



Meeting Agenda – Audit and Finance Committee

Genesee Gateway Local Development Corp

Thursday, March 30, 2023 – 3:00 p.m.

Location: 99 MedTech Drive, Innovation Zone

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	D. Cunningham	
2-4	2. Chairman’s Report & Activities 2a. Agenda Additions / Other Business 2b. Minutes: February 28, 2023	D. Cunningham	Vote
5-12	3. Discussions / Official Recommendations to the Board: 3a. 12/31/22 Audit	Mostert, Manzanero & Scott	Disc / Vote
13-15	3b. Revised Right of First Refusal for Ag Park (CH4 Biogas)	M. Masse	Disc / Vote
16	3c. Loan Application for J&R Fancher Holdings, LLC	M. Masse	Disc / Vote
	3d. Gateway II, LLC Lease Extension	M. Masse	Discussion
	3e. Transfer Funds to STAMP Sewer Works Corp.	M. Masse	Disc / Vote
	5. Adjournment	D. Cunningham	Vote

GGLDC Audit & Finance Committee Meeting

Tuesday, February 28, 2023

Location – 99 MedTech Drive, Innovation Zone

8:30 a.m.

MINUTES

ATTENDANCE

Committee Members: D. Cunningham, T. Felton, P. Battaglia (Video Conference*)
Staff: L. Farrell (Video Conference), M. Masse, L. Casey, J. Krencik, P. Kennett, S. Hyde
Guests: M. Gray (GCEDC Board Member), P. Zeff (GCEDC/GGLDC Board Member)
Absent: T. Bender

* Attending from physical location identified in meeting notice as open to the public.

1. CALL TO ORDER / ENTER PUBLIC SESSION

D. Cunningham called the meeting to order at 9:12 a.m. in the Innovation Zone.

2. CHAIRMAN'S REPORT & ACTIVITIES

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

2b. Minutes: January 31, 2023

T. Felton made a motion to recommend approval of the January 31, 2023 minutes; the motion was seconded by P. Battaglia. Roll call resulted as follows:

T. Felton - Yes
P. Battaglia - Yes (Video Conference*)
T. Bender - Absent
D. Cunningham - Yes

The item was approved as presented.

3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD:

3a. Allowance for Doubtful Accounts - M. Masse and L. Farrell reviewed the analysis of allowance for doubtful accounts with the Committee. Included at the bottom of the worksheet are any changes that were made, including a portion of the Rest & Revive Loan (\$24,683.40) that was written-off as an uncollectible account. Staff will not replenish this amount in the allowance account. The collectability of these loans was discussed. The loan balance for Caccamise will be written off in 2023. The Kanaley loan, which is in collections, is potentially uncollectible. There are no additional foreseen concerns, and the staff does not recommend any changes to the allowance, which is approximately 10% of total loan balances.

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P. Zeliff requested an itemized list of loans categorized by loan fund. M. Masse stated that staff can accommodate this request along with the changes to the RLF Policy that were discussed during the GCEDC Audit and Finance Committee Meeting. These changes are to be provided by T. Felton. Staff will make these changes, which will be brought forward at a subsequent meeting for review and consideration.

P. Battaglia made a motion to approve the Allowance for Doubtful Accounts as presented; the motion was seconded by T. Felton. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes (Video Conference*)
- T. Bender - Absent
- D. Cunningham - Yes

The item was approved as presented.

3b. Investment Report - The Investment Report summarizes the GGLDC's bank balances, general ledger balances and interest income at 12/31/22. As of 12/31/22, cash balances were fully collateralized. The report will be submitted into PARIS and posted on the website.

P. Battaglia made a motion to recommend to the full Board the approval of the Investment Report as presented; the motion was seconded by T. Felton. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes (Video Conference*)
- T. Bender - Absent
- D. Cunningham - Yes

The item was approved as presented.

3c. Procurement Report- Public Authorities are required to report all procurement transactions active during the reporting period that have an actual or estimated value of \$5,000 or more. This report will be submitted into the PARIS system and posted on the website.

