

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/ Treasurer/
Executive Director

Timothy Fitzgerald
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



584 Phoenix Drive
Rome, New York 13441-4105
(315) 338-0393, fax (315) 338-5694

David C. Grow
Chairman
Michael Fitzgerald
Vice Chairman

Ferris Betrus Jr.
Kirk Hinman
Mary Faith Messenger
Eugene Quadraro
Stephen Zogby

To: Oneida County Industrial Development Agency Board of Directors
From: Shawna M. Papale
Date: November 14, 2022
RE: OCIDA Meeting Agenda

The Oneida County Industrial Development Agency shall meet – **8:00 AM Friday, November 18, 2022.**

Members of the public may listen to the Agency meeting by calling +1-408-418-9388, Access code: 263 407 22173 or attend in person. The Minutes of the Agency meeting will transcribed and posted on the OCIDA website.

1. Executive Session at 8:00 AM if needed
2. Approve minutes – October 21, 2022
3. Financial Review
4. Discussion on Open Meetings Videoconferencing Policies and Procedures to get formal policy drafted and in place.
5. OCIDA-EDGE 2023 Contract
6. OCIDA-EDGE 2023 Supplemental Contract
7. Consider a resolution approving the modification of EDGE Project Related Debt (Wolfspeed Facility) and authorizing the form and execution of related documents, subject to counsel review.

OCLDC MEETING TO FOLLOW IMMEDIATELY AFTER

Next meeting date – **Friday, December 16, 2022 at 8 AM at 584 Phoenix Drive, Rome, NY**

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**Minutes of the Meeting of the
Oneida County Industrial Development Agency
October 21, 2022
584 Phoenix Drive, Rome, NY/Webex Video/Teleconference**

Members Present: David Grow, Michael Fitzgerald; Ferris Betrus; Gene Quadraro.

Members Present Virtually: Kirk Hinman; Mary Faith Messenger; Steve Zogby(exited at 11 AM)

EDGE Staff Present: Steven DiMeo; Shawna Papale, Maureen Carney; Bill Van Shufflin; Mark Kaucher; and Hannah Phillips; Laura Cohen(WebEx)

Other Attendees: Rome Mayor Jackie Izzo; Paul Goldman, Esq., Goldman Attorneys, PLLC (WebEx); Linda Romano, Bond, Schoeneck & King (telephone); Mark Levitt and Jenna Peppenelli, Levitt & Gordon (WebEx); Jon Scolnik, member of the public (telephone).

Chair Grow called the meeting to order at 8:05 AM.

Executive Session

At 8:05 AM a motion to enter executive session in order to discuss current litigation and potential contracts was made by F. Betrus, seconded by E. Quadraro, and carried 7-0.

At 11:12 AM a motion to exit executive session and return to the open meeting was moved by F. Betrus, seconded by E. Quadraro, and carried 7-0. Director Steve Zogby exited the meeting at 11 AM. No action was taken during the executive session.

Mayor Izzo gave a brief update on the status of the Delta Townhomes project and left the meeting at 11:14 AM.

Interim Financials

Chair Grow asked if there were any questions on the September 30th, interim financial report which was provided to all directors ahead of time for review. There being no questions or comments, **The Agency received and accepted the interim financials presented, subject to audit.**

Minutes

The September 16, 2022 meeting minutes were reviewed. **A motion to approve the September 16, 2022 minutes as presented was moved by M. Fitzgerald and seconded by M. F. Messenger. The motion carried 6-0.**

Indium Corporation of America/ICA Holdings III, LLC - Woods Park Drive Final Authorizing Resolution

Chair Grow introduced a final authorizing resolution relating to The Indium Corporation of America (Woods Park Drive) Facility, authorizing financial assistance in the form of exemptions from sales tax (not to exceed \$148,750), exemptions from mortgage recording tax exemption (not to exceed \$82,200) and reduction of real property taxes (valued at approximately \$1,270,000) during which time the Company will enjoy fixed exemptions as follows: 2023: \$0; 2024: \$40,000; 2025: \$150,000; 2026: \$150,000; 2027: \$150,000; 2028: \$150,000; 2029: \$150,000; 2030: \$135,000; 2031: \$120,000; 2032: \$90,000; 2033: \$75,000; 2034: \$60,000; the Company will assume the existing PILOT from AX NY Office, L.P. and payments will continue to be made under the terms of the existing Allocation Agreement until the existing PILOT Payments are scheduled to terminate, which financial assistance is a deviation from the Agency's Uniform Tax Exemption Policy, and approving the form and execution of related documents all in the Agency's standard form and subject to counsel review. The Agency conducted a public hearing on October 6 and mailed notices of the intent to deviate from Policy to the tax jurisdictions on October 12. **A motion to approve the ICA Holdings III, LLC/Indium Corporations of America final authorizing resolution was moved by F. Betrus and seconded by M. Fitzgerald. F. Betrus asked if these were the corrected numbers and S. Papale responded that they were. There being no further questions, Chair Grow called for a vote on the resolution as presented: The motion carried 6-0.**

Facilities Management Corporation- Universal Photonics JH Rhodes Mortgage Re-Finance

Chair Grow introduced a request from Facilities Realty Management Vernon, LLC (Universal Photonics) Facility for the Agency to mortgage its leasehold interest to the bank in connection with the refinancing of its facility, authorizing financial assistance in the form of exemptions from mortgage recording taxes (not to exceed \$18,000) and approving the form and execution of related documents, subject to counsel review. S. Papale, in response to an earlier question from F. Betrus, explained that they would not exceed the mortgage recording tax that was originally agreed to from the original PILOT application, which was in 2012. M. Fitzgerald stated that due to recent Agency policy, we would only approve MRTE up to \$1.2 million, which is the amount they owe today. **A motion to approve a resolution authorizing mortgage recording tax exemption on the first \$1.2 million of refinancing was moved by M. Fitzgerald and seconded by F. Betrus. There being no further questions, Chair Grow called for a vote on the resolution as presented: The motion carried 6-0.**

Delta Luxury Townhomes, LLC – Release of roadway lands to City of Rome

Chair Grow introduced a request from Delta Luxury Townhomes, LLC relating to the release of 3.25 acres of roadways from the lease-leaseback transaction for conveyance to the City of Rome and ratifying the execution of a Partial Release of Lease Agreement by the Chairman. The Company submitted a request to urgently release the land to allow for the roads to be conveyed to the City so they could assume responsibility for the roads and begin necessary improvements, and the Chairman subsequently executed a Partial Release of Lease conditioned upon receipt from the City that it will assume responsibility for the roads. The Agency has received the written report from the City that they will assume the conditions, which was backed up by a statement made by Mayor Izzo and the City has already moved to accept the acreage. **A motion to approve a resolution authorizing the release of 3.25 acres of roadways from the lease-leaseback transaction for conveyance to the City of Rome and ratifying the execution of a Partial Release of Lease Agreement by the Chairman was moved by M. Fitzgerald and seconded by M.F. Messenger. There being no further questions, Chair Grow called for a vote on the resolution as presented: The motion carried 6-0.**

Vincent Holdings, LLC Building 302 -GLDC – Extension of Existing License

Chair Grow introduced a resolution relating to the Griffiss Local Development Corporation (Building 302) Facility, authorizing a six-month extension to an existing license to Vincent Holdings to renovate the property, authorizing the form and execution of related documents, subject to counsel review and receipt of updated insurance certificates. The Agency authorized a license in March 2021 and GLDC is requesting the Agency authorize a six-month extension to allow Vincent to complete its due diligence and renovations, and to exercise its option to purchase. M. Fitzgerald asked for clarification as to exactly where the building was located. S. Dimeo responded that it is located next to AIS on Brooks Road/March Street. Vincent Holdings plans to lease the space out and is seeking tenants. Vincent has done asbestos abatement and some temporary exterior improvements to improve the curb appeal. It is not presently occupiable. It has been vacant for around 25 years. Mr. Dimeo has toured the inside of the building and Vincent has so far done what it has committed to do. **A motion to approve a resolution authorizing a six-month extension to an existing license to Vincent Holdings, LLC to renovate the property, authorizing the form and execution of related documents, subject to counsel review and receipt of updated insurance certificates was moved by M. Fitzgerald and seconded by F. Betrus. There being no further questions, Chair Grow called for a vote on the resolution as presented: The motion carried 6-0.**

