

THE AGENCY

B R O O M E C O U N T Y I D A / L D C

BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

June 15, 2022 • 12:00 p.m. • The Agency Conference Room
FIVE South College Drive, Suite 201, 2nd Floor
Binghamton, New York 13905

AGENDA

- | | | |
|----|--|--------------|
| 1. | Call to Order | J. Bernardo |
| 2. | Approve Transcript – May 18, 2022 Board Meeting | J. Bernardo |
| 3. | Public Comment | J. Bernardo |
| 4. | Executive Director's Report <ul style="list-style-type: none">• Updates• Internal Financial Report – May 31, 2022 | S. Duncan |
| 5. | Loan Activity Reports as of May 31, 2022 | N. Abbadessa |

New Business

- | | | |
|----|--|--------------|
| 6. | Resolution Accepting an Application from OCSH Binghamton Holdings, LLC and Authorizing a New York State and Local Sales and Use Tax Exemption in an Amount Not to Exceed \$37,176.00, for a Term Not to Exceed Twelve Months, Consistent with the Policies of The Agency in Connection with the Construction, Renovation and Equipping of the Property and Building Located at 257 Washington Street, in the City of Binghamton, County of Broome and State of New York | S. Duncan |
| 7. | Resolution Authorizing the Board of Directors of The Agency Broome County IDA/LDC to Approve the Request to Close the ARC grant NY-6007 and Subsequent Amendments Totaling \$1,727,472.79 Plus Net Program Income. In Addition, a Revised Revolving Loan Fund (RLF) Plan is Recommended by the Executive Director and Staff that will Follow the Access to Capital Projects Application and Operating Guidelines Updated on May 16, 2022. Resolved Further that the RLF Plan Shall Provide Guidance for the New RLF and is Directed to Assist Local Businesses and to Strengthen the Area's Investment Capital and Improve Economic Development. Further, that the RLF Plan Outlines the Purpose of the RLF, New ARC Reporting Requirements, and Flexibilities Permitted by ARC During the Life of the RLF | N. Abbadessa |
| 8. | Resolution Authorizing The Agency Broome County IDA Board of Directors and all its Committees to use Videoconferencing Technology to Participate in Public Meetings Under Extraordinary Circumstances, as Set Forth in Exhibit A, Attached Hereto | S. Duncan |
| 9. | Executive Session: To Discuss the Sale of Property | S. Duncan |

Old Business

- | | | |
|-----|-------------|-------------|
| 10. | Adjournment | J. Bernardo |
|-----|-------------|-------------|

BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Board Meeting

Held via Zoom, May 18, 2022, commencing at
12:00PM. Adjourned at 12:42PM.

[See attendees at end of transcript.]

Digitally recorded proceeding
Transcribed by: Elana Hulsey
Reporters Transcription Center
P.O. Box 903
Binghamton, NY 13902

CHAIRMAN BERNARDO: I'd like to call to order this meeting of the Broome County Industrial Development Agency of May 18, 2022. Looking for a motion relevant to the transcript of our March 16, 2022, Board Meeting.

MR. CROCKER: I so move.

CHAIRMAN BERNARDO: Thank you, Dan. Is there a second?

MR. PEDUTO: Jim.

CHAIRMAN BERNARDO: Thank you, Jim. Any discussion? Let's have a vote. All those in favor say aye.

ALL: Aye.

CHAIRMAN BERNARDO: Any opposed? Any abstentions? Thank you. We've come to the part of our agenda where we have our public comments section. Anybody wishing to speak on any matter concerning the Broome County IDA, please state your name and address for the record, and please limit your comments to five minutes. No takers. We'll close our public comments section. Executive Director's Report, Stacey?

MS. DUNCAN: Yes. Good afternoon, everyone. It's nice to see so many of you in person. A few updates that I have, and then what I will try to be incorporating too is just some brief updates from staff each month just to give you an update on what they're working on.

So, a few things. I had the good fortune to participate in two very positive events related to projects we've been involved with. The first was the UHS groundbreaking for their \$160 million Wilson campus renovation and reconstruction. That

took place a few weeks ago, and it was a great way to highlight the work, the service we can provide with our taxes and bond financing, so it was a great event. Then about a week later, I was able to participate in the Lourdes, the grand opening of the Lourdes Health and Wellness facility - Lourdes Pavilion as it's now called, and then if you recall that's a project we first supported with Spark Broome when the Matthews family purchased the former Sears building. If you've not been in it, it's a beautiful facility. It was a great culmination of a lot of years of work on building that.

In addition, a few other things. We are going to return to our Community Breakfasts. We have not done that in person in a few years. We invite a number of our clients and community members to hear sort of our annual report to the community every year. We're planning that June 7th at the SUNY Broome Culinary & Event Center, downtown Binghamton, so we're looking forward to that. You should all have invitations in your folders, and we're mailing some out this week.

A few other things, Brendan, Natalie, and myself will be heading to Cooperstown next week for the New York State Economic Development Council's annual meeting. That will be Wednesday to Friday morning. We do have I think, one marketing nomination in there for Excellence in Marketing of our site selection, site selection, yes, our digital advertising. Amy's going to get into a little bit on the performance, some of our digital advertising in a few.

Related to projects, we were able to close with Kashou Enterprises on the reconstruction of the Greater Binghamton Sports Complex. We're happy to see that project moving forward after some unfortunate setbacks. One thing to make the Board aware of, related to Mountain Fresh Dairy and Joe can fill in the details, but the process for the litigation and foreclosure is coming to I guess a culmination with a foreclosure auction

on the property. That will happen on June 16th. A public notice was issued on May 19th. That will take place-

MR. MEAGHER: At the courthouse.

MS. DUNCAN: At the courthouse, so there is, does exist the potential that we will own that facility following the foreclosure auction. I don't know if there's any other details we should add.

MR. MEAGHER: Do you want me to speak on the taxes?

MS. DUNCAN: Oh, yes. Please.

MR. MEAGHER: Well, one thing we are going to have to do is pay the outstanding taxes. It's now a requirement of a foreclosing party that prior to or simultaneously you pay the outstanding taxes. I think they total about \$80,000.00. It's money we would get back from an eventual sale or it would be added into our bid at the foreclosure sale.

We haven't heard anything from the owners of the property. We were in contact with them and with their lawyer for a couple of years during this whole process, but Gary Collison from my office has reached out to them, and there's been no response. The response before was, "We'll never let this go through to sale. We have too much invested in it." But do they want to put another couple hundred? Well, now it will now be close to three. With the taxes, do we want to put another three into it and own this thing? Who knows?

I recall hearing one of the owners died, so part of the asset is owned by his estate so that certainly may change their appetite for acquiring the whole dairy.

MR. BUCCI: Who's doing the auction, the County or is it private?

MR. MEAGHER: We are.

MR. BUCCI: We're doing the auction?

MS. DUNCAN: Yeah. We're doing the auction.

MR. BUCCI: Are we setting a minimum? Did we set a minimum?

MR. MEAGHER: Our bid will essentially be everything that we're owed. We're entitled to bid in that amount, and then someone else will have to bid a dollar over.

MR. BUCCI: To get it. Because we don't really want it.

MR. MEAGHER: We don't really want it.

MR. BUCCI: We just want to get back what we're owed.

MR. MEAGHER: In my experience, serious buyers who are interested in buying a used dairy facility, don't buy it on the courthouse steps because you have no due diligence. You have no guarantees. You really, it's a pig and a poke, and most often what happens, the bank - which we are in this case - bids it in for what they're owed. They end up owning it, and then they turn around and sell it in the market.

People who are seriously interested in buying it go through the ordinary process of inspecting the property and doing whatever due diligence. It can happen where someone shows

up and they've got three hundred in cash, but we probably would have heard from that person.

MR. BUCCI: So, what's the total amount owed with taxes and loans?

MR. MEAGHER: Well, I would say it's probably around three hundred with the real estate taxes.

MR. BUCCI: \$300,000.00.

MR. MIRABITO: Joe, does that include equipment and the contents and everything when you foreclose?

MR. MEAGHER: Everything.

MS. DUNCAN: I think it's pretty close to being a turnkey operation as far as the investment that Mountain Fresh made on new equipment.

MR. BUCCI: That stuff was pretty new.

MS. DUNCAN: It was brand new, and it had gone through the process with the state certification and all the necessary-

MR. BUCCI: We could technically make money on this. We could get for \$300,000.00, we could sell it for-

MR. MEAGHER: \$2 million.

MR. BUCCI: So, we could consider it a bet. I'm an optimist. Somebody's going to buy it. Hey Joe, you have contacts with all these dairies and stuff.

MR. MIRABITO: I was just going to say, the reason I asked the question, Mayor, because you're spot on. The stainless steel in there is probably worth a lot more today than three or four years ago. You see what I'm saying? That's why I asked Joe, what happens if there's some contents and there's a lien on them? How does that get cleaned up? Do you have to pay the lien off?

MR. MEAGHER: It depends actually on the type of equipment. If it's equipment that's attached to the building, which is what most of this is, but if you have a spare table or pump or something like that, in theory that might be outside of our lien, but the stuff that is actually affixed goes with the building.

MR. BUCCI: Well as to Joe's question though, let's say hypothetically there's a freestanding piece of equipment, there's a lien on it, can we just say, "You take it. It's yours. We're not going to pay you for it"? Anything attached to the building.

MR. MEAGHER: Any UCC filings, etc. would be subordinate to our lien.

MR. MIRABITO: Those stainless-steel tanks have real value is what my thinking was.

MR. BUCCI: And they're fairly new. They were hardly used. I think he just, he did process a little bit of milk in there I think. Initially he did.

MS. DUNCAN: Yeah, but not much.

MR. PEDUTO: _____ right now on all that equipment.

MS. DUNCAN: We are in the process. There have been a few companies in that space that we've reached out to make them aware of public notice on the auction. One does aseptic milk, they do nut milk product out of the Buffalo area, and when I was at the IAMC Conference, which I'll talk about in just a moment, there's another bottling beverage company that I had the opportunity to meet. So, we are trying to get word out that this facility might be available for an appropriate user, but that's coming up. So I wanted to make sure the Board knew about that.

I'll end my part with I was able for the first time to attend the IAMC, Industrial Asset Management Council, Spring Forum down in Florida at the end of April, early part of May. It's the first time I think Binghamton has had a presence in a number of years. I was part of Team New York, which included our state association New York State Economic Development Council, representatives from Fulton County IDA, Greater Rochester Enterprise, National Grid was there, as well as a few others representing New York, so it was a tremendous event.

It is a hard group to get into. We're on a waiting list for membership because what they try to do is a third, a third, and a third. So, they'll have a third of their membership be economic development organizations, a third be service organizations - engineering, site selection, client reps - and a third corporate members. We were able to get in front of a lot of logistics and distribution companies to talk about the Binghamton area.

It's fascinating what's happening in industrial real estate right now. The vacancy rate is so low. So, it will help inform our direction with a lot of site inventory and land

development initiatives in the year ahead. Especially with the State's \$200 million ShovelReady fund that we're watching and waiting for the application process to open. But as well, even things, met a company who is working with shipping containers. They're being docked with nowhere to go, so this company does inventory management and tries to move product just for a temporary period of time.

It's a fascinating sector right now, but it was very worthwhile and we're reaching out to a list of contacts and we're reaching out to them to talk about Broome. So, with that, I did want to just have Brendan and Amy give two quick updates. We're going to start with Brendan to do the CDBG Grant program that we're involved with. Brendan?

MR. O'BRYAN: Thank you, everybody. To give a little background, we partnered with Broome County last summer to apply for a CDBG Coronavirus Relief Grant for small businesses. This would be a \$1 million grant, with \$50,000.00 coming to us for administration and the rest, \$950,000.00, being dispersed to businesses who are applicable for the grant. There could be a minimum of up to 19 grants awarded. These businesses have to qualify based on showing loss over the pandemic time period. Very minimal losses, a 1% loss, so it's very minimal.

They have to have 25 or less employees, and they have to have a certain number of those employees be at or below the median income of the county. So, since then we've received 44 inquiries and received formal applications from about 28 since then. We have 23 completed applications, and the reason why there's a big discrepancy between inquiries and applications received is there's a lot of paperwork involved in the process and a lot of the businesses once they see _____ provide and how much that can be they've dropped off since then. Now comes

the next difficult process is that we've only submitted one application as of today.

And this is in the process of, our general thinking of it is that we want to get one application fully completed, fully ready, perfect for the eyes of the state, while we sit on these other ones and get them up to speed at the same time, so that when they say go with that application - we're good to go with that one - we can then submit the rest of them and be thinking that it should be a simplified process going forward from there. We've had some issues with getting that one application up to what New York State wants.

We fulfilled everything they wanted as of March/ February time, but they've kind of changed their minds three or four times in how they want it. We're talking just logistically speaking, what documents they want where. They currently have everything they need to approve that one application, but they want it in five PDFs instead of two. It just has to be parsed out and just collated in the way that they want. So we're waiting on, we just completed the last round of edits and submitted that, so we're hoping that we hear back this week that this looks good and can be formally submitted, and then we can do the backlog of 15-plus that we want to get approved.

