Buffalo Niagara's research and marketing services. Our combined work, with the support of other critical key partners, created a path for Genesee County to become one of the nation's top ten micropolitans and to seriously compete on a national scale for prime-time projects.

Invest Buffalo Niagara functions as WNY's lead generation and marketing arm for outreach to prospective businesses and acts as a concierge for businesses that express an interest in expansion in our region, ranging from research to ribbon cutting. Beyond our core mission, Invest Buffalo Niagara

Come grow your business with us.

does so much more to support economic development in our community, and specifically in Genesee County.

For example:

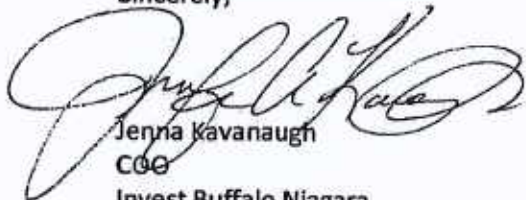
- Invest Buffalo Niagara supports several regionally significant business attraction opportunities investigating Genesee County. In the last two years Invest Buffalo Niagara Business Development and Research staff have supported GCEDC execute over one dozen regional visits by companies across the globe in target industry sectors. Major project wins born out of our joint efforts include Edwards Vacuum, La Fermiere, and Plug Power, with several more transformational projects actively considering Genesee County.
- To support Invest Buffalo Niagara and GCEDC's business attraction efforts, InBN's Research team consistently leads regional efforts related to fulfillment of Requests for Information (RFI) and other critical data inquiries from economic development opportunities and site selection consultants. The data managed by our research team helped inform recovery efforts through the global pandemic and bolsters InBN and GCEDC marketing efforts such as various guides and brochures, presentations, websites, and social media. Direct research support to GCEDC since the outset of the pandemic totals 125 hours.
- Invest Buffalo Niagara proudly collaborates with the Genesee County Economic Development Council on marketing initiatives and tactics. InBN often assists GCEDC with the production and design of many of its marketing materials. Recent marketing activities include the design of GCEDC's annual report, development of print advertisements, new product folders, and promotional materials for WNY STAMP, including a refreshed brochure and postcard. GCEDC also utilized the BuffaloNiagara.org Commercial Listing System with backend authoring access.
- This past year, GCEDC, Greater Rochester Enterprise and Invest Buffalo Niagara collaborated on a social media campaign to promote the Buf Roc Tech Corridor. In addition, GCEDC, GRE, and InBN, frequently engage in mega region social media marketing activities.
- Invest Buffalo Niagara is engaged in national public relations campaign to encourage investment and job creation in Buffalo Niagara through national news stories – positioning the region as a hub of innovation and transformation. Launching in September 2022, we will build upon the current success of the program, which has resulted in articles in *Fast Company*, *The New York Times* and more. We have successfully been positioning Buffalo Niagara as a climate refuge and have been featured in more than nine outlets. We will host fam tours and continue to pitch and promote the innovations happening in our region and showcase our transformative businesses, economic landscape, and regional amenities.
- Invest Buffalo Niagara will be conducting outreach and business recruitment to the site selection community as well as business owners and c-level executives within key target industries. Through outbound trade missions targeting six to eight prospect meetings per region, we will

connect with companies that express interest in expanding their operations in the northeast region. We will attend two Area Development Consultants Forum and one Consultants Connect event, which provide direct access to site selectors, participate in the Site Selectors Guild Fall Forum and conduct two outbound visits (New York City and Chicago) to pitch site selectors on our region. In addition, Invest Buffalo Niagara will continue to deploy targeted Canadian outreach in key industry sectors to generate a strong pipeline of companies interested in establishing their footprint in Western New York. These target industry outreach programs are complemented by a national digital marketing strategy highlighting the region's strengths and innovations, particularly in technology and manufacturing.

- Invest Buffalo Niagara spearheaded the efforts to create a regional WNY Industrial Real Estate Development Strategy and is in the process of implementing 58 strategic recommendations in the areas of business recruitment readiness, site readiness, incentives, workforce development, and marketing to improve industrial site availability and adopt best practices throughout the economic development delivery system as identified through the strategy document released in February 2021.
- Finally, Invest Buffalo Niagara is currently conducting a Labor Market Assessment with report findings and strategic recommendations being released in December 2022. Key components of the study include an understanding of Buffalo Niagara's workforce and target industries, an understanding of livable wage occupations in our region and where transferability of skills from low-wage careers exist, as well as the skill gaps found in our occupations with low unemployment and where the gap in skill attainment is occurring/can be overcome. The study is primarily funded by an EDA Grant Build Back Better Grant and National Grid. It is anticipated that there will be several strategic initiatives proposed which may require Invest Buffalo Niagara to facilitate the support of a variety of regional partners to implement.