B240 Phase 3 – Sales Tax Exemption Extension Request

Chair Grow introduced a request from B240 LLC (Air City Lofts Phase 3 Facility) to authorize an extension of its agency appointment for an additional year to September 30, 2023 and approve the form and execution of related documents subject to counsel review. M. Fitzgerald asked for clarification that this was not an increase in the value of the sales tax exemption and which buildings in the complex were Phase 3. It was clarified that this request was not for an increase in sales tax exemption value and that the buildings furthest away from Route 825 traffic circle, and are 100% residential. **A motion to approve an extension of its agency appointment to B240 LLC (Air City Lofts Phase 3 Facility) for an**

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additional year to September 30, 2023 and approve the form and execution of related documents subject to counsel review, was moved by F. Betrus and seconded by M. Fitzgerald. There being no further questions, Chair Grow called for a vote on the resolution as presented: The motion carried 5-0, as K. Hinman was temporarily unavailable via WebEx.

New Business

F. Betrus distributed copies of legislation related to open meetings in New York State. He directed attention to the paragraph starting on the bottom of page 1 and ending on page 2. The legislation pertains to remote access of meetings. Discussion ensued as to how the statute applies in the OCIDA's case. It was determined that there are two questions that need to be answered. The first being If four or more directors are attending the meeting electronically from a remote locations, must all of those locations must be accessible to the public to attend, which would require the meeting notice to provide the location of the meetings. The second question being is there is a physical limitation on where the remote, publicly accessible locations can be. Chair Grow asked that Jenna Peppinelli be engaged to research both questions.

There being no further business, at 11.32 AM Chair Grow asked for a motion to adjourn the meeting: E. Quadraro moved, and M. Fitzgerald seconded the motion to adjourn. Motion carried 5-0.

Respectfully Submitted,

Mark Kaucher

Oneida County Industrial Development Agency
Notes to the Financial Statements
October 31, 2022

Balance Sheet:

1. Cash increased by \$111K over the last 12 months; this is basically due to the increase in net assets
2. The balance in restricted cash is made up of PILOT holdings; per direction from the board, the PILOT holding is being presented on the financial statements under assets instead of under liabilities; this more clearly shows the actual assets of the organization
3. The \$1,000 commitment fees collected from the following for projects that have not closed as of October 31:
 1. Source Renewables LLC (received April 2020- Project on Hold- commitment fee will be held and used to pay certain legal bills from BS&K related to the project)
 2. EDF Renewables (former partner in the Quiet Meadows projects) (received November 2021)
 3. Central Utica Building (received November 2021)
 4. Solar Generation Projects LLC (SG Oneida PV) (received December 2021)
 5. Solar Power Capital LLC (received January 2022)
 6. Solitude Solar, LLC (received February 2022)
 7. Fiber Instrument Sales (received March 2022)
 8. McCraith Beverages (received June 2022)
 9. Indium Corporation (received July 2022)
4. Fund balance increased approximately 21% over the last 12 months

Budget Comparison Report (Income Statement):

1. 2022 annual lease payments have been billed and all, but one payment have been collected
2. The following are the closings and application fees received from 1/1/22-10/31/22:

1/21/2022	Solar Power Capital LLC	App Fee	500.00
2/7/2022	Solitude Solar, LLC	App Fee	500.00
2/25/2022	Camden Renewables, LLC	Admin Fee	40,231.25
2/25/2022	Camden Renewables, LLC	Commitment Fee	1,000.00
3/16/2022	Fiber Instrument Sales	App Fee	500.00
4/1/2022	B240 LLC	B240 LLC Admin Fee	81,721.00
6/13/2022	McCraith Beverages / STD Realty	Application Fee	500.00
6/30/2022	Pivot Energy, INC	Admin Fee	20,976.00
6/30/2022	Pivot Energy, INC	Commitment Fee	1,000.00
7/15/2022	Indium Corporation Of America	Application Fee	500.00
7/31/2022	Quiet Meadows Solar Farm 2, LLC	Admin Fee	500.00
7/31/2022	Quiet Meadows Solar Farm 2, LLC	Admin Fee	500.00
8/19/2022	Delta Luxury Apartments	Admin & Commitment Fee	49,355.00
10/3/2022	Square One Coating Systems	Admin Fee	500.00
			198,283.25

Total as of 10/31/22

Admin fees are slightly under budget as of 10/31/22

3. 2020 Admin fees include 2 large projects thus the large difference from the other comparative years

No other significant items to note

**Oneida County Industrial Development Agency
Balance Sheet
October 31, 2022 and 2021**

	Current Year	Prior Year
Assets		
Current Assets		
Cash and Cash Equivalents	822,976	712,015 ¹
Restricted Cash - PILOT Holdings	318,892	88,256 ²
PILOT Holdings	(318,892)	(88,256) ²
Accounts Receivable	500	3,583
Prepaid Expenses	738	1,909
Total Current Assets	824,214	717,508
Fixed Assets		
Furniture/Fixture/Eqpt	6,679	6,679
A/D-Furniture/Fixt/Eqpt	(6,679)	(6,679)
Total Fixed Assets	0	0
Total Assets	824,214	717,508
Liabilities & Net Assets		
Liabilities		
Current Liabilities		
Accounts Payable	979	38,603
Accrued Expenses	5,833	5,833
Deferred Revenue	9,000	6,000 ³
Total Current Liabilities	15,812	50,436
Total Liabilities	15,812	50,436
Net Assets		
Fund Balance	408,402	267,072
Fund Balance-Board Restricted	400,000	400,000
Total Net Assets	808,402	667,072 ⁴
Total Liabilities & Net Assets	824,214	717,508

Oneida County Industrial Development Agency
 Budget Comparison Report
 Current Period: 10/1/2022 - 10/31/2022
 Budget Period: 1/1/2022 - 12/31/2022
 With Comparative Periods Ending 9/30/2021 and 9/30/2020

	Current Period Actual	Current Period Budget	Year-to-Date Actual	Year-to-Date Budget	10/31/2021	10/31/2020
Revenue						
Reimbursements	0	0	216	0	0	9,838
Interest Income & Miscellaneous	159	38	1,187	375	420	4,155
Lease Payments	0	3,396	51,000 ¹	33,958	46,750	43,250
PILOT Application / Admin Fees	500	21,667	198,283 ²	216,667	219,220	726,211 ³
PILOT Clawback MSP	0	0	0	0	65,000	0
Total Revenue	659	25,100	250,686	251,000	331,390	783,454
Expenses						
Business Expense	0	0	600	0	522	815
Contracted Service-Accounting	583	583	5,833	5,833	5,833	5,083
Contracted Services - Legal	850	850	8,450	8,450	8,000	8,075
Legal Services & PILOT Clawback MSP	0	0	0	0	60,695	4,305
Contracted Services- Other	0	0	3,269	0	8,089	0
Marketing- Contracted Services	0	17	915	167	45	150
Dues & Subscriptions	0	150	1,250	1,500	1,385	1,250
Insurance - General	376	333	3,328	3,333	3,180	3,127
Special ED Projects Contingency	8,333	8,333	83,333	83,333	83,333	770,404 ³
Office Supplies & Expense	40	267	400	2,667	238	0
Seminars & Conferences	0	250	3,679	2,500	1,300	2,740
Service Fees	14,000	14,000	140,000	140,000	133,333	133,333
Total Expenses	24,183	24,783	251,057	247,783	305,953	929,282
Excess or (Deficiency) of Revenue Over Expenses	(23,523)	317	(371)	3,217	25,437	(145,828)