We currently have more completed applications than what we have funding available for. And probably a couple of those won't get approved, so we do have ones ready and waiting to go in the case that we don't get everybody approved. So, we're hoping that we can get those started in the process over the next couple and get them through, and then checks back in the hands of businesses.

MS. DUNCAN: Brendan and Natalie and our intern Nick Grigoris, who couldn't be at this meeting, have done a tremendous amount of work and a great job in preparing them. I

don't know if the word is stylistic or presentation, but the content is there. It's just the way they want it just keeps changing, so we're working with them and we think, we're hopefully getting there to get these grants out the door.

MR. BUCCI: What was the dollar amount again that's available to us?

MR. O'BRYAN: \$50,000.00.

MR. BUCCI: So, the business fills out an application and then what do you guys do? Kind of help them massage it, for lack of a better word, and get it ready? Making it fit the guidelines that you just outlined for the state?

MR. O'BRYAN: Yeah. There are a lot of documents that are quite confusing that the state requires. We have that expertise and knowledge on how to fill it out. We help them through the process. Sometimes they submit payroll documentation that is just a QuickBooks documentation, rather than them wanting to see the actual company-provided payroll documents, and just making sure that they're matching parts.

MS. DUNCAN: Sort of like a concierge service, for lack of a better word. So, we're getting there. The good news is once we get this process and protocol down how they want it presented, we've got the applications completed and ready to go.

CHAIRMAN BERNARDO: So, who do you deal with at the State? Is it HCR?

MR. O'BRYAN: It's OCR, so it's a little bit different than HCR, but I think that's the main sticking point is that are used to one type of application, and this is completely different than what they're used to. And they're trying to put this bucket into the same hole, the square peg into the circle hole, and it's hard to fit.

MS. DUNCAN: It's just taking a while.

CHAIRMAN BERNARDO: Is the County involved in any way in terms of review?

MR. O'BRYAN: Yes. Throughout this whole process, I have Dropbox where we submit documents back and forth, and they review it, they look at it. And how the process will be working is that as soon as the State gives us an okay, we'll invoice the County and the County will issue a check to us and then we will be paying out _____.

CHAIRMAN BERNARDO: Got it. The only thing they exclude is sole proprietorships, right?

MR. O'BRYAN: No, we have been able to make those fit too. The reason why is the sole proprietor is on the New York State Form 45, showing them as kind of like a paid employee, and if there's still one employee under that median income limit, we can make it fit. We have two or three sole proprietors on the list that have applied.

MS. DUNCAN: Nonprofits are excluded. We cannot do nonprofits.

MR. O'BRYAN: That's pretty much the only exclusion.

MS. DUNCAN: Yeah. Then what we do try to do is give you a quarterly update on a number of our marketing and business development initiatives, so I'm going to have Amy give just a quick overview. You have a report in your folder. So, Amy, go ahead.

MS. WILLIAMSON: Sure. I'm not going to go through all the data with you. I'm sure that everybody here finds it just as riveting as I do, so I'll keep it nice and brief. This quarter we only advertised for February and March, instead of January, February, and March. That was just because - and we'll get to this in a little bit - some of our creative for our advertising just wasn't performing well. That's pretty typical within the space. We run creative, on average, anywhere from about three to nine months.

It's kind of very fickle to market. It depends on what people like to see and what people don't like to see. One month, one ad can do great for a full nine months. One ad can fail after two. So, we worked all of January with our advertising placement team Riger, as well as our creative team Hue, to come up with a series of some new ads and they are performing well above normal, probably some of the best data that we've seen in a while. We've got our typical targeted-site creatives, both of those are performing double the industry standard.

Something you'll also notice on this report is there is no formal Broome Is Good advertising. At this point in time, we just decided to put a pause on those advertising dollars as Broome Is Good is going to play a larger role in the [inaudible] marketing effort that will come out at the end of this year. We're currently working with ABC Creative, who's based out of Syracuse, but they also have an office actually

right down the hall - and they've been helping us come up with some new concepts on how to kind of more seamlessly market the three organizations in our program.

If you go to the LinkedIn data, that's the best example that I have of immediate growth, switching out that creative that we talked about. So, in September 2021, by that point, we were running a site selection ad. It was kind of looked similar to the targeted display that's also in your packet, the one that has the map. Not a lot of words, not too wordy. We worked with Riger, and they said, "It's been up for a few months now and when you're advertising especially as we do - we target by profession and industry - eventually you're going to be getting the same pool of people after a while, not right away, but eventually.

If it's not as engaging an ad, people are going to say, "Oh, I've seen this before," and they're going to scroll right by. So, they'll still be counted in those impressions and the reach. They'll still be counted as people that we did reach, but since they didn't interact with the ad, click through, or come to our website to see our services, that's why that click-through rate was just truly dismal in September. It was .01%. The average click-through rate for LinkedIn campaigns is .29%, and as you can see, just in the two months - and it really only ran for half of February - we have click-through rates of .47% and .56% already, well above the industry standard and our highest record with our LinkedIn advertising campaign.

MS. DUNCAN: Yeah, and you can kind of see, we trying to. The nice thing about doing this is we can check in quickly and see how performance is and make adjustments. You can see the difference between the top and the bottom of Page 2 in your packet. Just changing up the look of something can really dramatically - I think subconsciously you see it all the time,

so you don't think to click - even just changing a little feature.

MS. WILLIAMSON: Yeah, and everyone loves the As Easy As Pie is a more fun ad. We have a lot of black and white. It's definitely just a little bit different than we usually do. Then the next page really just has the in-depth numbers for each of our campaigns. Like I said, our target displays are performing... I think actually everything is performing above average, yeah. And our SEM as well truly has jumped. Previously, we were looking at an SEM rate of about 3% click-through. Now we're at 13% and 12%, which is incredible because industry standard is 1.91%. So, we're definitely getting a lot of advertising and website traffic through our search ads.

Finally, it's just our Google analytics. I didn't include comparison data for Broome Is Good since we didn't run formal marketing. It would be kind of a joke to look at since we're not having that formal marketing pushing folks to our website. We're not having as many visitors, but we're still averaging about 2,000 a quarter, which is pretty good.

And our social pages, which is where we do most of our organic outreach for Broome Is Good, those are still increasing. All of our following counters have increased this quarter. And so that's really that. And then my favorite thing to do as always, Coffeeville is still our number one and Ashburn has now made the list. Ashburn is number two.

MS. DUNCAN: Where's that?

MS. WILLIAMSON: Somewhere in New York isn't it?

MS. DUNCAN: We'll look it up.

MR. BUCCI: What's the name again?

MS. WILLIAMSON: Ashburn.

MR. BUCCI: Ashburn?

MS. WILLIAMSON: Georgia. It was in Georgia, so the South seems to like us.

MS. DUNCAN: I know, right? We'll be focusing a lot of these ads as mentioned moving forward. We're focusing a lot on site selection right now and promoting our real estate assets in the region just because we know the demand, especially in industrial and manufacturing.

MS. WILLIAMSON: Absolutely. One other thing that I didn't put in this report, but I've talked about in previous reports, we are involved in a lot more collaborative grant efforts, typically as to lead marketing with our communications partner. So, the way that works is we'll put the dollars up front and it'll be reimbursed to us. I've included some of the collaborative marketing results as well that we've done and all of them have done exceptionally well, only with a couple hundred dollars behind each post.

MR. BUCCI: Now tracking these generally, are you getting inquiries, calls here based on the advertising?

MS. DUNCAN: The conversion can be trickier to manage.

MS. WILLIAMSON: Yeah. Conversion is a little harder to manage, especially with the services that we provide. So, we're able to track for our website data, for example, how folks get

to our website, but for example, with calls somebody would just have to say.

MS. DUNCAN: We ask, yeah.

MS. WILLIAMSON: Our website data - and I can print it out if you're ever interested - is more in depth than goes into the reports. It breaks out the mediums and channels by which someone came. So, it'll say this targeted display ad was put on Facebook, it'll show that they clicked through this ad and it came from Facebook, or it'll show you this is a search engine marketing person. You can find how these people found your website, and you can also - it's very creepy - go in and you can follow and see what exactly they did on the site.

MS. DUNCAN: How much time they spent, everything.

MS. WILLIAMSON: You can see exactly what they clicked on the website. Even if it's not a link, there's a click map. So, if you just click on a random, this blank spot, I can see that you clicked there. It gets really in depth. That's kind of the best that we can track, but conversion metrics especially get a little bit trickier since we're not necessarily selling things.

Google doesn't have, unfortunately, a function yet to have non-traditional conversion metrics like we do, like making an appointment with us or downloading one of our brochures. We are able to pull that information on our own, but Google doesn't generate it as a conversion factor like they would if we were an ecommerce store.

MR. BUCCI: Well, I think the first job, the biggest hurdle, is getting people to look, so that's the important thing. If that's increasing, that's a good thing.

MS. WILLIAMSON: Yeah. And we're reaching I think, easily across all of our ads at least 150,000 folks, so it's pretty impressive.

CHAIRMAN BERNARDO: Keep it up. Thank you.

MS. DUNCAN: I think that's all I have.

CHAIRMAN BERNARDO: I trust everyone has had a chance to review the Internal Financial Reports for March and April. Thank you, Theresa. Any questions for Teresa on those reports? In addition, I take it everybody's looked at the Loan Activity Reports. Any questions for Natalie on that? Natalie also issued the Annual Report on bonds, PILOTS, and all that. Any questions for Natalie on that? There were two entities that had some trouble attributed to COVID. I think your recommendation is to leave them alone for another year, until the end of this year, right?

MS. ABBADESSA: Well, they have three years to create the jobs. After the three years, we still track it, but it doesn't count anymore towards it, so if they lose some or gain some, it doesn't count towards that loan. So, because this is the end of the third year, the Board can take specific action.

CHAIRMAN BERNARDO: Given the pandemic and the troubles they faced, is there any input here from the Board?

MR. PEDUTO: If we gave them, for the lack of anything else here, a pass here, it would come back and revisit it next year? It's just a complete waiver.

MS. DUNCAN: Correct.

CHAIRMAN BERNARDO: Good question. So, that begs another question and that is, should we modify that? Or should we say, "Okay, we'll give you the pass for the year, but a year from now, we anticipate you'll be in compliance. We can do that, right?

MR. MEAGHER: Oh, absolutely.

MR. BUCCI: I'd be more in favor of the one-year pass.

MS. DUNCAN: There've been a lot of challenges, yeah.

MR. BUCCI: It's based on the pandemic, but I wouldn't forgive it totally because then we're setting a precedent.

CHAIRMAN BERNARDO: That's a precedent we don't want to set.

MR. BUCCI: That could take us God only knows where.

CHAIRMAN BERNARDO: Cheryl or Joe, any input on this?

MS. SACCO: I would agree with the Mayor. I don't want to set a bad precedent.

MS. DUNCAN: We can we can reach out to them and let them know that we will revisit. Kind of a gap year that we have with COVID, and we'll revisit next year.

MR. BUCCI: I think it's fair that we give them another year.

MS. DUNCAN: Yeah. And this would still be captured for this year's PARIS, for next year's PARIS, correct? This year's performance? So, we'll let them know. We'll make sure they know now that we'll be revisiting with them.

CHAIRMAN BERNARDO: Does it have formal action that has to be taken, Joe, or not?

MR. MEAGHER: No.

CHAIRMAN BERNARDO: It's just a procedural thing.

MS. DUNCAN: Just procedural.

CHAIRMAN BERNARDO: Thank you. Good input. So, if there are no questions or comments on the Loan Activity Reports as presented, moving on to new business. Resolution Authorizing an Exemption of the June 10, 2021, Sales and Use Tax Exemption Agreement Granted to Kashou Enterprises, Inc., Through and Including May 19, 2023, and Authorizing an Increase thereof in the Amount of \$91,440.00 for a Total Sales and Use Tax Exemption not to exceed \$331,440.00. Stacey?

MS. DUNCAN: Yes. So, as mentioned in my earlier remarks, we were able to close our PILOT Agreement and Project Agreement with Kashou Enterprises this previous month, and we're thrilled to see Bob Kashou, who is here today, be able to move forward with the building project at the Greater Binghamton Sports Complex on Airport Road. We all are aware of the unfortunate setback in the project, so not surprisingly it has delayed time and caused some cost increases.

Kashou Enterprises is here today to request an additional year on the time of that benefit, so from today to May 19th of 2023. And then also the addition of about \$91,000.00 in new sales tax benefit. You do have an application that outlines the cost increase there. It is under the required amount for public hearings, so today's action would just approve the full benefits as requested.

CHAIRMAN BERNARDO: Okay, questions for Mr. Kashou, who's with us today? Hi, Bob.

MR. KASHOU: Hi, everybody.

CHAIRMAN BERNARDO: Okay. Mayor, did this go through Governance?

MR. BUCCI: It did, so we'll move it forward as a motion to approve.

CHAIRMAN BERNARDO: Is there a second?

MR. CROCKER: Second.

CHAIRMAN BERNARDO: Thank you, Dan. Any discussion? Let's have a vote. All those in favor say aye.

ALL: Aye.

