

# LIVINGSTON COUNTY DEVELOPMENT

ECONOMIC • INDUSTRIAL • COMMUNITY

Approved by 

## MINUTES LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY Friday, April 1, 2016

Livingston County Government Center, Room 205  
Geneseo, NY

**Members Attending:** P. Brooks, R. Smith, G. Moore, P. Yendell, S. Boscoe, W. Bacon, E. Gott.

**Staff Attending:** M. Wheeler, L. Wadsworth and T. Connell

**Guests Attending:** E. Russell, Esq., Andrew Kosa from Clark Patterson Lee, and Charlene Masten from Livingston Athletic Center.

Chairman Brooks welcomed members and guests and called the meeting to order at 9 AM.

### APPROVAL OF MINUTES

*A motion was made by Mr. Moore to approve the March 11, 2016 Meeting Minutes, seconded by Mr. Yendell. All in favor. Carried.*

### TREASURER'S REPORT

Ms. Wheeler reviewed the Treasurer's Report.

*A motion was made by Mr. Yendell, seconded by Mr. Boscoe, to accept the Treasurer's Report for the period ending March 31, 2016. All in favor. Carried.*

### COMMUNICATIONS & CORRESPONDENCE

#### **Annual Statement of Financial Disclosure for Livingston County**

Ms. Wheeler advised Board members that they have been provided with a reminder as well as instructions on how to fill out their annual statement of Financial Disclosure for Livingston County.

#### **New York State Economic Development Council Conference**

Ms. Wheeler advised Board members that early registration ends April 15. Members interested in attending should let Ms. Wheeler know.

#### **Livingston County Education Alliance/Chamber of Commerce Golf Tournament Sponsorship**

*A motion was made by Mr. Gott to sponsor a hole for \$125. Seconded by Mr. Yendell. All in favor. Carried.*



Livingston County Industrial Development Agency  
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## Letter from Mr. Henry Fuller

Ms. Wheeler reported that Mr. Fuller is a resident from the Town of York who wrote a letter to the Agency as well as the Town of York, the Planning Board and the Livingston County Planning Department. The letter expressed some concerns with the Planning Board process regarding the meeting where the WNY Enterprises project went through their SEQR review and site plan approval. Ms. Wheeler advised that there is nothing in the letter that is directly related to the Agency, and the Agency will be responding notifying Mr. Fuller that this is a Town Planning Board issue.

## NEW BUSINESS

### Authorizing Resolution – Livingston Athletics

Ms. Wheeler introduced Ms. Masten who gave an overview of the project. Ms. Masten explained that the goal of this project is to create a community center, and to give the County something that it doesn't have. There will be a variety of indoor and outdoor areas for sporting events, as well as instructional classes on health and education, and work out classes. Mr. Russell presented the closing resolution for the Livingston Athletics project.

#### **RESOLUTION OF THE LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY TO BE LEASED TO LIVINGSTON ATHLETIC CENTER, LLC AUTHORIZING THE SCHEDULING AND CONDUCTING OF A PUBLIC HEARING, AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS**

WHEREAS, Livingston Athletic Center, LLC, a New York limited liability company (the "Company") on behalf of itself and/or the principals of Livingston Athletic Center, LLC has applied to the Livingston County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the acquisition of an approximately 40.50 acre parcel of land (the "Land") located at 3100 Rochester Rd. in the Town of Livonia, Livingston County, New York (further described as Tax Map No. 65-1-6. 112 (the "Land"), and renovating and equipping an existing 25,225 square foot building (the "Improvements") located on the Land, which is to be leased to the Agency by the Company and leased back by the Agency to the Company and used by the Company for its athletics, health and wellness facility (the "Improvements" together with the Land, are jointly hereinafter described as the "Facility") and including the following with respect to the construction and equipping of the Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the construction and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the construction and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Agency will lease the Facility from the Company pursuant to a Company Lease between the Company and Agency (the "Company Lease") and will lease the Facility back to the Company pursuant to an Agency Lease between the Agency and the Company (the "Agency Lease") all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 132 of the Laws of 1973 of the State of New York, as the same may be amended from time to time (collectively, the "Act"); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company, consistent with the policies of the Agency, in the form of exemptions from mortgage taxes in the estimated amount of \$5,000 and exemptions from sales and use taxes in an estimated amount of up to \$17,000; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed transaction is either an inducement to the Company to locate the Facility in Livingston County or is necessary to maintain the competitive position of the Company in its industry; and

NOW, THEREFORE, BE IT RESOLVED by the Livingston County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:



Section 1.The renovating and equipping of the Facility is hereby declared to be a TYPE II Action under SEQRA as it is unlikely to give rise to any adverse environmental impacts

Section 2.The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of (i) exemptions from mortgage recording taxes in an amount presently estimated to be \$5,000 for one or more mortgages in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping of the Facility and (ii) exemptions from sales and use taxes in connection with the purchase or lease of equipment, building materials, services or other personal property in an amount collectively not to exceed \$17,000 consistent with the policies of the Agency.