**Oneida County Industrial Development Agency
Statement of Cash Flows
For the Period Ending October 31, 2022**

Cash Flows From (Used by) Operating Activities

Increase (Decrease) in Net Assets	\$ 141,331
Adjustments for Noncash Transactions	
Depreciation and Amortization	0
(Increase) Decrease in Assets	
Accounts Receivable	3,083
Prepaid Expenses	1,171
Increase (Decrease) in Liabilities	
Accounts Payable and Accrued Liabilities	(34,624)
Net Cash Flows From Operating Activities	<u>110,961</u>

Cash Flows From (Used By) Investing Activities

Capital Expenditures	<u>0</u>
Net Cash From (Used by) Investing Activities	0

Cash Flows From (Used By) Financing Activities

Repayments of Long Term Debt	0
Proceeds from Long Term Debt	<u>0</u>
Net Cash Flows (Used by) Financing Activities	0

Net Increase (Decrease) in Cash and Cash Equivalents

110,961

Cash and Cash Equivalents, Beginning of Period

712,015

Cash and Cash Equivalents, End of Period

\$ 822,976

LEVITT & GORDON

ATTORNEYS AT LAW
91 GENESEE STREET
P.O. BOX 97
NEW HARTFORD, NEW YORK 13413

(315) 724-2194 * TELECOPIER (315) 724-2261

MARK D. LEVITT
JENNA R. PEPPENELLI

DEAN L. GORDON
Of Counsel

November 15, 2022

Oneida County Industrial Development Agency

Attn: David Grow, Chairman

584 Phoenix Drive

Rome, New York 13441-4105

**Re: Oneida County Industrial Development Agency
Calendar Year 2023 Staff Service Agreements**

Each calendar year OCIDA enters into Staff Service Agreements with various entities, whereunder OCIDA staff provides administrative and professional services to various not-for-profit organizations and governmental entities. Below is a listing of the Staff Service Agreements provided herewith, along with a listing of the material changes:

1. OCIDA Staff Service Agreement:
 - a. Service fee increased to \$176,400 (previously \$168,000).
2. OCIDA Supplemental Agreement:
 - a. Service fee increased to \$125,000 (previously \$100,000); and
 - b. Expanded scope of work to provide guidance on new legislative changes and trends.

We have reviewed the Staff Service Agreement presented and there are no other changes from the Agreement of last year.

Very truly yours,

Levitt & Gordon Esqs.

By: 

Mark D. Levitt

MDL:mlb

STAFF SERVICES AGREEMENT

THIS STAFF SERVICES AGREEMENT- CY 2022 (this "Agreement"), dated as of **December 1916, 20212022**, is by and between **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**, a New York not-for-profit corporation with its principal office at 584 Phoenix Drive, Rome, New York 13441 ("EDGE") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with its principal office at 584 Phoenix Drive, Rome, New York 13441 ("OCIDA"). EDGE and OCIDA are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties".

WITNESSETH:

WHEREAS, EDGE was formed and exists for the general purpose of promoting economic development primarily within the corporate limits of Oneida County, New York; and

WHEREAS, OCIDA was formed under Article 18 of the General Municipal Law as a public benefit corporation and exists for the general purpose of promoting economic development in Oneida County; and

WHEREAS, EDGE employs administrative personnel and support staff (collectively, the "Staff") who maintain an expertise in various matters relating to economic development; and

WHEREAS, OCIDA desires to avail itself of the Staff's expertise and services which the Staff can provide (collectively, the "Staff Services") upon and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **DESCRIPTION OF STAFF/STAFF SERVICES.** EDGE will assign various members of the Staff to perform Staff Services for and on behalf of OCIDA. Subject to OCIDA's approval, EDGE shall designate one of the Staff members to be the "primary" Staff member assigned to perform and/or coordinate the Staff Services. If OCIDA becomes dissatisfied with such designated staff member, EDGE shall designate a replacement staff member acceptable to OCIDA in its sole discretion. If EDGE fails to designate a staff member acceptable to OCIDA, OCIDA may terminate this Agreement upon 30 days written notice. The Staff Services to be performed by the Staff for and on behalf of OCIDA shall consist of general administrative and staff support services relating to economic development

within Oneida County and shall include, but not necessarily be limited to, those Staff Services more particularly described on **Exhibit A** annexed hereto and made a part hereof. The Staff shall perform the Staff Services at EDGE's principal office or at such other locations as EDGE deems necessary or desirable in order to discharge its obligations hereunder.

2. **EDGE'S RESPONSIBILITIES.** EDGE will recruit, interview, select, hire and assign those members of the Staff who, in EDGE's judgment, are best qualified to perform all EDGE work including, without limitation, the Staff Services. As the Staff's employer, EDGE will (a) maintain all necessary personnel and payroll records for the Staff, (b) calculate the Staff's wages and withhold taxes and other government-mandated charges, if any, (c) remit such taxes and charges to the appropriate government entity, (d) pay net wages and furnish benefits, if any, directly to the Staff, and (e) provide for such insurance coverage as may be required of it herein.

3. **STAFF ASSIGNED TO OCIDA.** Those members of the Staff assigned by EDGE to provide Staff Services for and on behalf of OCIDA pursuant to this Agreement shall at all times be deemed employees of EDGE. The Staff shall not be deemed employees of OCIDA for any purpose and shall not be entitled to participate in any OCIDA employee benefit plans including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay, and other similar plans, programs and agreements, whether reduced to writing or not. EDGE will require all Staff members who are assigned to work on OCIDA projects and/or matters (collectively, the "OCIDA Projects/Matters") to acknowledge, in writing, the application of the terms of this Section. EDGE will endeavor to notify OCIDA prior to recruiting and/or hiring any person as a member of the Staff whom it anticipates will be assigned to work on OCIDA Projects/Matters.

4. **EDGE REPRESENTATION.** EDGE represents that the members of the Staff whom it assigns to OCIDA Projects/Matters will satisfactorily perform the Staff Services. If a particular member of the Staff does not perform such Staff Services to OCIDA's satisfaction, EDGE will arrange for said Staff member to be replaced by another Staff member within twenty (20) days after it receives notice from OCIDA that it is not satisfied with such Staff member's performance on OCIDA Projects/Matters. In those instances where OCIDA is dissatisfied with a particular Staff member's performance on OCIDA Projects/Matters, EDGE's replacement of such Staff member by another Staff member shall be OCIDA's sole and exclusive remedy.

5. **COMPLIANCE WITH LAWS.** In connection with its performance under this Agreement, EDGE will comply with all laws, regulations, and orders, to the extent applicable to EDGE including, but not limited to, equal opportunity employment laws and regulations, the Fair Labor Standards Act, and the Immigration Reform and Control Act.

6. **OCIDA's RESPONSIBILITIES.** OCIDA shall specify, in detail, to EDGE the OCIDA Projects/Matters, which OCIDA desires to have the Staff perform for and on its behalf, and shall set specific objectives and goals in connection therewith as set forth in Exhibit A. OCIDA shall furnish EDGE with such information, guidelines, reports and the like as may be reasonably necessary in order for EDGE to direct the Staff to effect and carry out their functions and responsibilities in connection with such OCIDA Projects/Matters. Should the OCIDA require any further project assistance or additional services they reserve the right to request those from EDGE at such time and modify this Agreement.