CHAIRMAN BERNARDO: Any opposed? Any abstentions? Carried, thank you. Item No. 7, Resolution Authorizing The Agency to Enter into Three (3) Year Term Contract(s) for Architectural, Engineering, Civil and Environmental Services. Stacey?

MS. DUNCAN: Yeah. So, this was a process we started several years ago, and what it does, the real benefit to us is it enables us to do a blanket RFP for potential contractual relationships with things like architectural engineering, civil engineering, site planning, feasibility studies, etc. We do this every three years. We issued an RFP this year, earlier this year for these services, and we did receive 12 proposals back. And we are recommending, this is higher than we've done previously, but I think for good cause. We recommended six vendors.

Two of those I would characterize as in the area of planning and feasibility studies, that's Elan Planning out of the Saratoga area, which we do have an existing relationship with on our site inventory analysis, which we are beginning our Phase Two site inventory analysis. The second one is LaBella & Associates. They're a new recommendation. They do similar planning and consulting and economic development studies for us. They have a new location in Broome County now, relatively new, so they are looking to get more involved in the market. They're a great firm. We've known them for a long time.

And then we have four that we would characterize as architecture and engineering: more classical, Shumaker Engineering in Binghamton; Chianis & Anderson, which is more strictly the architecture side of things; Delta Engineers; and Keystone & Associates. Again, the benefit of pre-approving, if you will, these relationships is we would enter into three-year term contracts. When we do find a project or a specific objective we're trying to accomplish, we can just go to them for quotes, rather than another full RFP process.

Rich had asked for some information on a previous term. So from 2019 we had had relationships with Delta Engineering, Shumaker Engineering, and CNS Engineering. We had utilized

Delta for the total of about \$2,400.00 for some structural assessment with the IBM Country Club. We are still working with them as that project continues. Then all of the other relationships we've had have gone through other grants that we've received. The 600 Main Street Feasibility Grant, we issued an RFP on the site inventory analysis, so those have been outside of this relationship.

But again, this process just, I think, helps us move a little more nimbly moving forward. So, we are recommending today Elan and Shumaker, who are both WBE enterprises here in New York State, LaBella & Associates, Chianis & Anderson Architects, Delta Engineers and Land Surveyors, and Keystone Associates.

MR. PEDUTO: I have a conflict. Do you want me to leave or sit here quietly?

MS. DUNCAN: I think he doesn't need to leave, he can just recuse.

CHAIRMAN BERNARDO: Okay. Thank you. Mayor, did this go through Governance?

MR. BUCCI: It did, but we didn't have a quorum to move it forward, so we just figured we would bring it to the full Board for consideration.

CHAIRMAN BERNARDO: Okay. Looking for a motion on this item.

MR. CROCKER: Motion.

CHAIRMAN BERNARDO: Dan. Is there a second?

MS. SACCO: Second.

CHAIRMAN BERNARDO: Okay. Cheryl, thank you. Discussion? Questions for Stacey relative to this topic? It's to have the ability to engage any one of these firms and seek obviously quotes at the time.

MS. DUNCAN: Yes. Sure. That's typically at \$5,000.00 or above, so it's a practice.

MR. BUCCI: Yeah, I think this is important, I guess, to note again, which Stacey stressed, is if it is above \$5,000.00 she puts out an RFP - a Request for Quote, I'm sorry - which I think is important for everybody to understand.

CHAIRMAN BERNARDO: What you're saying is they're qualified in your opinion and you would like to do business with them, it just comes down to the economics of it?

MS. DUNCAN: Yeah.

CHAIRMAN BERNARDO: Okay, with that said, let's have a vote. All those in favor say aye.

ALL EXCEPT MR. PEDUTO: Aye.

CHAIRMAN BERNARDO: Any opposed? And one abstention, Jim. Thank you. Item No. 8, Resolution to Approve a Proposal from Sentry Alarms Providing for the Installation of Four Exterior Cameras, Two Interior Cameras, and Two Glass Break Detectors to the Existing Security System. Stacey?

MS. DUNCAN: Yes. This actually came as a result of an incident we had here at the building which I informed the Board about a few months back. We did have an attempted break in. I assume it was an attempted break in. The glass at the Visions Federal Credit Union, part of our building, was shattered. We did provide video camera to Sentry Alarms and relevant law enforcement was involved. Thankfully, I think because it was the double-pane, they were not able to penetrate the entire building and get in, but certainly it was a moment for us to revisit, what do our security systems look like?

We discovered what we felt was somewhat of a deficiency in the appropriate amount of cameras and security equipment for the size of our building given the multi-tenant nature of the building. Part of that was because I think when we built the building, we had an understanding with SUNY Broome Community College that we were sort of covered under their security force, if you will, but we are not. I asked Natalie to sit down with Security at the college. We learned we were not covered in that way that we initially thought.

So what you have here, we did seek some additional information from Sentry, and we're recommending just additional security for the building. There's often times there's only a few people in the building. We just want to maintain security for all of our tenants and employees. So, you see that the quote here is provided. The cost does include the cost for prevailing wage, which we are required to pay.

CHAIRMAN BERNARDO: Is there a motion on this item?

MR. MIRABITO: Motion.

CHAIRMAN BERNARDO: Is there a second?

MR. PEDUTO: Second.

CHAIRMAN BERNARDO: Any discussion? Let's have a vote.
All those in favor say aye.

ALL: Aye.

CHAIRMAN BERNARDO: Any opposed? Any abstentions? Thank you. Motion carried. Item No. 9, Discussion Regarding an Amendment to the Open Meetings Law. Okay, so we all read the stuff that Natalie sent us relative to participating in person versus from afar, so I'm going to just skip you and turn it over to the Mayor. What did the Governance Committee think, regardless of whether you had a quorum or not?

MR. BUCCI: Well, what we essentially recommended was that the key word in here was "extraordinary circumstances" that you could have this bifurcated meeting, and so we just asked Stacey and the staff to make suggestions what might be considered extraordinary and bring it back to us for a vote.

CHAIRMAN BERNARDO: Like I have COVID as an example.

MR. BUCCI: Like someone being sick, yeah. So, we said rather than trying to brainstorm all the possibilities, we felt we'd throw it back to them and they can make a recommendation what's extraordinary or not.

CHAIRMAN BERNARDO: It makes perfect sense.

MS. DUNCAN: So, we will have that prior to the June meeting because right now everything is being extended for open meetings month to month. There's still an extension of this

emergency order, but we know that's potentially expiring, so we'll plan for this for June.

MR. BUCCI: So, June is still under the current order?

MS. DUNCAN: We will know, when does she usually...

MR. BUCCI: We don't know? So, right now it is.

MS. SACCO: I think it's the middle of June, I think it's the middle of June it ends.

MS. DUNCAN: Middle of June, so we're either covered by a day or not covered by a day. It's always right in the middle of the month.

CHAIRMAN BERNARDO: Is vacation one of those extraordinary?

MR. BUCCI: Family emergencies are, family issues.

MR. PEDUTO: And being sick is, with no note.

CHAIRMAN BERNARDO: So, the ball is back in your court.

MS. DUNCAN: We'll provide a recommendation for June.

CHAIRMAN BERNARDO: Well done, Governance.

MR. BUCCI: We know how to punt.

MS. DUNCAN: I do not have any items for Executive Session, but if I may, it's not necessarily old business, but

while he's on our virtual call, I want to just kind of give a shout out to Joe Mirabito and thank him. I am a member of the Conrad and Virginia Klee Foundation Board, and I just want to thank Joe for his support. Given the significant increase in the cost of fuel for organizations, we know we have a lot of nonprofits in our community that rely a lot on reaching clients where they are. That requires a lot of cost for transportation.

So, the Klee Foundation decided to venture into micro grants for those nonprofits who are struggling to maintain their service with increasing costs. And not surprisingly, we approached Mirabito, and they not only supported but enhanced the total dollar amount for these grants for nonprofits. Thank you, Joe and Mirabito, for being a tremendous community partner.

CHAIRMAN BERNARDO: Thanks, Joe.

MS. DUNCAN: It's tough if you rely a lot on your cars to get to your clients, so we appreciate that. That's all I have.

CHAIRMAN BERNARDO: Thank you, Joe, as always. Any old business? Looking for a motion to adjourn.

[The meeting was adjourned on a motion by Mr. Crocker, seconded by Mr. Mirabito, at 12:42PM.]

[Attendees: John Bernardo, Rich Bucci, Jim Peduto, Cheryl Sacco, Dan Crocker, Joe Mirabito, Stacey Duncan, Natalie Abbadessa, Carrie Hornbeck, Brendan O'Bryan, Theresa Ryan, Amy Williamson, Joe Meagher, Bob Kashou, Mike Tanzini, Linda Jackson]

C E R T I F I C A T E

Broome County IDA Board Meeting - 5/18/22

I, Elana Hulsey, certify that the foregoing transcript of the Broome County Industrial Development Agency Board on May 18, 2022, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature:

A handwritten signature in blue ink, appearing to read "Elana Hulsey", is written over a horizontal blue line.

Date: May 20, 2022

Broome County IDA
Internal Financial Status Reports
May 31, 2022

Broome County IDA
Financial Statements vs. Budget
Month Ended 05/31/22

Month # -> 5

	2022 Approved Budget	Actual YTD thru 5/31/22	Budgeted YTD thru 5/31/22	Variance
<u>INCOME:</u>				
A) Land/Building Income:				
Bluestone	94,058	-	39,191	(39,191)
ADEC Mortgage	58,838	24,516	24,516	-
Canopy	100,000	-	41,667	(41,667)
FIVE South College Drive Tenant Leases	80,400	34,121	33,500	621
Miscellaneous Income	10,000	5,776	4,167	1,610
Solar City	5,000	-	2,083	(2,083)
Spark JC, LLC	115,499	100,000	48,125	51,875
Subtotal	463,795	164,413	193,248	(28,835)
B) BCIDA Fees:				
IRB/Sale Leasback Fees	715,000	87,800	297,917	(210,117)
Loan Fund Administration	35,000	-	14,583	(14,583)
Subtotal	750,000	87,800	312,500	(224,700)
C) Other Income:				
Bank Interest	90,000	33,282	37,500	(4,218)
TOTAL INCOME	\$ 1,303,795	\$ 285,495	\$ 543,248	\$ (257,753)

EXPENSES:

A) Administration:

Salaries	\$ 487,520	\$ 190,846	\$ 196,404	\$ 5,558
Benefits	213,074	83,654	88,656	5,002
Professional Service Contracts	40,000	11,600	16,667	5,067
Payroll Administration	2,000	884	833	(50)
Investment Management	20,000	3,516	8,333	4,818
Subtotal	762,594	290,499	310,893	20,394

B) Office Expense:

Postage	2,000	1,227	833	(394)
Telephone/Internet Service	6,000	2,425	2,500	75
Equipment & Service/Repair Contracts	12,000	7,463	5,000	(2,463)
Supplies	7,000	4,359	2,917	(1,442)
Travel/Transportation	16,000	9,986	6,667	(3,320)
Meetings	14,000	5,522	5,833	311
Training/Professional Development	13,000	12,347	5,417	(6,931)
Membership/Dues/Subscriptions	7,000	8,133	2,917	(5,217)
Audit	8,500	8,000	3,542	(4,458)
Legal	70,000	16,211	29,167	12,955
Insurance (Agency, Director & Officers)	17,000	16,656	7,083	(9,573)
Contingency	5,000	755	2,083	1,329
Subtotal	177,500	93,086	73,958	(19,127)

Broome County IDA
Financial Statements vs. Budget
Month Ended 05/31/22

Month # -> 5

	2022 Approved Budget	Actual YTD thru 5/31/22	Budgeted YTD thru 5/31/22	Variance
C) Business Development:				
Advertising	112,000	61,193	46,667	(14,526)
Printing & Publishing	15,000	6,498	6,250	(248)
Public Relations Contract	40,000	15,718	16,667	949
Subtotal	167,000	83,408	69,583	(13,825)
D) FIVE South College Drive Expenses	80,400	47,002	33,500	(13,502)
E) Building/Property Maintenance:				
Broome Corporate Park				
Maintenance - Mowing/Snowplowing	8,000	1,680	3,333	1,653
600 Main Street				
Maintenance - Mowing/Snowplowing	14,000	12,800	5,833	(6,967)
Subtotal	22,000	14,480	9,167	(5,313)
TOTAL EXPENSES	\$ 1,209,494	\$ 528,476	\$ 497,102	\$ (31,374)
OPERATING INCOME	\$ 94,301	\$ (242,981)	\$ 46,146	\$ (289,127)

Projected Capital Expenditures

	Approved Budget	Actual Expenditure To Date
IDA Capital Expenditures	\$ 3,000,000	\$ 1,725