Invest Buffalo Niagara works collaboratively on business attraction – and many other important initiatives – with a number of partner organizations in the public and private sectors. The most successful business attraction organizations around the country are funded by the private sector and local governments in tandem. We sincerely appreciate the support and dedication of Genesee County in working to continue the economic resurgence of our community for the benefit of all its residents.

Sincerely,



Jenna Kavanaugh
COO

Invest Buffalo Niagara
jkavanaugh@buffaloniagara.org

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NIAGARA

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Buffalo, New York 14202

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CC:

Thomas A. Kucharski, President & CEO,
Invest Buffalo Niagara

Douglas W. Dimitroff
Invest Buffalo Niagara, Board Chair
Phillips Lytle LLP, Partner

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56

ENGAGEMENT LETTER / CONSULTING AGREEMENT

This Agreement is made this December 1, 2022, for the period January 1, 2023 through December 31, 2023, between the **Genesee County Economic Development Center** (the "Company"), having its principal place of business at 99 MedTech Drive, Batavia, NY 14020 and **Sheila Eigenbrod**, (the "Consultant"), having a principal place of business at **ADD ADDRESS** Warsaw, NY **ZIP Code** (collectively, the "Parties").

COMPENSATION AND SERVICES RENDERED:

The Consultant hereby agrees to perform the following services, as required:

1. Perform consulting services to assist in the development and implementation of workforce development programs and training initiatives relative to the goals of the Company and its' affiliates.
2. Consult with the Company staff relative to the application, development, and deployment of its' workforce programs.
3. Consult with educational institutions who may serve as partners in the development, implementation, and delivery of training programs. Specifically, interface with Genesee Community College and its' BEST Center, other institutions of higher learning, the Genesee Valley Educational Partnership/Business Education Alliance, and local secondary schools as appropriate and GLOW Works, Inc.
4. Provide consulting services as requested by the Company.

For the services provided to the Company, the Company, agrees to pay the Consultant based upon presentation of a monthly invoice based on the following fee schedule and conditions:

Fee Schedule:

1. A maximum of Three Hundred and Fifty Dollars (\$350.00) per day. Partial days will be billed at an hourly rate of Fifty Dollars (\$50.00) per hour.
2. Total remuneration is not to exceed Twenty-Nine Thousand Eight Hundred Dollars (\$29,800.00), for the period January 1, 2023, through December 31, 2023.

The Consultant understands and agrees that the Company may provide a 1099 to the Consultant which shall include all compensation as well as expenses paid by company, and it will be the responsibility of the Consultant to maintain adequate records to substantiate all business related expenses for tax purposes.

TERM

This Agreement shall remain in effect through **December 31, 2023** or until terminated by providing a thirty (30) day written notice of termination with the date of receipt by the recipient party indicating the initiation of the notice period, by either party to this Agreement. This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties.

If the Parties have failed to renew, modify, or terminate this Agreement, for any reason, prior to the Termination Date, then this Agreement shall continue in force until such time as it is terminated in accordance with its provisions.

WARRANTIES BY THE CONSULTANT

The Consultant represents and warrants to Company that Consultant will provide services to Company in a professional, competent, and timely manner; that the Consultant has the power to enter into and perform this Agreement, and that the Consultant's performance of this Agreement shall not infringe or violate any federal, state, or municipal laws. The Consultant shall make no promise or warranty concerning Company's business activity, service, or product outside the scope of their responsibilities and the Consultant acknowledges that it has no authority to bind Company to any such promise or warranty made by the Consultant.

INDEPENDENT CONTRACTOR / CONFLICTS OF INTEREST

The Consultant acknowledges that the services rendered under this Agreement shall be solely as an independent contractor. The Consultant further acknowledges that the Consultant is not to be considered an employee of Company, is not entitled to any employment rights or benefits, and that this undertaking is not a joint venture.

The Consultant understands that Company shall not provide employment related insurance, including but not limited to worker's compensation insurance, and agrees to provide adequate insurance coverage for his own activities.

NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND COVENANT NOT TO COMPETE

The Consultant acknowledges that in and as a result of its association with Company, Consultant will be making use of and acquiring confidential information of a special and unique nature and value relating to such matters as

1. Company's patents, copyrights, proprietary information, trade secrets, systems, procedures, manuals, confidential reports, customer lists and price lists (which are deemed for all purposes confidential and proprietary), as well as the nature and type of products and services rendered by Company; and
2. The equipment, business practices and methods used and preferred by Company's customers, and the fees paid by them.