7. **SERVICE FEE** In consideration of the Staff Services to be furnished to OCIDA by EDGE hereunder during the Term, OCIDA shall pay a service fee (the "Service Fee") to EDGE in the amount of **ONE HUNDRED SIXTY-EIGHTSEVENTY-SIX THOUSAND FOUR HUNDRED AND NO/100ths DOLLARS (\$168,000176,400.00)**. The Service Fee shall be paid to EDGE within thirty (30) days after the date that EDGE presents an invoice therefor to OCIDA. EDGE shall invoice OCIDA on a monthly basis for the calendar year in twelve monthly installments.

The Service Fee covers the Staff Services provided to OCIDA during the Term, including those set forth on **Exhibit A** annexed hereto, as well as that portion of EDGE's general office overhead allocable to the Staff Services provided to OCIDA.

The Service Fee does not include any out-of-pocket expenses incurred by EDGE in providing the Staff Services including, without limitation, the following: the costs of third-party service providers retained by EDGE to perform Staff Services for or on behalf of OCIDA including consultants, accountants and attorneys, the premiums for OCIDA's insurance coverage (i.e., liability, D&O, and property insurance), OCIDA's annual audit fees, reimbursements of interest costs and other fees, OCIDA's meeting expenses, collection costs on OCIDA loans, the costs of any annual or other contributions made by OCIDA to other organizations, the costs of special events attended or sponsored by OCIDA, NYS filing fees, safety deposit box fees, the cost of occupancy of space at 584 Phoenix Drive, Rome, New York 13441 by OCIDA, bank charges on OCIDA bank accounts, and any costs or expenses of an extraordinary nature. Notwithstanding anything to the contrary contained in this Agreement, EDGE shall not engage any third-party service provider to perform Staff Services for or on behalf of OCIDA or incur any out-of-pocket expense for Staff Services in excess of \$1000 (or aggregate out-of-pocket expenses in excess of \$2,500) without OCIDA's prior consent. EDGE shall bill OCIDA on a monthly basis for all out-of-pocket expenses incurred by EDGE in performing the Staff Services.

8. **TERM.** The term of this Agreement shall be for one (1) year commencing on **January 1, 2022-2023** and ending on **December 31, 2022-2023**, inclusive (the "Term"), unless both Parties, prior to the completion of the Term of this Agreement, mutually agree, in writing, to extend, renew, or continue this Agreement beyond **December 31, 2022-2023**. Both Parties reserve the right to negotiate terms for an extension, renewal or continuation of this Agreement, subject to the approval of each Party's governing body. Negotiations for an extension, renewal or continuation of this Agreement shall commence at least sixty (60) days prior to the end of the Term. Notwithstanding anything to the contrary herein contained, EDGE reserves the right to terminate this Agreement immediately if OCIDA fails to pay the Service Fee within thirty (30) days of its due date.

9. **DOCUMENTATION OF TIME WORKED.** EDGE shall arrange for the Staff to devote such time to OCIDA Projects/Matters as may be necessary or required, in EDGE's judgment, to properly, promptly and completely perform such OCIDA Projects/Matters in a good and workmanlike manner. EDGE shall maintain bi-weekly timesheets, and such other documentation as may be necessary to demonstrate the amount of time spent by the Staff on OCIDA Projects/Matters.

10. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, each Party hereto (each, individually, an "Indemnifying Party") shall indemnify the other Party hereto, and its contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage and claims brought by third parties for personal injury and/or property damage (collectively, "Damages") incurred by any Indemnified Party to the extent caused by (i) any breach of this Agreement by the Indemnifying Party, its contractors, officers, directors, members, servants, agents, representatives, or employees, or (iii) the negligence, unlawful act or omission, or intentional misconduct of the Indemnifying Party, its contractors, officers, directors, members, servants, agents, representatives, or employees, arising out of or in connection with this Agreement, or the Staff Services, except to the extent such Damages are directly caused by the breach of this Agreement, the negligence, unlawful act or omission, or intentional misconduct of the Indemnified Party or any person or entity for whom the Indemnified Party is legally responsible.

11. **INSURANCE.** Each Party shall obtain and maintain during the Term, at its own cost and expense, insurance against such risks and for such amounts as are customarily insured against by businesses of like type and size, including, but not limited to, the following coverages with the following limits of coverage:

- (a) Commercial General Liability insurance with a combined single limit per occurrence in respect of bodily injury, disease, death and property damage of not less than \$1,000,000, and an aggregate limitation of not less than \$2,000,000, which insurance shall include contractual liability insurance.
- (b) Business automobile liability insurance with limits of insurance not less than \$1,000,000 for each accident.
- (c) Such other policies of insurance as such Party shall be required by applicable law to obtain and provide.

In addition, EDGE shall obtain and maintain (i) fidelity bond insurance or other insurance covering employee dishonesty with limits of coverage of not less than \$1,000,000 and (ii) Workers' Compensation and Employer's Liability and State-mandated Disability Benefits Liability insurance covering all persons employed by EDGE, with the limits of insurance required by law.

Each Party's insurance shall be written by a company or companies licensed to do business in the State of New York and reasonably satisfactory to the other Party with a Best's rating of A or better and financial size category of at least Class VII, or such higher standard as the other Party shall reasonably require. Deductibles and terms and conditions of each Party's insurance shall be subject to the other Party's reasonable approval. All policies and certificates of insurance shall state that the carrier cannot cancel or refuse to renew or create a material reduction in coverage without giving the other Party at least thirty (30) days' prior written notice. To the extent commercially available, each party's liability insurance shall include contract liability coverage for the "indemnification" requirements set forth in Section 10 hereof.

Each Party's Commercial General Liability insurance policy and Business automobile liability insurance policy shall name the other Party as an additional insured, on a primary and non-contributory basis, as its interests may appear (or loss payee in the case of property insurance). On the date hereof, each Party shall deliver to the other Party certificate(s) of insurance evidencing the required insurance coverages hereunder.

Each Party shall attempt to cause its property insurance carrier to agree to a waiver of subrogation. If any insurance policy cannot be obtained with a waiver of subrogation, or if one is obtainable only at additional cost, then the Party undertaking to obtain the insurance shall notify the other Party of such fact. The other Party shall have ten (10) business days after receipt of notice to (i) direct the Party undertaking to provide insurance to place it with a company

reasonably satisfactory to the other Party that will issue it with a waiver of subrogation at no greater cost, or (ii) agree to pay the additional premium. To the extent that the Parties obtain insurance with a waiver of subrogation, the Parties release each other from any claims for damages that are caused by or result from risks that such policies cover.

Each Party may provide any required insurance under a blanket policy.

12. **PERMITS AND LICENSES.** Each Party will maintain in effect during the Term of this Agreement any and all Federal, State, and/or local licenses and permits which may be required with respect to the respective business in which such Party is engaged.

13. **THIRD PARTY BENEFICIARIES.** Except as may be otherwise provided herein, this Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

14. **FORCE MAJEURE.** EDGE will not be responsible for any failure or delay in providing the Staff Services to OCIDA if such failure or delay is due to labor disputes and strikes, fire, riot, war, terrorism, acts of God, or any other causes beyond the control of EDGE.

15. **NOTICES.** All notices, consents, or other communications required or permitted from either Party to the other under this Agreement shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third business day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of the first business day after being deposited with a nationally-recognized overnight courier service, pre-paid for next day delivery, addressed as follows:

If to EDGE: Economic Development Growth
Enterprises Corporation
584 Phoenix Drive
Rome, New York 13441
Attn: Steven J. DiMeo
It's President

If to OCIDA: Oneida County Industrial Development
Agency
584 Phoenix Drive
Rome, New York 13441
Attn: David C. Grow
It's Chairman

16. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the law of the State of New York, without reference to its choice of law rules or principles.

17. **SECTION HEADINGS.** The Section headings of this Agreement are for the convenience of the Parties only and shall in no way alter, modify, amend, limit, or restrict the contractual obligations of the Parties hereunder.