Broome County IDA
Summary of Bank Deposits and Investments

	Account	Month End Balance	Statement Date	Rate
Cash & Bank Deposits				
	Petty Cash	100.00	5/31/2022	
	NBT BCIDA Checking	31,387.38	5/31/2022	0.00%
	NBT BCIDA Money Market	3,300,337.44	5/31/2022	0.1000%
	Total Cash & Bank Deposits	3,331,824.82		
Portfolio Investment Accounts				
	Cash & Equivalents	-	5/31/2022	
	NBT Transition Account	308,913.78	5/31/2022	0.0500%
	CDs & Time Deposits		5/31/2022	
	US Treasury Bonds & Notes	6,987,511.03	5/31/2022	0.91%
	Total Portfolio Value	7,296,424.81		
Total Cash, Bank Deposit Accounts & Investments		10,628,249.63		
Loan Funds				
STEED				
	Petty Cash	100.00	5/31/2022	
	NBT STEED Checking	111,345.65	5/31/2022	0.00%
	NBT STEED Money Market	238,424.19	5/31/2022	0.0500%
	Total STEED	349,869.84		
BDF				
	NBT BDF Checking	126.33	5/31/2022	0.00%
	NBT BDF Money Market	367,971.86	5/31/2022	0.0500%
	Total BDF	368,098.19		
Total Loan Funds		717,968.03		
Total Combined Funds		11,346,217.66		

**Broome County IDA
Account Receivables**

BCIDA Notes Receivable	Beginning Balance	Interest Rate	Total Principal Payments as of 5/31/2022	Total Interest Payments 5/31/2022	Outstanding Balance as of 5/31/2022	Status	Comments
ADEC 8/5/2015	710,000.00	3.0%	269,038.28	113,405.86	440,961.72	Current	Mortgage Agreement Monthly Payment \$4,903.13
Broome County - Solar City 8/15/2016	100,000.00	0.0%	25,000.00	-	75,000.00	Current	Land Lease Annual Payment \$5,000
Precium Holdings - Charles St. 5/23/2017	80,000.00	3.0%	15,470.74	10,706.38	64,529.26	Current	Land Sale Monthly Payment \$443.68

Steed Loan Status

BORROWER	Opening Balance 1/1/2022	Current Balance 5/31/2022	Maturity Date	Status 5/31/2022
17 Kentucky Ave., LLC	182,930.43	177,247.01	1/1/2033	Current
20 Delaware Ave, LLC	72,286.72	63,576.49	1/1/2025	Current
Airport Inn Restaurant, LLC	31,693.35	28,906.10	6/1/2026	Current
Alice's Closet	25,000.00	25,000.00	7/1/2026	60 Days
Bernice Brews, LLC (Marshall McMurray)	9,371.49	8,578.45	8/1/2026	Current
Better Offer Properties, LLC	22,617.10	-	3/1/2024	Current
BrightDrive, HCS, LLC	58,118.36	53,379.85	10/1/2026	Current
Bryant Heating & Air	66,724.82	60,739.74	5/1/2026	Current
Concept Systems	23,871.60	14,789.39	10/1/2022	Current
DGC Jewelers, Inc.	13,582.88	12,388.36	6/1/2026	Current
Daniel Liburdi	15,393.90	14,040.08	6/1/2026	Current
Denise O'Donnell	10,000.00	10,000.00	6/1/2026	Current
F.A. Guernsey, Co., Inc.	118,273.72	118,273.72	6/1/2024	Bankruptcy
Fuller Holding Company, LLC	146,897.62	143,210.03	2/1/2035	Current
Highland Hollow Farm, LLC	49,216.80	45,276.24	11/1/2026	Current
Integrated Wood Components, Inc.	100,000.00	100,000.00	9/1/2026	Current
Melissa Beers	22,241.63	20,246.63	5/1/2026	Current
Mountain Fresh Dairy	92,416.06	92,416.06	12/1/2021	Litigation
Odyssey Semiconductor Technology	93,714.76	85,784.29	8/1/2026	Current
Prepared Power (Sabato)	53,788.15	52,844.05	10/1/2033	Current
Paulus Development Company, LLC	214,455.74	204,866.03	6/1/2030	Current
Roberts Stone	11,180.85	3,210.87	7/1/2022	Current
Sirgany Eyecare	21,676.46	6,228.60	4/1/2022	Current
SpecOp Tactical Center	70,453.61	70,453.61	5/1/2024	Litigation
T-Squared Custom Millwork, Inc.	18,014.04	-	4/1/2024	Current
ZDD LLC, DBA The Shop	40,000.00	38,116.41	2/1/2027	Current
TOTAL	1,583,920.09	1,449,572.01		

Business Development Fund Status

BORROWER	Opening Balance 1/1/2022	Current Balance 5/31/2022	Maturity Date	Status 5/31/2022
20 Delaware Ave., LLC	70,480.04	61,987.59	1/1/2025	Current
24 Charlotte Street, LLC	100,000.00	93,714.76	1/1/2027	Current
250 Main Street, LLC	46,599.69	45,856.46	10/1/2029	Current
265 Main St, LLC	134,001.00	131,633.36	9/1/2033	Current
J.B. Lehtonen, LLC	-	155,000.00	3/1/2028	Current
Roberts Stone	7,304.00	2,097.84	7/1/2022	Current
SpecOp Tactical Center	74,856.90	74,856.90	5/1/2024	Litigation
Total	433,241.63	565,146.91		

BR+E Loan Status

BORROWER	Opening Balance 1/1/2022	Current Balance 5/31/2022	Maturity Date	Status 5/31/2022
24 Charlotte Street, LLC	50,000.00	46,857.39	1/1/2027	Current
250 Main Street, LLC	46,599.69	45,856.46	10/1/2029	Current
265 Main St, LLC	44,667.11	43,877.90	9/1/2033	Current
Antonio's Bar & Trattoria, LLC	25,000.00	24,215.99	3/1/2027	Current
Gordon Dusingberre, DBA Northside Auto	24,215.99	22,241.63	10/1/2026	Current
Grow Hemp, LLC	39,330.62	-	11/1/2025	Paid Off
Prepared Power	44,823.48	44,036.73	10/1/2033	Current
Total	274,636.89	227,086.10		

Loan Delinquency Status

STEED

Alice's Closet
F. A. Guernsey
Mountain Fresh Dairy
SpecOp Tactical

Litigation
Bankruptcy
Litigation
Litigation

BDF

SpecOp Tactical

Litigation

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY
LOAN FUNDS ACTIVITY AS OF
May 31, 2022**

STEED ACCOUNT BALANCE: \$ 349,769.84

Amount held at ARC in Washington, DC \$ -

LOAN COMMITMENTS	Commitment Date	Expiration Date
-------------------------	------------------------	------------------------

Total STEED Loans Commitments

Available to Lend \$ 349,769.84

BDF ACCOUNT BALANCE: \$ 368,098.19

LOAN COMMITMENTS	Commitment Date	Expiration Date
-------------------------	------------------------	------------------------

Total BDF Loan Commitments \$ -

Available to Lend \$ 368,098.19

BR+E \$ 72,913.90

LOAN COMMITMENTS	Commitment Date	Expiration Date
-------------------------	------------------------	------------------------

Total BRE Loan Commitments \$ -

Available to Lend \$ 72,913.90

THE AGENCY

BROOME COUNTY IDA / LDC

SMALL BUSINESS INCENTIVE PROGRAM APPLICATION

The Small Business Incentive Program can provide eligible applicants the following: an eight percent (8%) NYS sales tax exemption on all construction materials, machinery & equipment and FF&E.

Applicants seeking assistance must complete this application and provide additional documentation if required. A **non-refundable** application fee of \$250.00 must be included with this application. Make check payable to The Agency Broome County IDA.

The Applicant requesting a sales tax exemption from the Agency/IDA must include in the application a realistic estimate of the value of the savings anticipated to be received. As per NYS 2013 Budget Law and the regulations expected to be enacted thereunder are expected to require that the Agency/IDA recapture any benefit that exceeds the amount listed in the application.

Please answer all questions. Use "None" or "Not Applicable" where necessary.

APPLICANT

Name OCSH Binghamton Holdings, LLC
Address 257 Washington Street
City/State/Zip Binghamton, NY 13901
Tax ID No. 26-3767852
Contact Name Kevin Findley
Title Manager/Member
Telephone (607) 644-7332
E-Mail kevin@ocsh.biz

Owners of 20% or more of Applicant Company

Name	%	Corporate Title
*CFLP	75	Member
Kevin Findley	25	Member

Costa Family Limited Partnership

Benefit Requested

☒ Sales Tax Exemption

Description of project (check all that apply)

- ☒ New Construction
☐ Existing Facility
 ☐ Acquisition
 ☐ Expansion
 ☒ Renovation/Modernization
☐ Acquisition of machinery/equipment
☐ Other (specify) _____

GENERAL DESCRIPTION OF THE PROJECT

(Attached additional sheets as necessary)

1. Convert Existing Large Apartments into 1 Bedroom Units and Studio Apartments
2. Construct 5 New Studio Apartments in Lower Level
3. Construct a Community Room
4. Install Heat Pumps in the Renovated Apartments and New Studios
5. Modernize Control Access System
6. Install new roof, doors on south side of building and replace windows that are older than 6 years

TAX MAP ID NUMBER: 160.33-1-7

PROJECT TIMELINE

7/1/2022

Start Date

6/30/2023

End Date

257 Washington Street, Binghamton

Project Address

Contractor(s) *please refer to required Local Labor Policy

State Environmental Quality Review (SEQR) Act Compliance

The Agency, in granting assistance to the Applicant, is required to comply with the New York State Environmental Quality Review Act (SEQR). This is applicable to projects that require the state or local municipality to issue a discretionary permit, license or other type of Approval for that project.

Does the proposed project require discretionary permit, license or other type of approval by the state or local municipality?

☐ YES – Include a copy of any SEQR or other documents related to this project including Environmental Assessment Form, Final Determination, Local Municipality Negative Declaration.

☒ NO

LOCAL LABOR POLICY

It is the goal of the The Agency to maximize the use of local labor for each project that receives benefits from The Agency. This policy applies to general contractors, subcontractors, trade professionals, and their employees. The Agency's Local Labor Area consists of the following New York State counties: Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Tioga and Tompkins.

APPLICANT PROJECT COSTS

- A. Estimate the costs necessary for the construction, acquisition, rehabilitation, improvement and/or equipping of the project by the APPLICANT.

Building Construction or Renovation

- a. MATERIALS a. \$ 225000
b. LABOR b. \$ 202200

Site Work

- c. MATERIALS c. \$ _____
d. LABOR d. \$ _____
e. Non-Manufacturing Equipment e. \$ 121200
f. Furniture and Fixtures f. \$ 118500
g. LAND and/or BUILDING Purchase g. \$ _____
h. Soft Costs (Legal, Architect, Engineering) h. \$ _____
Other (specify) i. Architect i. \$ 35000
j. Interest j. \$ 51660
k. Permit k. \$ 3000

TOTAL PROJECT COSTS \$ 756560

- B. Sources of Funds for Project Costs:

- a. Bank Financing & Leasing a. \$ 618000 Bank \$574,000 Leasing \$44,000
b. Public Sources b. \$ 0

Identify each state and federal grant/credit

\$ _____
\$ _____
\$ _____
\$ _____

- c. Equity \$ 138560

TOTAL SOURCES \$ 756560

- C. Has the applicant made any arrangements for the financing of this project?

☒ Yes ☐ No

If so, please specify bank, underwriter, etc.

Pathfinder Bank

3775 State Route 31

Liver Pool, NY 13090

VALUE OF INCENTIVES

A. Sales Tax Exemption Benefit

Estimated value of goods that will be exempt from New York State and local sales tax (materials, non-manufacturing equipment, furniture and fixtures - **line a,c,e,f from Project Costs**) \$ 464,700.00

Estimated value of New York State and local sales tax exemption (8% of value of eligible goods) \$ 37,176.00

Estimated duration of sales tax exemption 12 M
(The sales tax letter shall be valid for a period of twelve (12) months.)

PROJECTED EMPLOYMENT

Will this investment result in the creation of new jobs? If so, how many? 3.00

Current number of full time employees: 1.00

Estimated annual salary range of jobs to be created:

Annual Salary range from: 41,600 to 57,200

Estimated annual salary range of current jobs:

Annual Salary range from: 36,400 to 36,400

****Upon approval of this application, the business agrees to provide FTE and all construction job information, along with its NYS 45 in all years that a sales tax benefit is claimed.***

APPLICATION & ADMINISTRATIVE FEES

A. Application Fee:

A non-refundable application fee of \$250.00 shall be charged to each applicant and accompany the completed application.

\$ 250.00

B. Administrative Fee:

A non-refundable administrative fee is due and payable prior to the issuance of a Sales Tax Letter. The administrative fee is based on the size and scope of the project, and is determined on a case by case basis.

\$ 500.00

TOTAL TAX EXEMPTION FEES

\$ 750.00

This Application, including without limitation, information regarding the amount of New York State and local sales and use tax exemption benefits, is true, accurate and complete.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;*
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;*
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;*
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;*
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement.*
- (vi) As of the date of the Application this project is in substantial compliance with all provisions of GML Article 18-A, including but not limited to, the provisions of GML Section 859-a and GML Section 862(1) (the anti-raid provision) and if the project involves the removal or abandonment of a facility or plant within the state, notification by the IDA to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.*

APPLICANT COMPANY

Sworn to before me this

6th day of June, 2022

Alvin L. Gusefski

ALVIN L. GUSEFSKI
NOTARY PUBLIC, STATE OF NEW YORK
No. 01GU6089810
Qualified in Broome County
Commission Expires March 31, 2023

LABOR POLICY

Local General Contractor, Subcontractor, Trades and Labor Policy

It is the goal of the The Agency/**IDA** to maximize the use of local labor for each project that receives benefits from the Agency/**IDA**. This policy applies to general contractors, subcontractors, trade professionals, and their employees. The Agency/**IDA**'s Local Labor Area consists of the following New York State counties: Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Tioga and Tompkins.