T. Felton made a motion to recommend to the full Board the approval of the Procurement Report as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes (Video Conference*)
- T. Bender - Absent
- D. Cunningham - Yes

The item was approved as presented.

3d. RLF Policy Review – The same discussion that took place during the GCEDC Audit and Finance Meeting applies to the GGLDC. The key points of discussion have been added for ease of reference. The Revolving Loan Fund Policy was included with the meeting materials. Staff is not recommending any changes; however, it was added to the agenda for discussion. Currently, there are three loans with the GGLDC that have a variable interest rate of prime with a 3% floor, readjusted annually in January.

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T. Felton will provide language and suggestions that will make the policy more consistent. Once received, staff will make these changes, which will be brought forward at a subsequent meeting for review and consideration.

No action was taken by the Committee.

3e. County Mowing Contract - The GGLDC Received a proposal for mowing of the stormwater ponds and vacant land at MedTech Centre and Ag Park for 2023. Proposal amount is from the same vendor as last year and the price has increased from \$10,350 to \$10,600.

Fund commitment: \$10,600 from operational funds of MedTech Centre and Ag Park.

Board action request: Approval of mowing contract for \$10,600 with Genesee County Highway Department.

T. Felton made a motion to recommend to the full Board the approval of the Genesee County Highway Mowing Contract not to exceed \$10,600 as presented; the motion was seconded by P. Battaglia. Roll call resulted as follows:

- T. Felton - Yes
- P. Battaglia - Yes (Video Conference*)
- T. Bender - Absent
- D. Cunningham - Yes

The item was approved as presented.

4. ADJOURNMENT

As there was no further business, P. Battaglia made a motion to adjourn at 9:21 a.m., seconded by T. Felton and passed unanimously.

Mark Masse

Audit & Finance Committee

March 30, 2023

Right of First Refusal (ROFR) for Ag Park CH4Biogas

Discussion: Attached is a ROFR for a 20 acre parcel located at the Ag Park.

Fund Commitment: None.

Board Action Request: Recommend approval of the ROFR.

REAL ESTATE PURCHASE OPTION AGREEMENT

THIS REAL ESTATE PURCHASE OPTION AGREEMENT (this "Agreement") is made as of the latest date indicated on the signature page of this Agreement (the "Effective Date") by and between **GENESEE AGRIBUSINESS LLC** ("Landowner"), with an address at 99 MedTech Drive, Suite 106, Batavia, New York 14020, and **CH4 BIOGAS, LLC**, a Delaware limited liability company located at 30 Lakewood Circle North, Greenwich, Connecticut 06830 ("Option Holder").

Recitals

A. Landowner is the owner in fee of certain real property totaling approximately 20 acres, located at Ellicott Street Road, Batavia, New York 14020, as more particularly described as Tax map ID #20.-1-108.1 and as set out in the legal description at **Exhibit A** (the "Property").

B. Option Holder wishes to obtain an option to purchase the Property from Landowner, together with certain appurtenant rights over, across, to and through other portions of the Property, and Landowner is willing to sell the Property and grant such appurtenant rights to Option Holder, all on and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of \$1.00, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by all parties, the parties hereto agree as follows:

1. Grant of Option. Landowner hereby grants to Option Holder an exclusive and irrevocable option (the "Option") to purchase the Property exercisable by Option Holder or its Designee at any time during the Term, defined below, at \$50,000 per acre. Landowner represents and warrants that, as of the date hereof, Landowner holds fee simple title to the Property and knows of no liens or encumbrances that would prohibit the sale of the Property.
2. Deposit. Option Holder shall make a Twenty Thousand and no/100 U.S. Dollars (\$20,000.00) non-refundable deposit ("Deposit") to Landowner within three (3) business days following the Effective Date. Such Deposit shall be credited against the total purchase price at closing, if applicable.
3. Term of Option. The term of the Option (the "Term") shall be for a total of twelve (12) months, provided that Option Holder makes the Deposit to Landowner in accordance with the terms of Section 2 of this Agreement, beginning on the Effective Date, provided, however, that Option Holder shall have the right at any time prior to exercising the Option to terminate this Agreement by giving written notice to Landowner.
4. Method of Exercising Option. Option Holder may exercise the Option at any time during the Term by delivering written notice to Landowner of such exercise, such notice to be delivered to Landowner at the address written above, unless Landowner has otherwise provided an alternative address to Option Holder in writing (hereinafter the "Exercise Notice"). The parties

agree thereafter to execute a Purchase and Sale Agreement in the form attached hereto as Exhibit B.