18. **SEVERABILITY; WAIVER.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a Party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

19. **ASSIGNMENT.** Neither EDGE nor OCIDA may assign this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

20. **INDEPENDENT CONTRACTOR.** In its performance of this Agreement, EDGE will at all times act in its own capacity and rights as an independent contractor, and nothing contained herein may be construed to make EDGE an agent or partner of, or joint venturer with, OCIDA or make EDGE and OCIDA joint employers of the Staff.

21. **WAIVER OF JURY TRIAL.** Each Party hereby expressly waives any right to trial by jury for any action or proceeding brought under this Agreement and agrees that any action or proceeding hereunder shall be tried by a judge without a jury.

22. **FURTHER ASSURANCES.** Each Party hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file, or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

23. **LIMITATION OF LIABILITY.** Notwithstanding anything to the contrary in this Agreement, under no circumstance shall either Party have any liability whatsoever for consequential, incidental, special or punitive damages, howsoever claimed or arising and whether or not foreseeable.

24. **MISCELLANEOUS.** The Parties acknowledge and agree that OCIDA is managed by OCIDA's Members (the "OCIDA Members") and, to the extent that the OCIDA Members delegated management duties to OCIDA's

officers, OCIDA's officers. The Parties further acknowledge that nothing contained in this Agreement shall confer on EDGE any power or authority to manage OCIDA, which power and authority shall remain with the OCIDA Members and/or OCIDA's officers at all times. Without limiting the generality of the foregoing, the Parties acknowledge and agree that (a) the Staff Services shall be strictly administrative (rather than managerial) in nature, and (b) EDGE shall have no authority to execute contracts or agreements on OCIDA's behalf or otherwise bind OCIDA.

Nothing contained in this Agreement shall be deemed to make either Party an affiliate or sponsor of the other.

21. **ENTIRE AGREEMENT.** This Agreement (including **Exhibit A** annexed hereto) contains the entire understanding and agreement between the Parties with respect to the subject matter covered, and all prior agreements, understanding, covenants, promises, warranties, and representations, oral or written, express or implied, not incorporated in this Agreement are superseded. This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized officers both parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Staff Services Agreement-CY ~~2022~~2023 to be signed by their respective duly authorized officers as of the day and year first written above.

EDGE:

**ECONOMIC DEVELOPMENT GROWTH
ENTERPRISES CORPORATION**

By: _____

**Rocco F. Arcuri Sr.
It's Chairman**

OCIDA:

**ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

**David C. Grow
It's Chairman**

EXHIBIT A

1. Actively promote, attract, encourage and develop job and business opportunities through utilization of the IDA program benefits solely or in conjunction with other economic development and packaging of proposals to prospective clients and/or business, and negotiations of deals that are to be acted upon by Oneida County Industrial Development Agency (OCIDA).
2. Comply with New York State requirements set forth for the governance and operation of the Oneida County Industrial Development Agency including all required reporting, monitoring, auditing.
3. Market the programs and benefits of OCIDA through written materials, presentation, website, press releases, and meetings with potential clients.
4. Assist OCIDA in obtaining title to any remaining real property that is to be conveyed to OCIDA pursuant to the Economic Development Conveyance Agreement, as amended, between the Air Force and OCIDA assist the County of Oneida in obtaining title to any remaining property that is to be conveyed by the Air Force to the County pursuant to the Public Benefit Conveyance Agreement between the Air Force and the County.
5. Provide all accounting and finance support for OCIDA, including administrative support for completion of necessary financial reports, coordinating the completion of financial audits, completes all other reports required by government funding agencies, and provides other financial information and analyses as requested by OCIDA. This includes the billing and remitting of PILOT payments which are due directly to the OCIDA where an allocation agreement has been put in place, such as The Hartford, New Hartford Business Park, B240 LLC, 99 Otis Street LLC, Sovena, and Wolfsped.
6. Assist OCIDA in the hiring of consultants, securing professional services, and in the development of requests for proposals and qualifications for feasibility studies, and securing A/E services for various projects.
7. Provide necessary staff and administrative support to OCIDA, its Audit and Governance Committees, and other committees established by OCIDA.
8. Provide such other services or staff support functions as may be requested by OCIDA from time to time.
9. Participate in IDA training and information events such as annual Economic Development Council, including following and monitoring any legislative trends and reports impacting IDAs.
10. Maintain and update as necessary the application documents of the OCIDA that would be distributed to potential applicants to the OCIDA.
11. The Primary Staff person is Shawna Papale.

SUPPLEMENTAL STAFF SERVICES AGREEMENT- CY 2021-20232

THIS SUPPLEMENTAL STAFF SERVICES AGREEMENT- CY 2021-20232 (this "Agreement"), dated as of January 1, 2021-20232, is by and between **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**, a New York not-for-profit corporation with its principal office at 584 Phoenix Drive, Rome, New York 13441 ("EDGE") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with its principal office at 584 Phoenix Drive, Rome, New York 13441 ("OCIDA"). EDGE and OCIDA are sometimes referred to herein, individually, as a "Party" and, collectively, as the "Parties".

WITNESSETH:

WHEREAS, EDGE was formed and exists for the general purpose of promoting economic development primarily within the corporate limits of Oneida County, New York; and

WHEREAS, OCIDA was formed under Article 18 of the General Municipal Law as a public benefit corporation and exists for the general purpose of promoting economic development in Oneida County; and

WHEREAS, EDGE employs administrative personnel and support staff (collectively, the "Staff") who maintain an expertise in various matters relating to economic development and who are available to provide staff services (collectively, the "Staff Services") to OCIDA; and

WHEREAS, concurrently herewith, EDGE and OCIDA have entered into a Staff Services Agreement- CY 2017-20232 (the "Basic Staff Services Agreement"); and

WHEREAS, the Basic Staff Services Agreement provides, among other things, that during CY 2021-20232 EDGE is to furnish to OCIDA the Staff Services (as such term is defined therein) in consideration of a ~~\$160,000.00~~168,000~~176,400.00~~ service fee (the "Basic Service Fee"); and

WHEREAS, the Basic Staff Services Agreement anticipates that EDGE will provide a certain volume of Basic Staff Services to OCIDA during CY 2021-20232 (the "Basic Volume of Staff Services"); and

WHEREAS, during CY 2021-20232, OCIDA desires EDGE to provide a supplemental volume of Staff Services over and above the Basic Volume of Staff Services (collectively, the "Supplemental Staff Services") and EDGE is willing to do so in consideration of a ~~\$100,000~~125,000.00 supplemental service fee (the

“Supplemental Service Fee”) and upon the other terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. DESCRIPTION OF STAFF/SUPPLEMENTAL STAFF SERVICES.

EDGE will assign various members of the Staff to perform Supplemental Staff Services for and on behalf of OCIDA. Subject to OCIDA's approval, EDGE shall designate one of the Staff members to be the "primary" Staff member assigned to perform and/or coordinate the Supplemental Staff Services. If OCIDA becomes dissatisfied with such designated staff member, EDGE shall designate a replacement staff member acceptable to OCIDA in its sole discretion. If EDGE fails to designate a staff member acceptable to OCIDA, OCIDA may terminate this Agreement upon 30 days written notice. The Supplemental Staff Services to be performed by the Staff for and on behalf of OCIDA shall consist of general administrative and staff support services relating to economic development within Oneida County and shall include, but not necessarily be limited to, those Supplemental Staff Services more particularly described on **Exhibit A** annexed hereto and made a part hereof. The Staff shall perform the Supplemental Staff Services at EDGE's principal office or at such other locations as EDGE deems necessary or desirable in order to discharge its obligations hereunder.