Every applicant is obligated to provide written proof and data (see attached ... forms) to the Agency/**IDA** as to the physical location of all the contractors who worked on the project.

The Agency/**IDA** will review the data provided and determine, on a case-by-case basis and in a fully-transparent manner, whether the Applicant has substantially conformed to the policy.

An Applicant **will not be deficient** if the proposed project requires specifically skilled labor that is unavailable in the Local Labor Area.

An Applicant **will not be deficient** if the proposed project utilizes parts and supplies assembled elsewhere because no such assembly is available in the Local Labor Area.

An Applicant **will be held non-compliant** with the Labor Policy if it imports labor from outside the Local Labor Area when equal labor that is ready, willing, cost-competitive, etc. resides in the Local Labor Area.

The Agency/**IDA** may determine on a case-by-case basis to waive any portion of this policy for a project or a portion of a project where consideration of warranty issues, necessity of specialized skills, significant cost differentials between local and non-local services, documented lack of workers meeting the Local Labor Requirement or if other compelling circumstances exist.

In consideration of the extension of financial assistance by the Agency/**IDA** OCSH Binghamton Holdings, LLC (the Applicant) understands the Local Labor Policy and agrees to submit either or both a Local Labor Utilization Report or a Non Local Labor Utilization Report at the time that construction ends on the project to the Agency.

The Applicant understands an Agency/**IDA** tax-exempt certificate is valid for one year from the effective date of the project inducement. If an Applicant wishes to request an extension, a letter must be sent 30 days prior to the end date to the Executive Director, on company letterhead, explaining the necessity for the extension.

The Applicant further understands any request for a waiver to this policy must be submitted in writing and approved by the Agency/**IDA** before a tax-exempt certificate is issued or extended.

The Applicant further understands that if the required forms are not submitted to the Agency/**IDA**, the Agency/**IDA** shall have the authority to immediately terminate any and all Financial Assistance being provided to the Project.

I agree to the conditions of this agreement and certify all information provided regarding the construction and employment activities for the Project as of June 6, 2022 (Submission date).

APPLICANT: OCSH Binghamton Holdings, LCL

REPRESENTATIVE FOR CONTRACT BIDS/AWARDS: Kevin Findley

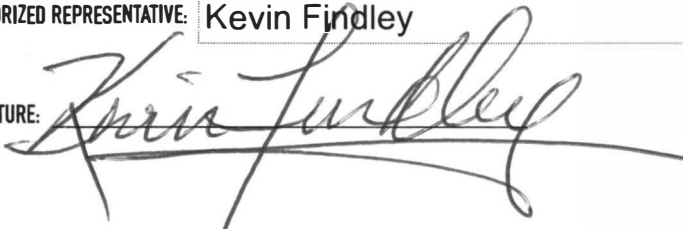
ADDRESS: 257 Washington Street

CITY: Binghamton STATE: NY ZIP: 13901 PHONE: 607-821-1600

EMAIL: info@ocsh.biz

PROJECT ADDRESS: 257 Washington Street, Binghamton NY 13901

AUTHORIZED REPRESENTATIVE: Kevin Findley TITLE: Manager

SIGNATURE: 

Sworn to before me this

6th day of June, 2022


(Notary Public)

ALYN L. GUSEFSKI
NOTARY PUBLIC, STATE OF NEW YORK
No. 01GU6089810
Qualified in Broome County
Commission Expires March 31, 2023

The following organizations must be solicited in writing for the purpose of meeting the requirements of this Agreement:

****Documentation of solicitation MUST be provided to the Agency.**

The Builders Exchange of the Southern Tier, Inc.
15 Belden Street
Binghamton, NY 13903
brad@bxstier.com
(607) 771-7000

Southern Tier Building Trades Council
1200 Clemens Center Parkway
Elmira, NY 14901
ibew139ba@aol.com
(607) 732-1237

Binghamton/Oneonta Building Trades Council
11 Griswold Street
Binghamton, NY 13904
raikens@iuoe158.org
(607) 723-9593

Dodge Reports
<http://construction.com/dodge/submit-project.asp>
830 Third Ave., 6th Floor
New York, NY 10022
support@construction.com

(877) 784-9556
Tompkins-Cortland Building Trades Council
622 West State Street
Ithaca, NY 14850
tbrueribew241@gmail.com
(607) 272-3122

Building Trades
Katie Fairbrother, Secretary
kfairbrother@ualocal112.org
607-723-9593

LOCAL LABOR UTILIZATION REPORT

To be completed for all contractors residing within the Broome County IDA Local Labor Area

APPLICANT: OCSH Binghamton Holdings, LLC

PROJECT ADDRESS: 257 Washington St.

CITY: Binghamton

STATE: NY ZIP: 13904

EMAIL: info@ochs.biz

PHONE: 607-821-1600

GENERAL CONTRACTOR/CONSTRUCTION MANAGER: McGill Balfe & Associates, LLC

CONTACT: Kevin Findley

ADDRESS: 257 Washington St

CITY: Binghamton

STATE: NY ZIP: 13901

EMAIL: mcgill.balfe@gmail.com

PHONE: 607-821-1600

ITEM	CONTRACT/SUB	ADDRESS	EMAIL	PHONE	AMOUNT
Site/Demo					
Foundation/Footings					
Building					
Masonry					
Metals					
Wood/Casework					
Thermal/Moisture					
Doors, Windows & Glazing					
Finishes					
Electrical					
HVAC					
Plumbing					
Specialties					
M&E					
FF & E					
Utilities					
Paving/Landscaping					

CHECK IF CONSTRUCTION IS COMPLETE

☐

CHECK IF THIS IS YOUR FINAL REPORT

☐

I CERTIFY THAT THIS IS AN ACCURATE ACCOUNTING OF THE CONTRACTORS THAT ARE WORKING AT THE PROJECT SITE.

Company Representative_____
Date

NON LOCAL LABOR UTILIZATION REPORTTo be completed for all contractors not residing within the Broome County IDA
Local Labor Area

APPLICANT:

PROJECT ADDRESS:

CITY:

STATE:

ZIP:

EMAIL:

PHONE:

GENERAL CONTRACTOR/CONSTRUCTION MANAGER:

CONTACT:

ADDRESS:

CITY:

STATE:

ZIP:

EMAIL:

PHONE:

ITEM	CONTRACT/SUB	ADDRESS	EMAIL	PHONE	AMOUNT
Site/Demo					
Foundation/Footings					
Building					
Masonry					
Metals					
Wood/Casework					
Thermal/Moisture					
Doors, Windows & Glazing					
Finishes					
Electrical					
HVAC					
Plumbing					
Specialties					
M&E					
FF & E					
Utilities					
Paving/Landscaping					

CHECK IF CONSTRUCTION IS COMPLETE

☐

CHECK IF THIS IS YOUR FINAL REPORT

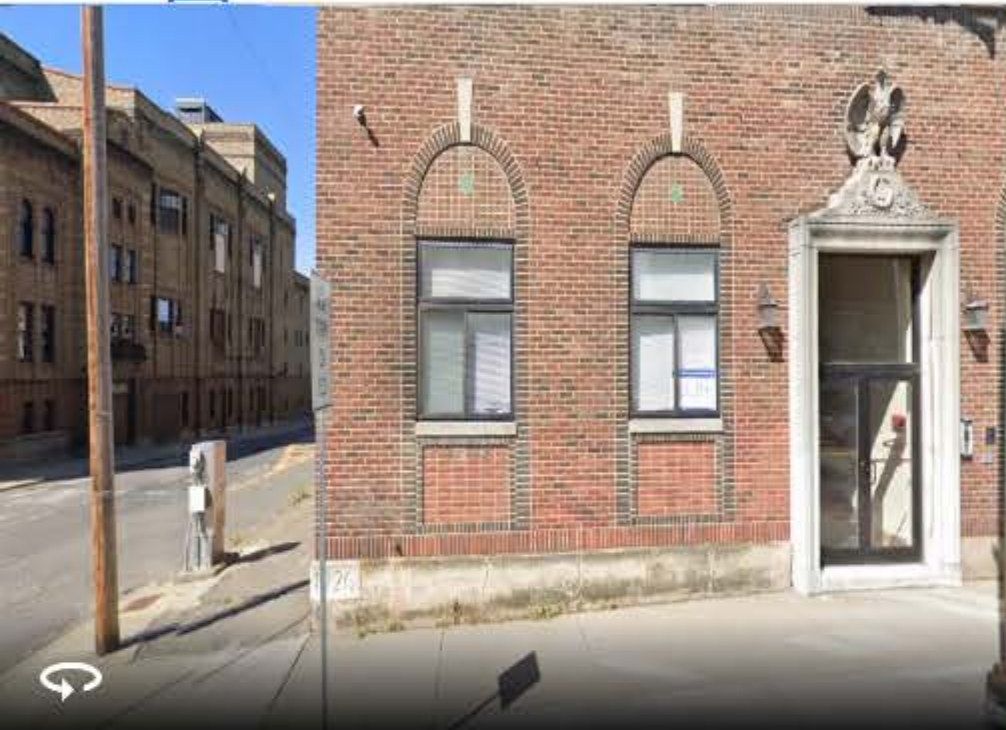
☐I CERTIFY THAT THIS IS AN ACCURATE ACCOUNTING OF THE CONTRACTORS
THAT ARE WORKING AT THE PROJECT SITE._____
Company Representative_____
Date



257 Washington St

All

Street View & 360°

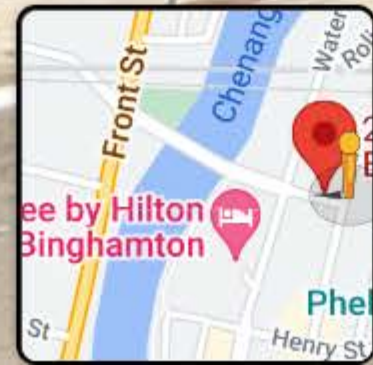


257 Washington St
Binghamton, New York



Google

Street View - Sep 2019





Appalachian
Regional
Commission

Access to Capital Projects Application and Operating Guidelines

Adopted October 5, 2021

Overview	3
Applicability	3
Eligible Applicants.....	3
Required Grantee Capacity	3
Eligible Borrowers and Equity Investment Recipients	4
Eligible Loan and Equity Investment Uses.....	4
Ineligible Loans and Equity Investments Uses	5
Responsibility for Equity Investment and Lending Decisions.....	5
Depositing Funds in Grantee's Account	5
Federal Reversionary Interest	5
Interest Rates.....	6
Conflicts of Interest.....	6
Match and Private Capital Raise Requirements	7
Non-POWER Grants	7
POWER Grants.....	7
Post Award Management and Monitoring.....	7
Requesting Payments from ARC and Submitting Progress Reports.....	7
ATC-Specific Report Requirements	8
Annual Reporting	8
Release from Reporting	9
Program Income	9
Annual Audit Requirements.....	10
Records Retention.....	11
Noncompliance.....	11
Appendix A: Applying for a Grant	13
Performance Measures	14

Overview

A primary Appalachian Regional Commission goal is to invest in entrepreneurial and economic development strategies that strengthen Appalachia's economy. Initiatives include expanding entrepreneurial ecosystems and support for start-ups and existing businesses, enhancing the competitiveness of the Region's manufacturers.

ARC seeks to expand the Region's entrepreneurial ecosystems by promoting greater access to capital. Accordingly, ARC has historically provided grants to support a range of economic development organizations providing debt and equity. These entities have a variety of structures such as local development districts, non-profits focused on economic development, Community Development Financial Institutions (CDFI), and New Market Tax Credit (NMTC) Program Community Development Entities (CDE) funds.

These guidelines provide Access to Capital (ATC) grantees with specific guidance about eligibility in applying; eligibility of borrowers; eligible and ineligible uses of grant funds; conflicts of interest; application requirements; post-award management and monitoring; audits; and consequences of non-compliance. Each potential ATC applicant should read this document carefully before submitting an application.

Grantees currently operating under the *ARC Business Development Revolving Loan Fund Grant Guidelines* (approved April 7, 2020) may continue to follow those guidelines. A written request must be submitted and approved by the Appalachian Regional Commission. As of October 5, 2021, all other ATC grantees must follow guidelines outlined in this document. *Access to Capital Projects Application and Operating Guidelines* (ATC Guidelines). The ATC Guidelines may be amended from time to time.

Applicability

These guidelines apply to grantees and applicants who use or may use funding to capitalize debt and equity investment products. These guidelines do not apply to grants for operating expenses. For more guidance that applies to non-ATC grants, please go to www.arc.gov.

Eligible Applicants

Only non-federal entities located in or serving the Appalachian Region are eligible to receive ATC grants from ARC. Applicants can be state and local governmental entities, non-profit organizations, or non-profit subsidiaries of a for-profit organization. Applicants must have the legal authority to receive ARC support and to make loans and equity investments.