As a material inducement to the Company to enter into this Agreement and to pay to the Consultant the compensation stated in Paragraph 1, Consultant covenants and agrees that the Consultant shall not, at any time during or following the term of this Agreement for a period of two (2) years:

1. Directly divulge or disclose for any purpose whatsoever any confidential information that has been obtained by, or disclosed to, it as a result of its association with Company **other than that information specifically required as a part of this consulting engagement to individuals only and expressly with a need to know.**

Or

2. Make use of any such confidential information to compete, either directly or indirectly, with Company.

The Parties further agree that the Consultant shall not be requested or required to, and shall not, divulge or disclose any information available to the Consultant in violation of any valid and enforceable confidentiality agreement between the Consultant and any other Party.

OWNERSHIP OF WORK PRODUCT

The Consultant agrees that the Consultant's work product produced in the performance of this Agreement shall remain the property of Company, and that the Consultant will not sell, transfer, publish, disclose or otherwise make the work product available to third parties without Company's prior written consent.

ARBITRATION

Any controversies or claims relating to any aspect of the Agreement, or to its breach, or the relationship created between the Parties shall be settled by arbitration under the rules of the American Arbitration Association. The Parties agree to abide by the arbitrator's decision and also agree that a judgment may be entered upon the award in any court having jurisdiction.

The Parties agree that neither Party shall act to terminate or modify the nature of the parties' course of performance under this Agreement during the pendency of an arbitration, it being the parties' intent to preserve the status quo so as not to jeopardize the rights of either party for the period from the commencement of an arbitration to the entry of the arbitration award.

NOTICES

All notices between the Parties shall be in writing and effective when sent by certified mail to the addresses above stated, unless such addresses are changed by written notification to the other Party.

WAIVER

No failure of either party to exercise any power hereunder or to insist upon strict compliance by the other party with any obligation or provisions hereunder, and no custom or practice of the parties at variance with the terms hereunder shall constitute a waiver of the right to demand exact compliance with the terms hereof.

INDEMNIFICATION

Company will indemnify and hold harmless the Consultant from and against all liabilities and expenses, including reasonable attorneys' fees ("Liabilities"), arising out of any claim by anyone not a party to this Agreement, including third parties, considering (i) Company's material breach or default, (ii) violation of law or regulation applicable to Company, and (iii) representations, guarantees or warranties provided by Company, excluding Liabilities arising out of, or in connection with any gross negligence or willful misconduct of the Consultant.

The Consultant shall indemnify and hold Company and its affiliates and their agents, employees, officers, managers, successors and assigns from and against all Liabilities arising out of, or in connection with, any (i) Consultant's material breach or default, or (ii) violation of law or regulation applicable to the Consultant, excluding Liabilities arising out of, or in connection with, any negligence or willful misconduct of Company.

This indemnity shall survive the termination of this Agreement. The obligation of either party to indemnify the other shall not apply to the extent the loss is due to either party's: a) failure to adhere to the terms of this Agreement; b) failure to comply with any applicable government requirements; or c) negligence or willful misconduct of a party, its directors, officers, agents or employees.

ABILITY TO ENTER AGREEMENT

The parties executing this Agreement hereby covenant and warrant that each respective company has full right and authority to enter into this Agreement, and that each of the persons signing on behalf of the corporation are duly authorized to do so.

RELATIONSHIP OF PARTIES

This Agreement is not intended to constitute or create a joint venture, pooling arrangement, partnership, agency or business organization of any kind. Sheila Eigenbrod and Company shall be independent contractors for all purposes and neither party shall act as or hold itself out as agent for the other or create or attempt any obligations or liabilities on behalf of the other party.

SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby.

ASSIGNMENT

Neither party may assign this Agreement or its obligations hereunder to any entity, except a corporate subsidiary, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by acts of God, war, Internet or electrical power disruptions, terrorism, civil disorder or disturbance, riot, labor disputes, acts or omissions of the other party or acts or omissions of any third party.

GOVERNING LAW

This Agreement will be governed by the laws of the state of New York, excluding application of its conflict of laws provision.

ENTIRE AGREEMENT

This Agreement contains the Parties' entire understanding and may not be modified except in written form signed by both.

IN WITNESS WHEREOF, **Genesee County Economic Development Center** and Sheila Eigenbrod have duly executed this Agreement as of the day and year first written above.

Dated:

Consultant: Sheila Eigenbrod

By: _____
Sheila Eigenbrod
Consultant

Dated:

Company: Genesee County Economic Development Center

By: _____
Pete Zelif
President