2. EDGE'S RESPONSIBILITIES.

EDGE will recruit, interview, select, hire and assign those members of the Staff who, in EDGE's judgment, are best qualified to perform all EDGE work including, without limitation, the Supplemental Staff Services. As the Staff's employer, EDGE will (a) maintain all necessary personnel and payroll records for the Staff, (b) calculate the Staff's wages and withhold taxes and other government-mandated charges, if any, (c) remit such taxes and charges to the appropriate government entity, (d) pay net wages and furnish benefits, if any, directly to the Staff, and (e) provide for such insurance coverage as may be required of it herein.

3. STAFF ASSIGNED TO OCIDA.

Those members of the Staff assigned by EDGE to provide Supplemental Staff Services for and on behalf of OCIDA pursuant to this Agreement shall at all times be deemed employees of EDGE. The Staff shall not be deemed employees of OCIDA for any purpose and shall not be entitled to participate in any OCIDA employee benefit plans including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay, and other similar plans, programs and agreements, whether reduced to writing or not. EDGE will require all Staff members who are assigned to work on OCIDA projects and/or matters (collectively, the "OCIDA Projects/Matters") to acknowledge, in writing, the application of the terms of this Section. EDGE will endeavor to notify OCIDA prior

to recruiting and/or hiring any person as a member of the Staff whom it anticipates will be assigned to work on OCIDA Projects/Matters.

4. **EDGE REPRESENTATION.** EDGE represents that the members of the Staff whom it assigns to OCIDA Projects/Matters will satisfactorily perform the Supplemental Staff Services. If a particular member of the Staff does not perform such Supplemental Staff Services to OCIDA's satisfaction, EDGE will arrange for said Staff member to be replaced by another Staff member within twenty (20) days after it receives notice from OCIDA that it is not satisfied with such Staff member's performance on OCIDA Projects/Matters. In those instances where OCIDA is dissatisfied with a particular Staff member's performance on OCIDA Projects/Matters, EDGE's replacement of such Staff member by another Staff member shall be OCIDA's sole and exclusive remedy.

5. **COMPLIANCE WITH LAWS.** In connection with its performance under this Agreement, EDGE will comply with all laws, regulations, and orders, to the extent applicable to EDGE including, but not limited to, equal opportunity employment laws and regulations, the Fair Labor Standards Act, and the Immigration Reform and Control Act.

6. **OCIDA's RESPONSIBILITIES.** OCIDA shall specify, in detail, to EDGE the OCIDA Projects/Matters, which OCIDA desires to have the Staff perform for and on its behalf, and shall set specific objectives and goals in connection therewith as set forth in Exhibit A. OCIDA shall furnish EDGE with such information, guidelines, reports and the like as may be reasonably necessary in order for EDGE to direct the Staff to effect and carry out their functions and responsibilities in connection with such OCIDA Projects/Matters. Should the OCIDA require any further project assistance or additional services they reserve the right to request those from EDGE at such time and modify this agreement.

7. **SERVICE FEE** In consideration of the Supplemental Staff Services to be furnished to OCIDA by EDGE hereunder during the Term, OCIDA shall pay a supplemental service fee (the "Supplemental Service Fee") to EDGE in the amount of **ONE HUNDRED TWENTY FIVE THOUSAND AND NO/100ths DOLLARS (~~\$100~~125,000.00)**. The Supplemental Service Fee shall be paid to EDGE on a monthly basis in twelve equal monthly installments.

The Supplemental Service Fee covers the Supplemental Staff Services provided to OCIDA during the Term, including those set forth on **Exhibit A** annexed hereto, as well as that portion of EDGE's general office overhead allocable to the Supplemental Staff Services provided to OCIDA.

The Supplemental Service Fee does not include any out-of-pocket expenses incurred by EDGE in providing the Supplemental Staff Services including, without limitation, the following: the costs of third-party service providers retained by EDGE to perform Supplemental Staff Services for or on behalf of

OCIDA including consultants, accountants and attorneys, the premiums for OCIDA's insurance coverage (i.e., liability, D&O, and property insurance), OCIDA's annual audit fees, reimbursements of interest costs and other fees, OCIDA's meeting expenses, collection costs on OCIDA loans, the costs of any annual or other contributions made by OCIDA to other organizations, the costs of special events attended or sponsored by OCIDA, NYS filing fees, safety deposit box fees, the cost of occupancy of space at 584 Phoenix Drive, Rome, New York 13441 by OCIDA, bank charges on OCIDA bank accounts, and any costs or expenses of an extraordinary nature. Notwithstanding anything to the contrary contained in this Agreement, EDGE shall not engage any third-party service provider to perform Supplemental Staff Services for or on behalf of OCIDA or incur any out-of-pocket expense for Supplemental Staff Services in excess of \$1000 (or aggregate out-of-pocket expenses in excess of \$2,500) without OCIDA's prior consent. EDGE shall bill OCIDA on a monthly basis for all out-of-pocket expenses incurred by EDGE in performing the Supplemental Staff Services.

8. **TERM.** The term of this Agreement shall be for one (1) year commencing on **January 1, 2021-20223** and ending on **December 31, 2021-20223**, inclusive (the "Term"), unless both Parties, prior to the completion of the Term of this Agreement, mutually agree, in writing, to extend, renew, or continue this Agreement beyond December 31, **2021-20223**. Both Parties reserve the right to negotiate terms for an extension, renewal or continuation of this Agreement, subject to the approval of each Party's governing body. Negotiations for an extension, renewal or continuation of this Agreement shall commence at least sixty (60) days prior to the end of the Term. Notwithstanding anything to the contrary herein contained, EDGE reserves the right to terminate this Agreement immediately if OCIDA fails to pay the Service Fee within thirty (30) days of its due date.

9. **DOCUMENTATION OF TIME WORKED.** EDGE shall arrange for the Staff to devote such time to OCIDA Projects/Matters as may be necessary or required, in EDGE's judgment, to properly, promptly and completely perform such OCIDA Projects/Matters in a good and workmanlike manner. EDGE shall maintain bi-weekly timesheets, and such other documentation as may be necessary to demonstrate the amount of time spent by the Staff on OCIDA Projects/Matters.

10. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, each Party hereto (each, individually, an "Indemnifying Party") shall indemnify the other Party hereto, and its contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage and claims brought by third parties for personal injury and/or property damage (collectively, "Damages") incurred by any Indemnified Party to the extent caused by (i) any

breach of this Agreement by the Indemnifying Party, its contractors, officers, directors, members, servants, agents, representatives, or employees, or (iii) the negligence, unlawful act or omission, or intentional misconduct of the Indemnifying Party, its contractors, officers, directors, members, servants, agents, representatives, or employees, arising out of or in connection with this Agreement, or the Supplemental Staff Services, except to the extent such Damages are directly caused by the breach of this Agreement, the negligence, unlawful act or omission, or intentional misconduct of the Indemnified Party or any person or entity for whom the Indemnified Party is legally responsible.

11. **INSURANCE.** Each Party shall obtain and maintain during the Term, at its own cost and expense, insurance against such risks and for such amounts as are customarily insured against by businesses of like type and size, including, but not limited to, the following coverages with the following limits of coverage:

- (a) Commercial General Liability insurance with a combined single limit per occurrence in respect of bodily injury, disease, death and property damage of not less than \$1,000,000, and an aggregate limitation of not less than \$2,000,000, which insurance shall include contractual liability insurance.
- (b) Workers' Compensation and Employer's Liability and State-mandated Disability Benefits Liability insurance covering all persons employed by such Party, with the limits of insurance required by law.
- (c) Business automobile liability insurance with limits of insurance not less than \$1,000,000 for each accident.
- (d) Such other policies of insurance as such Party shall be required by applicable law to obtain and provide.

In addition, EDGE shall obtain and maintain fidelity bond insurance or other insurance covering employee dishonesty with limits of coverage of not less than \$5,000,000.