Required Grantee Capacity

Grantees must demonstrate and meet the following criteria:

- Each grantee must have the organizational capacity in credit and/or equity investment analysis, program and policy development, finance, law, marketing, loan and/or equity investment structuring and packaging, and loan and/or equity investment processing and servicing.
- Grantees must have sufficient resources to cover the administrative costs of operations.

- ARC requires that Access to Capital projects be administered following a fund plan developed by the grant applicant and approved by the Commission. An applicant's plan defines specific objectives and operating procedures, including standards and selection criteria for loans in the portfolio.
- Grantees must have a solid and effective loan and/or equity investment review committee. A significant number of the review committee members must have had lending or equity experience depending on the grantee's financing activities. A list of the review committee members must be included in the grantee's fund plan, which requires ARC approval. Additionally, a majority must currently represent the private sector as opposed to the government. No loan or equity investment may be made without the favorable recommendation of the review committee; a majority of the members must participate in any meeting where an action is taken. The composition must be approved by ARC if different from that noted above.
- As lending and/or equity organizations, grantees must recognize and comply with their obligations under federal and state law, including but not limited to the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, as implemented by Federal Reserve Board Regulation B, and the Internal Revenue Code requirements for lender cancellation of debt (Form 1099C, Cancellation of Debt).

Eligible Borrowers and Equity Investment Recipients

- Loans and equity investments may be made in private, for-profit firms that do business in the Appalachian Region. The borrowers/investment recipients may be located outside the Region, but the activity financed and its benefits must be within the Region at all times.
- Additionally, non-profits or local governments that are developing or operating community facilities or social enterprises are eligible for loans but not equity investments.
- Firms must include majority US citizens or legal resident ownership.
- The eligible borrowers and equity investment recipients or any of their owners cannot have a delinquent debt to the federal government or be on a suspended or debarred list.

Eligible Loan and Equity Investment Uses

Including, but not limited to:

- Working capital, including financing of inventory
- Receivables financing
- Product development and testing
- Operating support for professional services, marketing activities, employee training, and other purposes to help portfolio firms
- Machinery, equipment, and other fixed asset acquisition, including transportation/delivery and installation costs
- Construction, alteration, modification, repair, and renovation of existing or new facilities
- Refinancing existing debt
- Land acquisition that is an integral part of a project
- Acquisition of an existing business

Ineligible Loans and Equity Investments Uses

- Loans or equity investments to themselves or a subsidiary. Subsidiaries are organizations under common control through common officers, directors, members, or employees.
- Land acquisition, except as noted above.
- Loans or equity investments in ARC designated Attainment Counties. ARC funds or the funds used as a match cannot be used for loans and equity investments in an attainment county. A list of ARC counties and their economic status, updated every fiscal year, can be found at www.arc.gov.
- Loans that assist the relocation of businesses from other labor areas are prohibited by law (40 USC 14524(b)).
- Loans or equity investments that provide the mandatory equity contribution required of borrowers for other federal loan programs.
- Loans or equity investments that refinance existing debt solely to reduce the risk to existing lenders.

Responsibility for Equity Investment and Lending Decisions

The responsibility for approving loans and investments and setting terms and conditions consistent with these guidelines resides entirely with the grantee.

Grantees must follow the loan and/or investment guidelines that they submit with their final grant applications. The grantee's governing board must approve the guidelines before application submittal. If any material amendments are made at any point, the grantee is required to submit the amended guidelines for ARC approval.

Depositing Funds in Grantee's Account

Grantees must place funds advanced from ARC, or returned to the fund, in interest earning accounts pending the closing of new investments and/or loans. Interest earning accounts must be Federally insured deposits, short term certificates of deposit that are covered by deposit insurance, or other secure instruments.

Please see the Audit section for more information on required financial control systems.

Federal Reversionary Interest

It is essential to note that ARC funds used for loans and equity investments will always be considered federal funds and therefore bound by requirements imposed by the Commission and the U.S. government. While subject to change, the grant agreement will typically have the following language reflecting this federal requirement:

The Federal Government, through the Appalachian Regional Commission, shall retain a reversionary interest in all loans made, or equity shares purchased, with ARC grant funds under this grant agreement. The extent of the Government's reversionary interest in a particular loan or equity share shall be equal to the percentage of such loan or share made or purchased with ARC grant funds. Annually, both during the period of performance and thereafter for the life of the loan fund or equity share fund supported by this grant, Grantee shall submit to ARC a report on the value and status of all funds, loans,

and shares in which the Federal Government retains an interest through the Appalachian Regional Commission.

Interest Rates

Grantees may make loans to eligible borrowers at interest rates and under conditions determined by the grantee to be most appropriate in achieving the goals of the loan and/or investment fund. The minimum positive interest rate an ATC grantee can charge is four percentage points below the current U.S. Treasury rate for issues of similar size and maturity, or the maximum interest rate allowed under state law, whichever is lower. The U.S. Treasury rate is found as a graph titled "Treasury Yield Curve," which is calculated daily by the US Treasury and can be found on its website <https://www.treasury.gov>. Percentage rates below this would have to be requested and approved by the Federal Co-Chair and would only be granted if extraordinary economic difficulties can be demonstrated, which would be provided on a temporary basis.

Conflicts of Interest

ARC Code Chapter 8, *Grant Administration*, applies to all ARC projects. Section 8.3—*Conflict of Interest*—governs requirements relating to prohibited conflicts of interest:

- a. No official nor employee of an ARC grantee nor subgrantee shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or through other actions in any proceeding, application, request for a ruling or other determination, contract award, cooperative agreement, claim, controversy, or other particular matter in which grant funds (including program income or other funds generated by ARC-funded activities) are used; where to his knowledge, he or his immediate family, partners, organization (other than a public agency) in which he is serving as an officer, director, trustee, partner, or employee; or any person or organization with whom he is negotiating, or has any arrangement concerning prospective employment; has a financial interest or less than arms-length involvement.
- b. In the use of ARC grant funds, officials or employees of grantees or subgrantees shall avoid any action that might result in, or create the appearance of:
 - a. using official position for private gain;
 - b. giving preferential treatment to any person;
 - c. losing complete independence or impartiality;
 - d. making an official decision outside official channels; or
 - e. affecting adversely the confidence of the public in the integrity of the government or the program.
- c. Pursuant to federal regulations at 2 CFR 200.318(c), each grantee and subgrantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees who select, award, and administer contracts. Any potential conflict of interest must be disclosed to ARC.
- d. In addition, an Interested Party shall not receive any direct or indirect financial or personal benefits in connection with any ATC grant or loan; and shall not lend funds to or invest equity in an Interested Party. Interested Party means any officer, employee or member of the board of directors or other governing board of the award recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the recipient, such as agents, advisors,

consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party's family and other persons directly connected to the Interested Party by law or through a business arrangement.

- e. Former members of the board or governing body, former officials, employees, or members of the staff, and former members of the loan review committee are barred from receiving ARC RLF loan assistance for one year from the date of termination of their service. Loan activities that directly or indirectly benefit these individuals or people related to them by blood, marriage, law or business arrangement are prohibited for a period of one year from the date of termination of service of such related person.

Match and Private Capital Raise Requirements

ARC grants traditionally require match or cost-share. Access to Capital project grants may require match and a private capital raise.

Non-POWER Grants

- **Match:** Non-POWER grants follow ARC's traditional match requirements found at <https://www.arc.gov/wp-content/uploads/2020/09/Match-Requirements-for-ARC-Grants.pdf>.
- **Capital Raise:** There is no capital raise requirement.

POWER Grants

- **Match:** Dollars dedicated to operations/technical assistance-related project activities follow ARC's traditional match requirements found at <https://www.arc.gov/wp-content/uploads/2020/09/Match-Requirements-for-ARC-Grants.pdf>.
- **Capital Raise:** To increase the attraction of private sector capital to the Region, all POWER awards used for ATC projects, i.e., loans or equity investment awards, require private capital raise. A portion of the capital raise may be used to meet these match requirements. Currently, ATC projects funded through POWER require a 3:1 private capital raise. This requirement is subject to change.
- The capital raise may **not** count towards the match requirement of any operations/technical assistance project activities.
- The applicant must submit a letter stating that the private capital raise has been completed. If all of the capital is not raised by time of grant approval, the applicant must provide a detailed letter showing progress on current private capital raise. The letter must also contain a commitment to complete the raise within an expected date.
- The private capital raise will count toward the leveraged private investment performance measurement.

Post Award Management and Monitoring

Requesting Payments from ARC and Submitting Progress Reports

All grantees must follow the ARC Grant Administration Manual for ARC Non-Construction Projects provided to every grantee for requesting payments and submitting reports. The Manual can be found here: <https://www.arc.gov/resource/grant-administration-manual-for-arc-non-construction-grants/>.

ATC grants follow those guidelines but also require some special determinations:

ATC-Specific Report Requirements

- Working with the ARC project coordinator, the grantee may choose to submit interim progress reports and payment requests at a minimum of every 3 months.
- The required forms include, note special requirements are in parenthesis:
 - SF 270, *Request for Advance or Reimbursement* (grantees must mark the "advance" payment option)
 - Advance backup worksheet (required to use this form versus the reimbursement backup worksheet)
 - SF-PPR - Performance Progress Report
 - A progress report narrative (must include loan defaults, cash on hand, pending loans, and a description of any technical assistance).
- If the grant is on the project reporting tool, as determined by the relevant ARC project coordinator, then the grantee will submit the same information online through ARCnet. For funds deployed as loan or equity investments, the grantee must select the "advance" option on the Financial Report Set up tab in the project reporting tool.
- For POWER projects, payment requests should reflect a proportional disbursement of capital raised to ARC funds disbursed at a ratio set by ARC, which is currently 3:1. If a grantee misses this proportional disbursement, then the ARC coordinator may withhold the payment until the requirement is met.

Annual Reporting

Following final disbursement, grantees will transition to submitting annual reports rather than interim reports. The first report will be due within 90 days of the grantee's first fiscal year-end after the final disbursement. Annual reports shall continue for a period of not less than seven (7) years after the first report that follows the final disbursement of the grant. At this 7-year date, grantees may request the closure of the grant and cessation of annual reporting as outlined below in "Release from Reporting."

Reporting should reflect the entire fund. Grantees are not required to report ARC grant funds and program income separately.

The following must be included in the annual report:

- **Brief background (1-2 paragraphs) on the original purpose of the grant to provide context.**
- **Current status (as of fiscal year-end):**
 - Balance of invested/lent funds
 - Number of investments/loans
 - Funds available for investing/lending
 - Loan loss percentage
 - Past due percentage
 - Return on investments
- **Report Period (since last report/over last fiscal year):**
 - Jobs created and retained
 - Number of loans disbursed/investments
 - Amount of loans disbursed/investments

- **Cumulative (since the start of the grant):**
 - Jobs created and retained
 - Number of loans disbursed/investments
 - Amount of loans disbursed/investments

In addition to providing required information on required reports, grantees must provide timely and accurate information to ARC upon request at any point, including after final disbursement. This includes responding with responsive information to any ARC request for success stories.

Release from Reporting

An ATC grantee may request release from reporting and the closing of the grant not less than seven (7) years after the final disbursement of the grant, excluding any subsequent return and disbursement of funds due to excess cash held or other reasons. Requests must be in writing and be signed and submitted by the organization's governing board. An ARC project coordinator will review the grantee's request and make a recommendation based on the programmatic and reporting performance. Following the state's concurrence, the Federal Co-Chair may approve the grantee's request.

If a grantee continues to operate a loan or investment fund after release from reporting and closing the grant, the grantee will submit an operating plan to ARC. The grantee's authorized representative shall sign an agreement that acknowledges the following:

- The federal reversionary interest continues to apply
- Program income shall remain in the project for lending and administrative costs
- The project shall continue to be subject to ARC, Office of Inspector General (OIG), and single audits (if applicable—see 2 CFR Part 200, Subpart F)
- The grantee will submit and must receive ARC approval of any future revisions of the operating plan, and
- The grantee will continue compliance with all applicable federal laws, regulations, and ARC requirements.

The grantee's authorized representative will be required to annually submit to ARC a signed declaration that it continues to operate as a revolving loan/equity fund.

Program Income

For auditing purposes, grantees must track program income:

- Program income typically includes but is not limited to the following: return on investments, loan principal and interest, fees, penalties and interest caused by the borrower's late payment, proceeds from the sale of collateral in excess of the unpaid balance of the original loan, and interest earned on cash balances held while awaiting relending or reinvestment.
- Program income must be added to the fund to expand lending or investment or cover reasonable and necessary administrative costs. Income added to the capital base may not be withdrawn, other than for the purposes stated above, without the prior written consent of the Commission.

Annual Audit Requirements

The following requirements pertain to any grantee, subgrantee, or recipient or subrecipient of federal financial assistance, regardless of which federal agency makes the award, as required by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200, Subpart F.