5. Intended Use. Landowner hereby consents to the Option Holder's intended use of the Property to construct, operate and maintain a biodigester system and other systems that, in Option Holder's sole opinion, are reasonably related to said biodigester system (the "Intended Use"). Landowner will reasonably cooperate with efforts to obtain any required permitting or approval as may be necessary for the Intended Use by Option Holder.

6. Due Diligence Activities. During the Term, Option Holder or its representatives shall have, and Landowner hereby grants Option Holder, the right of access to the Property during reasonable business hours for the purpose of obtaining building permits and approvals, completing non-invasive environmental studies, and performing other customary due diligence activities to evaluate the proposed use of the Property under the Purchase and Sale Agreement (collectively, the "Due Diligence Activities"). Notwithstanding anything to the contrary stated herein or otherwise, it is expressly agreed and acknowledged that in no event shall Option Holder or its representatives be permitted to conduct any invasive testing on the Property, including, but not limited to, Phase II environmental site assessments, without Landowner's prior written consent, which it may grant, condition, and/or withhold in its sole and absolute discretion. Notwithstanding the foregoing, Landowner hereby agrees to allow Option Holder to conduct a suitability study including but not limited to ground boring and the collection of soil samples, and neither of these activities shall be considered "invasive testing" for the purposes of this Agreement. Option Holder will notify Landowner of the location of the Due Diligence Activities and will endeavor to minimize any inconvenience to Landowner. All data and other information derived from such Due Diligence Activities shall be and remain the sole property of Option Holder. Option Holder shall repair or reimburse Landowner for the cost of any damages caused by Option Holder's Due Diligence Activities. In addition, Option Holder will be responsible for all costs incurred by it in conducting the Due Diligence Activities. Additionally, prior to permitting any contractor, agent, person or entity to enter onto the Property for any purposes, Option Holder shall deliver to Landowner evidence of commercial general liability insurance and automobile liability insurance coverage maintained by Option Holder, as well as commercial general liability insurance coverage and automobile liability insurance coverage for each such contractor, agent, person or entity, with each such policy having a combined single limit per occurrence for personal injury and property damage of not less than One Million Dollars (\$1,000,000); provided, however, no such certificates shall be required of any subcontractor of an environmental engineer and/or contractor which has provided Landowner with the requisite certificate. All policies required by this section shall name Landowner as an additional insured thereon. Each such insurance policy shall be maintained with an insurer that is reasonably acceptable to Landowner, and the form and scope of coverage shall be reasonably acceptable to Landowner. Option Holder and each such contractor shall also maintain workers compensation insurance, if required by applicable law, in no less than the minimum statutory amount.

7. Right of First Refusal. It is further agreed that, should Landowner, or Landowner's heirs, executors, successors, or assigns, at any time during the Term receive an offer to purchase the Property or any part of the Property, and Landowner desires to accept such offer, or should Landowner during any such time make an offer to sell the Property or any part of the Property or