Each Party's insurance shall be written by a company or companies licensed to do business in the State of New York and reasonably satisfactory to the other Party with a Best's rating of A or better and financial size category of at least Class VII, or such higher standard as the other Party shall reasonably require. Deductibles and terms and conditions of each Party's insurance shall be subject to the other Party's reasonable approval. All policies and certificates of insurance shall state that the carrier cannot cancel or refuse to renew or create a material reduction in coverage without giving the other Party at least thirty (30)

days' prior written notice. To the extent commercially available, each party's liability insurance shall include contract liability coverage for the "indemnification" requirements set forth in Section 10 hereof.

Each Party's Commercial General Liability insurance policy and Business automobile liability insurance policy shall name the other Party as an additional insured, on a primary and non-contributory basis, as its interests may appear (or loss payee in the case of property insurance). On the date hereof, each Party shall deliver to the other Party certificate(s) of insurance evidencing the required insurance coverages hereunder.

Each Party shall attempt to cause its property insurance carrier to agree to a waiver of subrogation. If any insurance policy cannot be obtained with a waiver of subrogation, or if one is obtainable only at additional cost, then the Party undertaking to obtain the insurance shall notify the other Party of such fact. The other Party shall have ten (10) business days after receipt of notice to (i) direct the Party undertaking to provide insurance to place it with a company reasonably satisfactory to the other Party that will issue it with a waiver of subrogation at no greater cost, or (ii) agree to pay the additional premium. To the extent that the Parties obtain insurance with a waiver of subrogation, the Parties release each other from any claims for damages that are caused by or result from risks that such policies cover.

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day after being deposited with a nationally-recognized overnight courier service, pre-paid for next day delivery, addressed as follows:

If to EDGE: Economic Development Growth
Enterprises Corporation
584 Phoenix Drive
Rome, New York 13441
Attn: Steven J. DiMeo
Its President

If to OCIDA: Oneida County Industrial Development
Agency
584 Phoenix Drive
Rome, New York 13441
Attn: David C. Grow
Its Chairman

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18. **SEVERABILITY; WAIVER.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a Party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

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22. **FURTHER ASSURANCES.** Each Party hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file, or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

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24. **MISCELLANEOUS.** The Parties acknowledge and agree that OCIDA is managed by OCIDA's Members (the "OCIDA Members") and, to the extent that the OCIDA Members delegated management duties to OCIDA's officers, OCIDA's officers. The Parties further acknowledge that nothing contained in this Agreement shall confer on EDGE any power or authority to manage OCIDA, which power and authority shall remain with the OCIDA Members and/or OCIDA's officers at all times. Without limiting the generality of the foregoing, the Parties acknowledge and agree that (a) the Supplemental Staff Services shall be strictly administrative (rather than managerial) in nature, and (b) EDGE shall have no authority to execute contracts or agreements on OCIDA's behalf or otherwise bind OCIDA.

Nothing contained in this Agreement shall be deemed to make either Party an affiliate or sponsor of the other.

21. **ENTIRE AGREEMENT.** This Agreement (including **Exhibit A** annexed hereto) contains the entire understanding and agreement between the Parties with respect to the subject matter covered, and all prior agreements, understanding, covenants, promises, warranties, and representations, oral or written, express or implied, not incorporated in this Agreement are superseded. This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized officers both parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Supplemental Staff Services Agreement-CY ~~2021~~2022 to be signed by their respective duly authorized officers as of the day and year first written above.

EDGE:

**ECONOMIC DEVELOPMENT GROWTH
ENTERPRISES CORPORATION**

By: _____

Steven J. DiMeo

Its President

OCIDA:

**ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

David C. Grow

Its Chairman

EXHIBIT A

1. Actively promote, attract, encourage and develop job and business opportunities through utilization of the IDA program benefits solely or in conjunction with other economic development and packaging of proposals to prospective clients and/or business, and negotiations of deals that are to be acted upon by Oneida County Industrial Development Agency (OCIDA).
2. Comply with New York State requirements set forth for the governance and operation of the Oneida County Industrial Development Agency including all required reporting, monitoring, auditing.
3. Market the programs and benefits of OCIDA through written materials, presentation, website, press releases, and meetings with potential clients.
4. Assist OCIDA in obtaining title to any remaining real property that is to be conveyed to OCIDA pursuant to the Economic Development Conveyance Agreement, as amended, between the Air Force and OCIDA assist the County of Oneida in obtaining title to any remaining property that is to be conveyed by the Air Force to the County pursuant to the Public Benefit Conveyance Agreement between the Air Force and the County.
5. Provide all accounting and finance support for OCIDA, including administrative support for completion of necessary financial reports, coordinating the completion of financial audits, completes all other reports required by government funding agencies, and provides other financial information and analyses as requested by OCIDA. This includes the billing and remitting of PILOT payments which are due directly to the OCIDA where an allocation agreement has been put in place, such as The Hartford, New Hartford Business Park, 394 Hangar Road, and Sovena.
6. Assist OCIDA in the hiring of consultants, securing professional services, and in the development of requests for proposals and qualifications for feasibility studies, and securing A/E services for various projects.
7. Provide necessary staff and administrative support to OCIDA, its Audit and Governance Committees, and other committees established by OCIDA.
8. Provide such other services or staff support functions as may be requested by OCIDA from time to time.

9. Participate in IDA training and information events, such as annual Economic Development Council, and including following new legislative changes and trends proposed.
10. Maintain and update as necessary the application documents of the OCIDA that would be distributed to potential applicants to the OCIDA.



MEMO TO: Oneida County Industrial Development Agency
FROM: Steve DiMeo
DATE: November 2, 2022
CC: Shawna Papale
RE: MV EDGE / NBT Loans for Wolfsped PIF

Shawna:

EDGE's interest only period on its NBT#1 and NBT#2 loans for the Wolfsped PIF is ending this month and the loans are set to begin full amortization of the loans. The interest rates have jumped dramatically over the past years with the fed raising interest rates. As such we have gone back to NBT and asked them to provide the following changes in the loan terms:

1. NBT#1 Loan: \$2,900,000 (no change in principal amount):

- Interest Rate: Borrower will have option to lock in at 5-Year Treasury + 225 bps (fixed) or 10-yr Treasury + 225 bps (fixed). This is a change from the original loan of 5-Yr. Treasury + 300 bps
- Loan Term: NBT has agreed to change the loan term from 5 years to 10 years with amortization period to match the loan term
- Add - prepayment penalty of 1% will apply (Yrs. 1-4 with 5 yr. fixed rate and Yrs. 1-6 with 7 yr. fixed rate) in the event of refinance with another lending institution. Reductions from excess cash flow permitted without penalty. There is currently no prepayment penalty.

2. NBT#2: \$4,600,000 (no change in principal amount):

- Interest Rate: Rate modification to 5 yr. T+2.25% (fixed) with reset at 3 yr. T+2.25% OR 10 Yr. T + 2.25% (fixed). This is a drop from the original rate of 5-Yr. Treasury + 300 bps.
- loan term 10 years in keeping with the remaining amortization
- Add - prepayment penalty of 1% will apply (Yrs. 1-4 with 5 yr. fixed rate and Yrs. 1-6 with 7 yr. fixed rate (w/10 yr. index) in the event of refinance with another lending institution. Reductions from excess cash flow permitted without penalty. There is currently no prepayment penalty.

We need to have OCIDA grant its consent at the November 18 meeting. We are looking to finalize this before the expiration of the interest only period that ends before end of November and we are looking to finalize the drawdown on the balance remaining on NBT#2. We have drawn down all of NBT#1.

Let me know if anything else is needed for OCIDA meeting on November 18.