A grantee that expends \$750,000 or more in its fiscal year in federal awards or financial assistance, including but not limited to the ARC contribution, shall have a single or program-specific audit conducted for that year. Grantees should notify auditors that the Catalog of Federal Domestic Assistance number for ARC programs is 23.011, Appalachian State Research, Technical Assistance and Demonstration Projects.

To determine when a federal award is expended, the grantee must examine when the activity related to the federal award occurs. See 2 CFR 200.502(a). Generally, the activity pertains to events that require the non-federal entity to comply with federal statutes, regulations, and the terms and conditions of federal awards, such as:

- expenditure/expense transactions associated with awards (including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations);
- the disbursement of funds to subrecipients;
- the use of loan proceeds under loan and loan guarantee programs;
- the receipt of property or surplus property;
- the receipt or use of program income;
- the distribution or use of food commodities;
- the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and
- the period when insurance is in force.

The following guidelines must be used to calculate the value of the federal awards expended under loan programs:

- Value of new loans made or received during the audit period; plus
- Beginning of the audit period balance of loans from previous years for which the federal government imposes continuing compliance requirements; plus
- Any interest subsidy, cash, or administrative cost allowance received. 2 CFR 200.502(b).

Grantees that expend less than \$750,000 a fiscal year in federal awards, including ARC's contribution, are exempt from the single audit for that year. Records must be available for review or audit by appropriate officials of ARC, including the OIG. No program income or grant funds will be expended for audit in these cases.

Audits must be performed by a public accountant or a federal, state or local government audit organization which meets the general standards specified in Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (known as the Yellow Book). Audits must conform to these standards. Auditors are required to follow the provisions of 2 CFR Part 200, subpart F, and the Compliance Supplement at Appendix XI to 2 CFR Part 200.

Records Retention

Grantees shall maintain complete records of all activities related to the award, including closed loan and investment files and all related documents, books of account, computer data files and other records over the term of the closed loan or investment, and for a three-year period from the date of final disposition of such closed loan or investment. The date of final disposition of a closed loan or investment is the date: principal, interest, fees, penalties and all other costs associated with the closed loan have been paid in full; or final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the closed loan or investment have occurred. However, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

Grantees must at all times:

1. Maintain adequate accounting records and source documentation to substantiate the amount and percent of loan or investment income expended for eligible administrative costs;
2. Retain records of administrative expenses incurred for any and all activities, and any and all equipment or property, relating to the operation of the loan or investment fund for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed; and
3. For the duration of loan or investment fund operations, maintain records to demonstrate the adequacy of the grantee's accounting system to identify, safeguard and account for the entire capital base, outstanding loans and other operations.

Grantees must ensure that standard loan and investment documents reasonably necessary or advisable for lending or investment are in place; and fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of ARC and the grantee.

Grantees must also make available for prompt and timely inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement.

Noncompliance

ARC will take appropriate compliance actions for a grantee's failure to operate the fund in accordance with the terms and conditions of the grant agreement, or ARC policies and guidelines, including but not limited to failure to obtain ARC approval to material changes in the investment guidelines; failing to submit timely reports as required by these guidelines; failing to manage the grant prudently; making an ineligible loan or investment; failing to comply with audit requirements or implement timely resolutions to audit findings; having or not reporting a conflict of interest; or failing to comply with any other requirement.

If noncompliance is found, ARC may require any of the following (not an exclusive list): increased reporting; implementation of a corrective action plan; an audit; repayment of ineligible loans or costs to ARC; transfer or merger of the ARC's funds to another entity; suspension of the grant; or termination of the grant, in whole or in part.

ARC assistance must be withdrawn if for any reason the activity financed or the economic benefit is moved from the Appalachian Region.

In certain circumstances, ARC may disallow a proportion of the grant or direct the grantee to transfer loans to a third party for liquidation.

ARC shall determine the manner and timing of any suspension or termination action. ARC may require the grantee to repay the federal share in a lump-sum payment or enter into a sale, or ARC may agree to enter into a repayment agreement with the grantee for repayment of the federal share.

Appendix A: Applying for a Grant

ARC awards grants to projects that address one or more of the five goals identified by ARC in its strategic plan and that can demonstrate measurable results.

Applicants must follow all ARC application guidelines and checklists specific to access to capital projects. Applicants must include the following in their narrative proposals:

1. SF 424a Form: The applicant will show the private capital raise in the "Other" line item in the application's budget forms (SF 424a) and budget narrative as part of the application.
2. Project Description:
 - a. Provide a brief statement that describes the project's primary purpose, main activities, and expected impacts.
 - b. Describe in detail what activities and processes the project will engage in, who will conduct the activities, and who will participate.
 - c. Outline the proposed financial products and/or services.
 - d. Describe one or two sample projects and how the deals might be structured.
 - e. Detail technical assistance to be provided to borrowers.
3. Strategic Rationale:
 - a. Describe the gaps in currently available capital for the targeted communities. Summarize local and regional demand, including the number of projects, types of projects, and total dollars needed.
 - b. If applicable, provide the deployment rate for currently available assets and outline restricted and unrestricted asset allocation.
 - c. Upload a document (no more than one page) outlining a pipeline of loan or equity investment opportunities, including the type of business (e.g., retail, restaurant, manufacturing, etc.), amount requested (if available), and brief description (1-4 sentences) of the intended use of financing.
 - d. Include any feasibility studies or other assessments substantiating the demand for this project.
 - e. Provide at least two letters of demand from businesses and other community stakeholders that attest to the need and impact of the proposed project.
 - f. Describe traditional sources of financing or financial services available to the target communities and how the proposed product/services are superior or complementary.
4. Regional Strategy/Plan
 - a. Explain how the proposed project represents progress toward addressing a regional strategy, such as a comprehensive economic development strategy or a local visioning process.
 - b. Describe other project benefits likely to result from the project (e.g., positive impact on future economic development activity in the area).
5. Collaborative Partnerships
 - a. Describe any partnerships or collaborations with other local community, state, regional, and federal partners in developing the proposal, particularly outlining key organizations within the Region's entrepreneurial ecosystem that will support effective service delivery.
 - b. Describe the Applicant's ownership, including the following information if applicable: For organizations that have affiliated companies (e.g., parents, affiliates, subsidiaries), please provide a list of the individual owners with their contact information of those entities. Briefly describe the relationship between

- the Applicant and these other entities and individuals, including management and products/services exchanged.
- c. Briefly describe the applicant's capacity to manage the funds and conduct associated programmatic activities effectively. Describe the applicant's experience with similar activities and length of time involved.
- d. Provide an overview of underwriting/investment guidelines and portfolio management systems. Please upload underwriting and investment guidelines and policies.
- e. Discuss whether the applicant is a member of any finance associations or organizations and the level of involvement.
- f. If an existing financial organization, please provide historical financial statements prepared according to Generally Accepted Accounting Principles (GAAP) for the past 3 years, including income statements and balance sheets and a current balance sheet and income statement according to GAAP and dated within 90 days of the application.
- 6. Organizational Experience
 - a. Grants Management: Describe ability to adhere to grant compliance and reporting requirements by describing any (1) experience in managing a previous grant(s); (2) familiarity with federal grants regulations; and/or (3) experience managing federal awards.
 - b. Staff Qualifications: Briefly describe the qualifications of key individuals who will manage and operate the project including staff and the members of the investment committee. Attach position descriptions (if not hired) or brief resumes of these individuals.
 - c. Please attach the loan and/or investment operating plan.
- 7. Outside Personnel Qualifications: If you plan on procuring the services of contractors or consultants to conduct any part of the project, describe the competitive procedures that will be used to select them. (You will be required to submit qualifications of all consultants and subcontractors once procured.)
- 8. Project Sustainability: Explain how the project will achieve long-term sustainability once ARC support is no longer available. Include a plan and timeline of efforts to secure other sources of support for future operations.
- 9. Please upload a five-year pro forma balance sheet that reflects the use of the loan proceeds or grant award; indicating the necessary start-up capital, operating capital, and short-term credit; and projected cash flow and income statements for five years supported by a list of assumptions showing the basis for the projections.
- 10. If the applicant has a business plan, please attach it to the application.

Performance Measures

All ARC projects must have documented output and outcome performance measures. Estimated measures are included in project applications and actual measures are reported in the project closeout reports. Every ARC project must have at least one output measure and one outcome measure from the lists below. Some output measures can be used with a range of outcome measures (these are called "standalone measures"), and some output measures must be used with specific outcome measures (these are called "paired measures"). Projects that have paired output and outcome measures may also have a stand-alone output or outcome measure with no corresponding measure.

Typical performance measures include:

1. Businesses served - The number of businesses served by an ARC project. This includes businesses receiving technical assistance or participating in training, entrepreneurship, export, or other business development and improvement programs. Additionally, with access to capital grants, a borrower and an investee may be counted as a business served.
2. Businesses improved - The number of businesses with a measurable improvement as a result of an ARC project. The grant applicant and ARC project manager must agree on what constitutes "measurable improvement" and a method for measuring the degree of improvement must be provided. Typically, this may include jobs created, revenue generated, new customers, new markets, and other measures. For each project this number is always a subset of, or the same as, the "businesses served" output measure.
3. Businesses created - The number of new businesses created as a result of an ARC project. This measure should only be used to measure new business creation, not the number of existing businesses recruited or otherwise relocated from other areas. The grant applicant should estimate how many new businesses will be created within **three years** of the project end date.
4. Leveraged private investment (LPI) - The dollar amount of private-sector financial commitments, outside of project costs that result from an ARC project, measured during the project period and up to **three years** after the project end date. Committed private investment partners should provide letters of intent. Private capital raise should be reflected in this measure.
5. Jobs Created - The number of jobs created (direct hires, excluding construction jobs) because of an ARC project, measured during the project period and up to **three years** after the project end date. Part-time and seasonal jobs should be converted to full-time equivalents and rounded up to whole numbers. Applicants should estimate the number of jobs that will be created by the organizations expected to benefit from the project.
6. Jobs Retained - The number of jobs retained as a result of an ARC project. These are existing jobs that would be lost or relocated if the ARC project were not undertaken. Grant applicants should estimate the number of existing jobs that would be at risk, due to relocation or loss of competitiveness, without the ARC-funded project.

STEED REVOLVING LOAN FUND PROGRAM

Program Guidelines and Operating Criteria

1. STATEMENT OF PURPOSE

The Southern Tier East Economic Development Revolving Loan Fund Program (STEED) is designed to stimulate the creation and expansion of small businesses for the purpose of retaining and/or creating jobs in Broome, Chenango, Cortland, Delaware, Otsego, Tompkins, Tioga and Schoharie Counties of New York State (the eight county STEED Region).

The STEED RLF provides low interest financing to small business concerns unable to fully finance their projects with equity, conventional financing, or other private and public sources.

2. GOALS AND OBJECTIVES

One of the major problems in local business development, and a significant contributing factor to local economic distress, is the problem of credit availability. Even when available, the cost and terms of the credit may prevent firms from expanding, continuing operations, or starting up. The result may be a community's loss of jobs, tax revenues and private investment.

While the STEED RLF is not a substitute for conventional financing, it can fill in the gaps in existing local financial markets and attract additional capital, which would otherwise not be available for economic development.

3. PROGRAM DESCRIPTION

The STEED RLF Program is primarily designed to assist existing firms in the eight County STEED Region by offering low interest financial support for the purchase of fixed capital assets or working capital. Eligible businesses may finance up to 40% of a project's cost up to a maximum of \$200,000.

Initial participation by conventional lending institutions is preferred, and STEED will take a subordinated security position to the bank, thus assisting less established firms in forming a banking relationship. However, in the event that conventional lending institutions choose not to participate STEED may provide direct lending up to 50% of a project's cost up to \$200,000 in conjunction with an equity investment or in conjunction with other funding sources and an equity investment. Since STEED participation in a project must not displace local commercial lenders, a request for direct STEED financing must be accompanied by a commercial lender letter declining participation. If warranted loans may also be granted that require interest only payments for specific terms.

The successful applicant must be able to document that the planned project will result in job creation and/or retention.

4. ELIGIBILITY

AREA: STEED borrowers must use loan proceeds in operations located within the eight County STEED

Region. BUSINESS ACTIVITIES: Firms classified in the following industries are eligible for RLF financing:

A. Manufacturing; this category includes all industries having a Standard Industrial Classification of 20 through 39.

B. Industrial/Commercial; this category recognizes the shift from manufacturing to the service sector in today's economy. In recognition of this trend, the ALC will consider businesses including but not limited to data management, computer software, agri-business, printing, publishing, research and development, warehousing and distribution and other companies that sell typically 60% of its products and/or services to customers located outside of the STEED eligibility area.

C. Retail; this category recognizes that under certain circumstances there may be a need for the ALC to consider assisting a retail project. Criteria that should be used in evaluating a retail project should include but not be limited to the following:

1. The project is a catalyst/anchor that will insure the success of a larger planned development or re-development project.
2. Substantial employment and investment will occur as a result of the ALC assistance.
3. The ALC recommends to the BCIDA Board that there is no apparent indication that RLF assistance will result in creating unfair competition with a similar business or businesses in the municipality.
4. In addition to these local policies, New York State General Municipal Law, Section 862 prohibits industrial development agencies assisting retail projects unless some of the following conditions are met. These guidelines should also be used by the ALC in evaluating retail projects:
 - a. Is considered a tourism destination facility
 - b. Is operated by a not-for-profit corporation
 - c. Will locate outside of the State without IDA assistance
 - d. Is located in a highly distressed area
 - e. Makes available goods or services not reasonably accessible
 - f. Preserves or increases permanent jobs

D. Non-profits

E. Local Governments

F. Social Enterprises

G. Exception; If warranted, a project may be presented by a business other than those mentioned for consideration if substantial economic impact is determined by job creation and/or retention or any other special criteria that are deemed acceptable.

