



**Meeting Agenda – Audit and Finance Committee**  
 Genesee Local Development Corp.  
 Tuesday, August 3, 2021 – 8:30 a.m.  
 Location: Innovation Zone Conference Room, Suite 107

Page #	Topic	Discussion Leader	Desired Outcome
	1. Call To Order – Enter Public Session	D. Cunningham	
2-5	<b>2. Chairman’s Report &amp; Activities</b> 2a. Agenda Additions / Other Business 2b. Minutes: June 29, 2021	D. Cunningham	Vote
	<b>3. Discussions / Official Recommendations to the Board:</b>		
6-10	3a. June 2021 Financial Statements	L. Farrell	Disc / Vote
11-13	3b. Strategic Investments Analysis	L. Farrell	Discussion
14-20	3c. Assessment of the Effectiveness of Internal Controls	L. Farrell	Disc / Vote
21-25	3d. John Jakubowski Contract	M. Masse	Disc / Vote
26-31	3e. Ag Park Drainage Contract	M. Masse	Disc / Vote
32-33	3f. Workforce – City of Batavia Police Community Night Out	C. Suozzi	Disc / Vote
34-46	3g. Northman & Star (Nexgistics) PSA	M. Masse	Disc / Vote
47-59	3h. J & R Fancher PSA	M. Masse	Disc / Vote
	4. Adjournment	D. Cunningham	Vote

**GGLDC Audit & Finance Committee Meeting**

**Tuesday, June 29, 2021**

**Location - Innovation Zone**

**8:30 a.m.**

**MINUTES**

**ATTENDANCE**

Committee Members: P. Battaglia, D. Cunningham, T. Felton, T. Bender

Staff: L. Farrell, M. Masse, L. Casey, P. Kennett, J. Krencik, S. Hyde, C. Suozzi

Guests: P. Zelif (GCEDC Board Member),

Absent:

**1. CALL TO ORDER / ENTER PUBLIC SESSION**

D. Cunningham called the meeting to order at 9:23 a.m. in the Innovation Zone.

**Enter Executive Session**

T. Bender made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 9:23 a.m. for the following reasons:

1. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.

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

P. Battaglia and C. Suozzi left the meeting at 9:33 a.m.

**Enter Public Session**

T. Bender made a motion to enter back into public session at 9:36 a.m., seconded by T. Felton and approved by all members present.

**2. CHAIRMAN'S REPORT & ACTIVITIES**

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

**2b. Minutes: May 4, 2021**

**T. Felton made a motion to recommend approval of the May 4, 2021 minutes; the motion was seconded by T. Bender. Roll call resulted as follows:**

T. Felton - Yes

P. Battaglia - Absent

T. Bender - Yes  
D. Cunningham - Yes

**The item was approved as presented.**

**3. DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD:**

**3a. Cyber Insurance Updated Proposal-** There was a presentation given by Lawley on Cyber Insurance at the beginning of the GCEDC Audit & Finance meeting. Details of the presentation are as follows: At the June 3, 2021 Board meeting, the GCEDC and GGLDC approved a \$1,000,000 Cyber Liability Insurance Policy with Corvus/Hudson for approximately \$9,000 to be split between both entities. However, when Lawley requested binding of coverage with Corvus/Hudson, they came back with a revised premium of more than \$12,000, which was based on their review of the items needed to bind, including their application. Although nothing had changed from what was already provided, Corvus/Hudson held firm on the revised premium.

Lawley was able to work with HSB Specialty Insurance Company to secure an alternative Cyber option. They are offering this coverage for approximately \$8,000. Their terms are similar to the proposal with Corvus/Hudson. Lawley reviewed all subjectivities with them and feel that this policy is a very solid alternative for the GCEDC to consider.

The cost of this cyber liability insurance policy is \$7,937.75, which will be split evenly between the GCEDC and GGLDC. This expense is not included in the budget, but there are strategic investment funds to cover.

**P. Battaglia made a motion to recommend to the full Board the approval of a Cyber Liability Insurance Policy with HSB Specialty Insurance Company for approximately \$4,000; the motion was seconded by T. Bender. Roll call resulted as follows:**

T. Felton - Yes  
P. Battaglia - Absent  
T. Bender - Yes  
D. Cunningham - Yes

**The item was approved as presented.**

**3b. May 2021 Financial Statements-** L. Farrell reviewed with the Committee the significant items of the May 2021 long form financial statements.