transfer the beneficial interest in any land trust in which the Property or any part of the Property are held, Landowner shall give Option Holder ninety (90) days' written notice of such offer setting forth the name and address of the proposed purchaser or new beneficiary, with executed copies of all relevant documents, the amount of the proposed purchase price (including a full and fair allocation of the proposed purchase price attributable to the Property if the offer includes property in addition to the Property or a portion of the Property) and all other terms and conditions of such offer. Option Holder shall then have the first option to purchase the Property or the beneficial interest covered in the offer by giving written notice to Landowner of its intention to purchase within such 90-day period at the same price (or allocated price, if applicable) and on the same terms as any such offer. For the purposes of this provision, an offer to sell shall include any assignment of beneficial interest if the Property is held in a trust. Whether or not the Property set forth in the offer is sold or the beneficial interest is transferred, Option Holder shall have, upon the same conditions and notice, the continuing first option to purchase the Property or beneficial interest or any part of the Property upon the terms of any subsequent offer or offers to purchase. If any of the foregoing options are exercised, Landowner shall convey marketable and insurable title to the Property in fee simple or convey the beneficial interest in a land trust by good and sufficient stamped warranty deed or assignment of beneficial interest, as the case may be, and free from all encumbrances whatsoever. Settlement of the purchase price and conveyance to Option Holder shall be made within ninety (90) days from the date of exercise. Taxes, utilities, rents, and other expenses shall be adjusted as of the date of closing by Option Holder. Landowner shall bear all costs of subdivision, replat, or surveying, to the extent any are required.

8. Brokers. Landowner and Option Holder each warrant and represent to the other that neither has employed or dealt with a real estate broker or agent in connection with the transaction contemplated hereby for which the other party hereto will have any responsibility or liability whatsoever. Landowner and Option Holder covenant and agree, each to the other, to indemnify the other against any loss, liability, costs, claims, demands, damages, actions, causes of action, and suits arising out of, or in any manner related to, the alleged employment, engagement, or use by the indemnifying party of any real estate broker or agent. The foregoing indemnification obligation shall survive the termination of this Agreement.

9. Notices. All notices or other communications required or permitted hereunder shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed to the receiving party at the address set forth below its respective signature on the signature page hereto. Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Any party may change its address for purposes of this section by giving written notice of such change to the other party in the manner provided in this section.

10. Intentionally Omitted.

11. Assignment. Option Holder shall not have the right to assign its rights, duties and obligations pursuant to this Agreement or any of its rights hereunder without the prior written consent of Landowner, which consent shall not be unreasonably conditioned, withheld, and/or

delayed; provided, however, Option Holder shall be permitted to assign this Agreement to any affiliate or subsidiary, or to an entity created for the potential acquisition contemplated herein without obtaining Landowner's consent so long as the Option Holder named herein remains fully responsible for the performance of all of Option Holder's obligations under this Agreement. No assignment shall be effective unless and until Option Holder provides Landowner with a notice of assignment together with a copy of the applicable assignment and assumption agreement.

12. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity, including but not limited to a temporary restraining order. Each party hereto (a) agrees that it shall not oppose the granting of such specific performance or other relief and (b) hereby irrevocably waives any requirements for proving that monetary damages would be an insufficient remedy or the security or posting of any bond in connection with such relief.

13. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted heirs, successors, and assigns. The parties each agree to do, execute, acknowledge, and deliver all such further acts, instruments, and assurances, and to take all such further action as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby. This Agreement shall be governed by and in accordance with the laws of the State of New York. If any clause or provision of this Agreement is held by a court having jurisdiction to be illegal, invalid, or unenforceable under any present or future law, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any such provision is held to be illegal, invalid, or unenforceable, there will be added in lieu of such illegal, invalid, or unenforceable provision a provision as similar in terms as is possible and be legal, valid, and enforceable. In the event that either party hereto commences an enforcement action against the other to enforce its rights hereunder, the prevailing party in such enforcement action shall be entitled to recover from the other its reasonable attorney's fees and expenses incidental to such enforcement action, whether incurred before or after a final decision on such enforcement action. This Agreement contains the entire agreement and understanding of the parties in respect to the subject matter hereof and supersedes all prior agreements in respect to the subject matter hereof, if any, between the parties. This Agreement may not be amended, modified, or discharged, nor may any of its terms be waived, except by an agreement in writing signed by the parties. This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This Agreement, along with any amendments hereto, to the extent signed and delivered by means of PDF, DocuSign, E-mail, a facsimile machine, or other means of electronic signature and transmission, shall be treated in all manner and respects and for all purposes as an original signed agreement or amendment and shall be considered to have the same binding legal effect as if it were an original signed version thereof delivered in person.