Regards,

Steven J. DiMeo
President
Mohawk Valley EDGE

**Resolution Approving Modification of
EDGE Project Related Debt
(Cree, Inc. Facility)**

Date: November 18, 2022

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 18th day of November 2022, the following members of the Agency were:

Members Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to approving the modification of certain EDGE Project Related Debt in furtherance of the Cree, Inc. Facility.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION APPROVING THE MODIFICATION OF CERTAIN EDGE PROJECT RELATED DEBT AND EXECUTION OF MODIFICATION DOCUMENTS WITH RESPECT TO THE CREE, INC. FACILITY LOCATED IN THE TOWN OF MARCY, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Economic Development Growth Enterprises Corporation, on behalf of itself and its principals (collectively, "EDGE"), and Cree, Inc., on behalf of itself and its principals (collectively, the "Company"), entered into a transaction in which the Agency is assisting in the (i) acquisition of an interest in a 55.25± acre parcel of land situate at Edic Road in the Town of Marcy, Oneida County, New York (the "Land"), (ii) construction on the Land of four buildings with 450,000± square feet of floor area consisting of (a) a three-story administrative building measuring 75,000± square feet; (b) a three-story, 300,000± square foot ballroom style wafer fabrication building with total cleanroom space measuring 100,000 - 135,000 square feet; (c) a HPM Warehouse, (d) a single-story Central Utilities Building measuring 70,000± square feet, and (e) all utilities and infrastructure to support the same (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all for the purpose of providing a state of the art wafer fabrication plant to support the substantial growth of the Company in its target markets (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the construction, renovation and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, The People of the State of New York, acting by and through the State University of New York (the "State") owns in fee a 53.76± acre portion of the Land (the "State Land") and leases the State Land to Fort Schuyler Management Corporation ("FSMC") pursuant to an Amended and Restated Ground Lease dated as of May 1, 2010, as may have been or may be amended from time to time (the "First Ground Lease"); and

WHEREAS, FSMC ground subleases the State Land to EDGE pursuant to a Second Ground Sublease, as may be amended from time to time (the "Second Ground Lease"); and

WHEREAS, EDGE owns in fee a 1.49± acre portion of the Land (the "EDGE Land"); and

WHEREAS, EDGE sub-subleases the Facility to the Company pursuant to a Ground Sublease, as may be amended from time to time (the "Third Ground Lease"); and

WHEREAS, the Agency acquired a leasehold interest in the Facility pursuant to a Lease Agreement from the Company to the Agency (the "Lease Agreement") and leases the Facility back to the Company pursuant to a Leaseback Agreement from the Agency to the Company (the "Leaseback Agreement"); and

WHEREAS, the Agency provides financial assistance in support of the Project in the form of exemptions from mortgage recording taxes and exemptions from sales and use taxes on materials and/or the Equipment used or incorporated in the Facility; and

WHEREAS, the Agency made provision for payments-in-lieu-of-taxes (the "PILOT Payments") by the Company to the Agency pursuant to a Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement"), which PILOT Payments are to be allocated by the Agency in accordance with the terms of an Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the County of Oneida, Whitesboro Central School District, the Town of Marcy, Maynard Fire District, Dunham Public Library (each an "Affected Tax Jurisdiction" and collectively, the "Affected Tax Jurisdictions"), the Agency and EDGE (the "Allocation Agreement"); and

WHEREAS, the payments under the PILOT Agreement are a first-priority lien on the Facility, secured by a PILOT Mortgage from the Agency and the Company to the Agency, for the benefit of the Taxing Authorities (the "PILOT Mortgage"); and

WHEREAS, the Company represented that it will create certain full time equivalent ("FTE") positions at the Facility, as a result of undertaking the Facility (the "Employment Obligation"), and the Financial Assistance is conditioned upon the Company achieving the Employment Obligation for a period of ten (10) years following completion of the Facility, and failure to do so may result in the termination or recapture of Financial Assistance; and

WHEREAS, EDGE has agreed to undertake certain site work in furtherance of the Project (the "EDGE Project Related Improvements") and to finance a portion of the costs of the EDGE Project Related Improvements by undertaking certain site work in furtherance of the Project (the "EDGE Project Related Debt"); and

WHEREAS, NBT Bank, National Association (the "Bank"), together with a consortium of other lenders to be identified at a later date (collectively, the "EDGE Lenders," and together with the Bank, collectively, the "Lenders") have agreed to finance the EDGE Project Related Improvements by extending one or more loans to EDGE in the principal sum of up to \$9,250,000.00, to be secured by one or more mortgages and/or other documents deemed necessary by the Lenders to secure their respective interests (the "Lenders' Financing Documents"); and

WHEREAS, by resolution adopted on October 23, 2020 (the "Resolution") the Agency approved EDGE Project Related Debt in an amount not to exceed \$9,450,000.00 on the condition that the Lender's Financing Documents are not extended without the express written approval of the Agency; and

WHEREAS, EDGE has requested, and the Bank has approved, a modification of certain terms of financing relating to two loans extended by the Bank to EDGE relating to the EDGE Project Related Debt, which modification does not increase the principal amount of the loans but does extend the payment terms from five to ten years, in addition to other modifications to the loan terms; and

WHEREAS, EDGE submitted a request to the Agency to approve the modification of the EDGE Project Related Debt and deliver to the Bank a certificate in substantially the form attached hereto as Exhibit A (the "Written Consent") and any other documents the Bank may require to modify the Lender's Financing Documents (together with the Written Consent, the "Modification Documents"); and

WHEREAS, the Agency recognizes that the Project is vitally important to economic development efforts in Oneida County, and desires to approve the modification of the EDGE Project Related Debt in support of the Project.

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

Section 1. 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) Approving the modification of the EDGE Project Related Debt will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) Modification of the EDGE Project Related Debt is reasonably necessary to induce EDGE to undertake the EDGE Project Related Improvements and to induce the Company to maintain and expand its business operations in the State of New York; and

(e) It is desirable and in the public interest for the Agency to approve the modification of the EDGE Project Related Debt; and

(f) The Modification Documents, in the Agency’s customary forms and subject to review by counsel, will be effective instruments whereby the Agency approves the modification of the EDGE Project Related Debt and modifies the terms of the EDGE Project Related Debt as presented to the Agency.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) approve the modification of the EDGE Project Related Debt; and (ii) execute, deliver and perform the Modification Documents.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such modification of EDGE Project Related Debt are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Modification Documents are hereby approved, subject to (i) the inclusion of the Agency’s standard financing provisions; (ii) the condition that the Lenders’ Financing Documents will not be further extended without the express written approval of the Agency; and (iii) approval of Agency counsel.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Modification Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the

Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 6. 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 Closing 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 Closing Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on the 18th day of November 2022 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) the meeting was open for the public to attend and public notice of the date, time and place of said meeting was duly given, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 18th day of November 2022.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Shawna M. Papale, Secretary

EXHIBIT A

**CONSENT BY AGENCY TO MODIFICATION OF EDGE PROJECT-RELATED DEBT
SECURED BY THE COLLATERAL ASSIGNMENT OF RENTS AND PAYMENTS.**

The Oneida County Industrial Development Agency (the “Agency”), by and through its duly authorized representative signing below, hereby confirms that it has consented to Economic Development Growth Enterprises Corporation’s (“EDGE”) modification of the terms of certain EDGE Project-Related Debt secured by a Collateral Assignment of Rents and Payments dated November 24, 2020 from EDGE and the Agency to NBT Bank, National Association.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
David C. Grow, Chairman

STATE OF NEW YORK:

Ss.:

COUNTY OF ONEIDA:

On this _____ day of November, 2022, before me, a notary public in and for such State, did personally appear David C. Grow, to me personally known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument; and acknowledged before me that he/she executed the same in his/her capacities; and that by his/her signature on the instrument, the individual, or the person upon whose behalf such individual acted, executed the same.

Notary Public - State of NY