Section 3.Subject to the provisions of this resolution and the Agency Lease Agreement the Company is herewith and hereby appointed the agent of the Agency to acquire, construct, equip and complete the Facility. The Company is hereby empowered to delegate their status as agents of the Agency to their respective agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may each individually choose in order to acquire, construct, equip and complete the Facility. The Agency hereby appoints the respective agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company and/or the Sublessee, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company and Sublessee, as agents of the Agency, but only with respect to their respective agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers. The aforesaid appointment of the Company as agents of the Agency to acquire, construct and equip the Facility shall commence upon the execution and delivery of the Agency Lease Agreement and the Equipment Lease Agreement and expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company have received exemptions from sales and use taxes in an amount collectively not to exceed \$17,000 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the completion of the transaction and the execution of the documents contemplated by this resolution.

Section 4.The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (b) The Facility constitutes a "project," as such term is defined in the Act; and
- (c) The acquisition, construction and equipping of the Facility and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Livingston County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand their business operations in the State of New York and is reasonably necessary for the Company to maintain their competitive position in their respective industries; and
- (e) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of Livingston County and all regional and local land use plans for the area in which the Facility is located; and
- (f) The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in the accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and
- (g) It is desirable and in the public interest for the Agency to lease the Facility to the Company; and
- (h) The Company Lease will be an effective instrument whereby the Company will lease Facility to the Agency; and



(i) The Agency Lease Agreement will be an effective instrument whereby the Agency will sublease the Facility to the Company; and

(j) The Recapture Agreement, dated as of as of such date as the Chairman or Director of the Agency and Counsel to the Agency shall agree (the "**Recapture Agreement**"), by and between the Agency and the Company will be an effective instrument whereby the Agency and the Company agree to provide for the recapture of certain benefits provided to the Company under the Transaction Documents (as defined in the Agency Lease Agreement) and describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company; and

(k) The Environmental Compliance and Indemnification Agreement, dated as of such date as the Chairman or Director of the Agency and Counsel to the Agency shall agree (the "**Environmental Compliance and Indemnification Agreement**"), by and between the Agency and the Company, will be an effective instrument whereby the Company and Sublessee covenant that the acquisition, construction, renovation, equipping and operation of the Facility will be in compliance with all laws and regulations, and the Company will indemnify and hold the Agency harmless from any violation of the environmental laws and regulations with respect to the Facility; and

(l) The Loan Documents to which the Agency will be a party will be effective instruments whereby the Agency and the Company agree to secure the Loan made to the Company by the Lender.

Section 5.In consequence of the foregoing, the Agency hereby determines to: (i) lease Facility from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sublease the Facility to the Company pursuant to the Agency Lease Agreement, (iv) execute, deliver and perform the Agency Lease Agreement, (v) execute, deliver and perform the Recapture Agreement (vi) execute and deliver the Environmental Compliance and Indemnification Agreement, (vii) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (viii), execute, deliver and perform the Loan Documents to which the Agency is a party, in connection with the financing of the costs of acquiring, constructing and equipping the Facility and any future Loan Documents in connection with any future refinancing or permanent financing of such costs of acquiring the Facility, without the need for any further or future approvals of the Agency.

Section 6.The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Agency Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 7.The Company hereby agrees to comply with Section 875 of the Act. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agents of the Agency pursuant to this Resolution is subject to termination and recapture of benefits pursuant to Section 875 of the Act and the Recapture Agreement.

Section 8.Pursuant to and in furtherance of the Agency's purposes under the Act, including advancing the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and the County of Livingston, the Agency hereby strongly encourages the Company to utilize local labor in connection with the construction and operation of the Facility.

Section 9.The form and substance of the Company Lease, the Agency Lease Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 10.

(a) The Chairman, Director, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Agency Lease Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and the Loan Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Director, Deputy Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman, Director and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Director, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Director, Deputy Director or any member of the Agency is further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.



Section 11. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 12. This resolution shall take effect immediately.

*A motion was made by Mr. Gott, seconded by Mr. Moore to adopt the foregoing resolution. The question of the adoption of the foregoing Resolution was duly put to a vote on roll call which resulted as follows:*

	<u>YEA</u>	<u>NEA</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Philip S. Brooks	[ X ]	[ ]	[ ]	[ ]
William Bacon	[ X ]	[ ]	[ ]	[ ]
Eric Gott	[ X ]	[ ]	[ ]	[ ]
J. Peter Yendell	[ X ]	[ ]	[ ]	[ ]
Steve Boscoe	[ X ]	[ ]	[ ]	[ ]
Robert Smith	[ X ]	[ ]	[ ]	[ ]
Gary Moore	[ X ]	[ ]	[ ]	[ ]

The Resolution was thereupon duly adopted.