[Remainder of page intentionally left blank. Signature page immediately follows.]

IN WITNESS WHEREOF, the undersigned parties have set their hands and seals hereto as of the day and year indicated next to their signatures.

LANDOWNER

GENESEE AGRIBUSINESS LLC, a New York limited liability company

Date: _____

By: _____

Name: _____

Title: _____

OPTION HOLDER

CH4 BIOGAS, LLC, a Delaware limited liability company

Date: _____

By: _____

Name: _____

Title: _____

Exhibit A

(Property Description)

Exhibit B
(Purchase and Sale Agreement)

Loan Application for J & R Fancher Property Holdings, LLC

Discussion: J & R Fancher Property Holdings, LLC has applied for a \$200,000 loan from the GGLDC's Batavia Micropolitan Redevelopment Loan Fund. Attached is the project description and outline of the proposed use of funds.

Fund Commitment: \$200,000 from GGLDC Batavia Micropolitan Redevelopment Loan Fund.

Committee Action Request: Recommend approval of \$200,000 loan to J & R Fancher Property Holdings, LLC at Prime Rate of interest, adjusted annually in January with a floor of 3%. This loan will also require personal and corporate guarantees as well as a second position in the building.

J & R Fancher Property Holdings, LLC

Project Description

Overview

J & R Fancher Property Holdings, LLC is a NYS LLC that is undertaking a project in Pembroke.

The Project

J & R Fancher Property Holdings, LLC is currently constructing a mixed use facility in Pembroke consisting of 6 market rate apartments and approximately 7,000 sq ft of retail space.

Financing for the project includes equity, bank financing and a loan from the Genesee Gateway Local Development Corp.'s (GGLDC) Batavia Micropolitan Redevelopment Loan Fund.

The GGLDC is proposing to use Batavia Micropolitan Redevelopment Loan Fund funding in the amount of \$200,000 to provide a loan to the Company to cover cost escalations on the project. The term loan will have an interest rate of Prime with a floor of 3% per annum, to be readjusted annually, and will be amortized over a 10-year term which will include an interest only period during construction. The loan will be secured by a second position lien filing on the building as well as cross-corporate and personal guarantees from the owners.

Combined project sources and uses of funds are detailed as follows:

<u>Uses of Funds:</u>	
Building acquisition and construction	\$2,724,226
Land acquisition	305,000
Total Uses	<u>\$3,026,226</u>
<u>Sources of Funds:</u>	
GGLDC Loan Fund	\$200,000
Bank financing	2,121,120
Equity/cash	708,106
Total Sources	<u>\$3,029,226</u>

Underwriting Guidelines

Project Costs - The Company has experienced an increase in costs in the project due to issues within the supply chain for construction.

Commitment of Other Sources of Funds - The Company has the available funds for the equity commitment.

Financial Feasibility – The GGLDC has reviewed the Company's financial projections. It appears that the projection of the revenues would cover the projected expenses including debt service payments along with providing additional cash flow to the Company.

Pro Rata Disbursement of Funds - The GGLDC Loan Fund funding will be used for construction costs. With equity funding the project, the GGLDC will require that the Company show expenditures equal to 75% of the bank financing and equity prior to disbursement of the GGLDC loan financing.

Description of Impact - The proposed project will result in the Company creating market rate housing that is needed based on a recent housing study that Genesee County commissioned to be completed. The proposed project will support the creation of one new FTE and 20 part time positions.

Transfer money to STAMP Sewer Works Corp.

Discussion: The GGLDC had identified funds in the strategic investments account to transfer \$90,000 to the STAMP Sewer Works Corp. (SSWC) to cover potential legal expenses related to the easements for the forcemain.

Fund Commitment: Transfer \$90,000 to SSWC.

Board Action Request: Recommend approval of transfer of funds as listed above.