H. All applicants must demonstrate need for funds.

I. RLF loans will normally finance industrial, trading or commercial activities; including assistance for light manufacturing and service industries, where the opportunity for private sector job creation/retention are the greatest. However, in all instances, credit will be extended at the discretion of the ALC and Board of Directors on a case-by-case basis.

COSTS: The following costs are eligible for funding:

- A.** Land costs, associated with the purchase, renovation or construction of a building, including acquisition, site preparation, infrastructure, engineering, legal and other related activities.
- B.** Building costs, including acquisition, construction, renovation, engineering, architectural, legal and other related costs.
- C.** Machinery and equipment, includes purchase, delivery and installation and related costs.
- D.** Working Capital.

5. LOAN PARAMETERS

LOAN SIZE: Loans shall be governed by a \$15,000 maximum cost per job factor based upon a three (3) year new employment or job retention project. The maximum loan for land, building, machinery and equipment (fixed assets) or working capital that one applicant may borrow is \$200,000 or 40% of the total project cost whichever is less. Special consideration for greater participation up to 50% will be given to projects that create high end, high wage positions and/or a substantial number of new job opportunities.

PRIVATE SECTOR INVESTMENT: Loans will preferably be made in conjunction with private sector lending sources, owner equity, private equity or other private sources.

EQUITY: Projects will normally require a minimum 10% owner equity and a minimum 40% bank participation. Exceptions to this structure may be considered on a case-by-case basis.

LOAN SECURITY: All loans will be secured by the highest position available on one or more of the following assets: Land, Buildings, Machinery, Equipment, Accounts Receivable and Inventory and/or personal assets or such other assets as are deemed appropriate. In addition loans will require corporate and/or personal guarantees unless a situation exists where such guarantors are not available, (i.e., widely held private corporations).

TERMS: Loans for real estate will have a typical repayment period of ten years; special circumstances can allow for a fifteen year term. Machinery and equipment loans will have a maximum term of eight years or no longer than the useful life of the assets being financed. Working capital loans will have a maximum term of three years; special circumstances can allow for a five-year term.

INTEREST RATE: All STEED loans have an interest rate set at seventy five percent (75%) of the lowest published (Wall Street Journal) prime rate, fixed at day of closing. Real Estate loans having a term exceeding five years will have the rate fixed for five-year periods and the Agency reserves the right to adjust it according to market conditions.

The Board of Directors of the Agency, on the recommendation of the Loan Committee, reserves the right to adjust the interest rate within the limitations set forth by the ARC to a level that will stimulate economic development and enhance program use. The minimum interest rate allowed will not be less than four (4) percentage points below the current U.S. Treasury rate for issues of similar size and maturity.

FEES AND PENALTIES: The Agency charges the following processing fees:

- A.** Application fee; \$250.00. This fee is non refundable.
- B.** Closing fee; reasonable and customary legal costs, filing and recording fees may be charged.
- C.** Failure to meet any of the terms and conditions of the loan may result in an increase in the interest rate of up to two points above the prevailing prime rate.

6. INELIGIBLE LOANS

- A.** Speculative activities, such as land banking and the construction of speculative buildings are not permitted since they do not normally result in near-term job creation or retention, nor is any prospective employment normally under the control of the borrower.
- B.** Loan activities and economic benefits resulting from these activities must be located within Broome County. Title IX assistance will be withdrawn if for any reason the activity financed is moved from Broome County.
- C.** Loans that assist in the relocation of jobs from another labor area are prohibited; also, loans that would allow the relocation of jobs within the local labor area unless there is a demonstrated need.
- D.** Loans for the purpose of investing in high interest accounts, certificates of deposit or other investments not related to job creation/retention are prohibited.
- E.** Prohibitions concerning STEED loans that would create a potential conflict-of-interest for any officer or employee of the grantee, or any current member of the grantee's loan administration staff who reviews, approves or otherwise participates in decisions on STEED loans, are contained in the General Terms of the grant agreement.

Former members of the Board, former members of staff and former members of the Advisory Loan Committee are barred from STEED assistance for a period of one year from the date of termination of their service to the Board, Loan Advisory Committee or staff position of the grantee or any of its subsidiaries. Loan activities that directly benefit these individuals or people related to them by blood, marriage, or law will be prohibited in accordance with the General Terms of the Grant, for a period of one year from the date of termination of service of such related person.

- F.** Proceeds from the STEED RLF cannot be used to purchase equity in private business, subsidize payments on existing loans, refinance loans made by other lenders, provide the equity contribution required of borrowers participating in other Federal loan programs and no loan or guaranty shall be made to any recipient of Federal direct loans or assistance without prior notification of the ARC.

7. LEGAL REQUIREMENTS

All borrowers of the RLF must comply with the requirements of Federal and State and local laws concerning civil rights, the environment, flood protection insurance, and access to the physically handicapped.

8. DELINQUENT LOAN & COLLECTION PROCEDURES

The Broome County Industrial Development Agency as the Administrator of the STEED loan fund will provide its best effort to collect all monies lent under the STEED loan program.

Delinquent Loan Definition: All loan accounts that have not had any payment activity during a sixty (60) day period or those loans that are sixty (60) days in arrears.

The Broome County Industrial Development Agency will monitor the monthly repayment activity of all outstanding loan accounts and initiate normal collection procedures, i.e., notice for payments, collection calls and other legal means necessary to collect the outstanding debt. When normal procedures fail to produce the desired results the account will be turned over for legal remedies and pursued to a conclusion.

9. PROCEDURE FOR AMENDMENT

As necessary, the Advisory Loan Committee shall review the overall operations of the STEED loan fund program. When the need for change or modification of policy arises, the Advisory Loan Committee shall submit such recommendations to the Board of Directors of the Broome County Industrial Development Agency for review and subsequent action.

10. LOAN APPLICATION REVIEW

All loan applications shall be reviewed by the members of the Broome County Industrial Development Agency's STEED Advisory Loan Committee. Said committee will provide recommendations to the Board of Directors of Broome County Industrial Development Agency for final approval.

STEED APPLICATION PROCEDURES

A. STEED Loan Applications will be distributed to all major economic development groups within the Counties described as the Southern Tier Region for redistribution to potential fund users.

The local economic developers will review the completed application and forward it to the BCIDA for processing.

A STEED program manager will be available to assist the applicant at any and all levels of the STEED loan process.

B. A STEED program manager or assigned staff will review the application for completeness and determine that the applicant meets the basic eligibility criteria for the region.

Once determined eligible, a complete financial review shall be conducted to establish the merits of each application. A detailed summary on each project will be compiled for presentation to the Advisory Loan Committee for action.

C. The Advisory Loan Committee (comprised of no greater than 15 members) will meet monthly to process applications. The Committee shall approve, deny or table applications, as they deem necessary. Approved applications will be submitted to the Board of Directors of the BCIDA for final ratification.

D. Upon ratification by the Board of Directors of the BCIDA, the Program Manager will forward a terms and conditions letter to the applicant for acceptance of the commitment.

E. Upon acceptance, Council for the Agency will prepare the necessary documents to close the Loan.

F. Fund Disbursement -All funds will be disbursed to invoice or upon proof of payment, funds will be reimbursed. No funds will be disbursed without such documentation.

G. Timing -Typically complete applications can be processed and presented to the Advisory Loan Committee within 45 days. BCIDA Board of Directors meet once per month and typically can take action on a STEED application within two weeks of the approval date by the Advisory Loan Committee.

Extraordinary Circumstances - factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for:

- Extreme Weather
- Medical Emergency of oneself or a family member
- Car Trouble (or other) Accident
- Personal Illness
- Necessary Medical Appointments
- House Emergency
- Military Obligations
- Jury Duty
- State of Emergency – by County Executive or Governor
- Bereavement



FROM: Ostroff Associates

DATE: April 13, 2022

RE: Status of Open Meetings Law (OML)

On **March 12, 2020**, Executive Order (EO) [202.1](#) was signed as part of the State's COVID-19 Disaster Emergency Declaration, suspending the New York State law that required meetings to take place in person, therefore, allowing for public meetings to be held virtually.

On **June 25, 2021**, the State Disaster Emergency ended, which removed this provision (EO 202.1) that suspended the law.

On **September 2, 2021**, the Governor signed into law Chapter 417 of the Laws of 2021 (S.50001 Kavanagh/A.40001 Dinowitz), which mirrored EO 202.1 and allowed for remote public meetings to continue to be held in the same manner as was allowed during the State Disaster Emergency through January 15, 2022.

On **October 19, 2021**, the Governor signed into law Chapter 481 of the Laws of 2021 (S.1150A Kaplan/A.1228A Paulin) which amends § 103(e) of OML to require that records that will be discussed at a meeting should be made available upon request, as well as posted online at least 24-hours before the meeting.

- The obligation to make records available to the public upon request and to post the records on the agency website has been in effect since February 2012.
- The only change this amendment made was placing a 24-hour minimum time frame for making those records available.

On **November 8, 2021**, the Governor signed into law Chapter 587 of the Laws of 2021 (S.4704A Kaplan/A.1108A Paulin), which amended the OML to require agencies that maintain a website to post meeting minutes on their website within two weeks of the meeting date, or within one week of an executive session.

On **December 21, 2021**, the Governor signed into law Chapter 676 of the Laws of 2021 (S.1625A Skoufis/A.924A Paulin), which amended the definition of “public body” to mean any entity for which a quorum is required in order to conduct public business or where two or more members are performing a governmental function for a public body or entity.

On **January 14, 2022**, Governor Kathy Hochul signed into law Chapter 1 of the Laws of 2022, which was a chapter amendment that amended Chapter 417 of the Laws of 2021 to also allow for meetings to be held by conference call.

- Please note, at this time, Chapter 1 would be repealed should the state disaster emergency end (pursuant to Governor Hochul’s EO 11).
- As of this date, EO 11.3 had extended EO 11 through March 16, 2022.

On **March 16, 2022**, Governor Kathy Hochul signed into law EO [11.4](#) (extending Executive Order 11), which allows for remote public meetings to continue to be held in the same manner as prescribed in Chapter 1, through April 15, 2022.

On **April 9, 2022**, Governor Hochul signed Chapter 56 of the Laws of 2022 (S.8006-C/A. 9006-C) relating to ELFA Part WW in the FY22-23 New York State Budget. Included in the bill (ELFA Part WW), was an amendment to OML which would make permanent, the expanded use videoconferencing by public bodies to conduct open meetings, under extraordinary circumstances, regardless of a declaration of emergency, until July 1, 2024.

- Until then, it is important to note that the law permits public bodies to continue to hold remote meetings in the same manner as described in Chapter 1 of the Laws of 2022, for a period of 60 days after its effective date, or until June 8, 2022.

The NYS Committee on Open Government Q&A – Chap. 56 of the Laws of 2022

The full Q&A can be found [here](#).

This new law is not meant to change what has always been required of public bodies complying with the OML. Public bodies may continue to operate now as they did before the onset of the pandemic in early 2020 when the “in person” aspects of the OML were first suspended.

- In other words, if a public body was permitted to do it before the pandemic, this law does not change that.

As noted above, this law is intended to expand, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.

- Each public body that wishes to allow for remote attendance is required to adopt a local law, joint resolution, or a resolution authorizing remote attendance, and they

must also establish written procedures on what they determine to be “extraordinary circumstances.”

- Any local public body that elects to utilize the “extraordinary circumstances” videoconferencing, must maintain an official website.
- Even if a public body allows its members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public, they still must afford members of the public the opportunity to view the meeting by videoconference.
- Public bodies are not required to allow their members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public. They are allowed to use discretion.

Any member who participates at a physical location that is open to in-person physical attendance by the public (and which location has been included in the meeting notice) may count toward a quorum.

- A member who is participating from a remote location may not be counted toward a quorum of the public body, but can still participate and vote if there is a quorum of members at a physical location.

Each meeting conducted using videoconferencing must be recorded, and posted or linked on the public website of the public body within five business days following the meeting, and remain available for a minimum of five years. These recordings must also be transcribed upon request.

- This law requires that any participating member of a public body must be able to be seen and heard thus, teleconferencing (audio only) is not an acceptable form of member participation under this law.
- Meeting minutes must reflect which members of the public body participated.
- Those participating virtually in a public meeting must have the same access to public participation or testimony as those participating in-person.
- Executive Sessions do not need to be recorded or transcribed. It was determined that this law only applies to portions of the meeting that the public would be able to attend.

Public meetings can still be conducted with members at multiple physical locations as the intent of this expansion was not to limit the existing authority to virtually connect.

- Additionally, fully remote meetings can still be conducted under State Disaster Emergencies or Local State Emergencies.