**Public Hearing Minutes – R&M Crown Holdings, LLC**

Ms. Wheeler reported that the Superintendent and Business Director of the Dansville Central School District, the Town Supervisor, Mr. Bacon and herself all attended the Public Hearing for the R&M Crown Holdings, LLC project on March 30th. No public comment was received.

*A motion was made by Mr. Boscoe, to accept the minutes of the public hearing, seconded by Mr. Bacon. All in favor. Carried.*

**Public Hearing Minutes – Marcus Real Estate**

Ms. Wheeler reported that the Superintendent and Business Director of the Dansville Central School District, the Town Supervisor, Mr. Bacon, Graham Marcus from Marcus Real Estate, and herself all attended the Public Hearing for the Marcus Real Estate project on March 30th. No public comment was received.

*A motion was made by Mr. Moore, to accept the minutes of the public hearing, seconded by Mr. Smith. All in favor. Carried.*

**Consent Letters – Evening Star Coffee Roasters**

Ms. Wheeler advised that the Company has requested the Agency give consent letters allowing them to move forward with their building permit application and in working with the utilities to get on their schedules as they have an 8-10 week lead time.

*A motion was made by Mr. Gott to grant consent letters to Evening Star Coffee Roasters. Seconded by Mr. Moore. All in favor. Carried.*

**Resolution Authorizing the Preparation and Submittal of a USDA Rural Business Development Grant Application**

Ms. Wheeler reported that The Agency did not receive the funds it applied for through the Regional Market Authority for Phase II of the Regional Small Grains Center Study. Ms. Wheeler recommended applying for a USDA Rural Business Development Grant in the amount of \$64,999, with \$70,001 in matching funds. \$65,000



of the match has already been approved and is being spent on phase I of the Regional Small Grains Center Study, and \$5,001 of the match would be incurred through staff or consultant hours. No additional money is being requested. The applications are due May 1<sup>st</sup> and the Agency will know if it is receiving the funds by July, which is when Phase I should be wrapping up.

### RESOLUTION

WHEREAS, the Livingston County Industrial Development Agency is charged with financing, development, sponsorship, acquisition, construction and equipping of certain economic development projects;

WHEREAS, the Livingston County Industrial Development Agency plans to examine the feasibility for a Western New York Regional Small Grains Center to be located in Livingston County, NY, undertake business planning for such a center and conduct an operator search;

WHEREAS, the United States Department of Agriculture (USDA) Rural Development funds are available for the purpose of supporting planning activities by non-profit agencies to promote economic development activities;

WHEREAS, the Agency has identified the need for funding to assist with operator identification and business planning for a Western New York Regional Small Grains Center to be located in Livingston County, NY;

WHEREAS, The Livingston County Industrial Development Agency will provide a \$70,001 contribution as match incurred through contracted services and staff hours; now therefore

BE IT RESOLVED, that the Livingston County Industrial Development Agency authorizes Maureen Wheeler to prepare and submit an application to the United States Department of Agriculture Rural Development in an amount not to exceed \$64,999.

Passed by the following vote of all Livingston County Industrial Development Agency Board Members voting in favor thereof:

Affirmative: 7  
Negative: 0  
Abstain: 0  
Absent: 0

Dated at Geneseo NY  
April 1, 2016

*A motion was made by Mr. Gott to adopt a resolution authorizing the submittal of a USDA Rural Business Development Grant application, and to provide \$70,001 in matching funds. Seconded by Mr. Moore. All in favor. Carried.*

### OLD BUSINESS

#### **2015 PARIS Reports**

Ms. Wheeler reported that the 2015 PARIS reports are completed and have been submitted.

#### **Industrial Park Updates**

Ms. Wheeler advised that the Agency has closed on all properties in the Mt. Morris Industrial Park.

*A motion was made by Mr. Yendell to enter into executive session under Public Officers Law; article 7 Open Meeting Law to discuss proposed, pending or current litigations at 9:22 AM, seconded by Mr. Moore. All in favor. Carried. Members, staff and counsel remained.*



*REPORT OF EXECUTIVE SESSION*

*The Livingston County Industrial Development Agency having met in executive session hereby reports as follows: the board took no action.*

**ADJOURNMENT**

*With no further business to discuss, a motion was made by Mr. Gott, to adjourn the meeting at 10:09 AM, seconded by Mr. Moore. Carried.*

Respectfully submitted,



Tessa Connell  
Senior Account Clerk/Typist