- On the balance sheet, Reserved Cash Loan Repayments decreased. The Fraser-Branche loan of \$150,000 closed.
- Reserved Cash Strategic Investments Funds increased by over \$300,000 due to the Mega Properties land sale at Gateway II. The land sale also flows through to the income statement.
- Other than the above-mentioned items, most items are consistent on the balance sheet.
- In the Operating Fund, there is interfund revenue of \$658,000. This money came from strategic investments from the GAB, LLC. It was a distribution to the owner (GGLDC) and then distributed as a grant to BOCES to purchase the mechatronics equipment.
- Regular monthly activity for all funds.
- L. Farrell and M. Masse continue to work with legal to dissolve the GAB, LLC.

**DRAFT**

**T. Felton made a motion to recommend to the full Board the approval of the May 2021 Financial Statements as presented; the motion was seconded by T. Bender. Roll call resulted as follows:**

- T. Felton - Yes
- P. Battaglia - Absent
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

**3c. Audit & Finance Committee Charter** – The Committee discussed the Charter in executive session during a Committee self-evaluation discussion. There are no recommended changes at this time.

As there were no changes, a vote of approval was not necessary.

**3d. Committee Self Evaluation** – A new memo will be drafted for the Governance Committee as the Committee Self-Evaluation comes out of the Committee Charter Review.

**3e. Assessment of the Effectiveness of Internal Controls** – This agenda item was tabled.

**3f. PSA for UGate Store, Inc. – BETP** - The GGLDC has received a Purchase and Sale Agreement from UGate Store, Inc. to acquire approximately 2.6 buildable acres out of tax parcel 19.-1-74 for \$130,000.

Fund Commitment: Legal fees to Harris Beach not to exceed \$5,000.00 for the transaction.

The Committee requested that more parameters related to the aesthetics of the proposed project are included in the PSA. Details of the project are outlined in the 6.29.21 GCEDC Audit & Finance minutes.

This item was tabled.

**3g. Roofing Contract Bill** - The GGLDC previously voted to pay the amount of the roofing contract, except for \$2,479.79. We have received the invoice for the balance of that contract in the amount of \$2,479.79.

Fund Commitment: Potentially \$2,479.79.

The Committee does not feel obligated to absorb any further expenses associated with the damage and contractor negligence.

**T. Bender made a motion to recommend to the full Board that D. Cunningham decline in writing payment of this invoice in the amount of \$2,479.79; the motion was seconded by T. Felton. Roll call resulted as follows:**

- T. Felton - Yes
- P. Battaglia - Absent
- T. Bender - Yes
- D. Cunningham - Yes

**The item was approved as presented.**

DRAFT

**4. ADJOURNMENT**

T. Bender made a motion to adjourn at 9:44 a.m., seconded by T. Felton and passed unanimously.



**Genesee Gateway Local Development Corp.**  
**June 2021 Dashboard**  
**Balance Sheet - Accrual Basis**

	6/30/21	5/31/21	[Per Audit] 12/31/20
<b>ASSETS:</b>			
Cash - Unrestricted	\$ 462,507	\$ 442,699	\$ 410,759
Cash - Restricted <sup>(A)</sup>	494,812	494,736	512,822
Cash - Reserved <sup>(B)</sup>	1,475,082	1,461,651	1,090,637
Cash - Subtotal	2,432,401	2,399,086	2,014,218
Grants Receivable <sup>(1)</sup>	5,406	5,406	30,406
Accounts Receivable	770	852	8,290
Loans Receivable - Current Portion	286,580	283,613	318,166
Other Current Assets <sup>(2)</sup>	13,124	15,161	872
<b>Total Current Assets</b>	<b>2,738,281</b>	<b>2,704,118</b>	<b>2,371,952</b>
Land Held for Dev. & Resale	2,885,776	2,885,776	3,496,874
Buildings & Improvements	7,202,120	7,202,120	7,202,120
Furniture, Fixtures & Equipment	46,599	46,599	46,599
Total Property, Plant & Equip.	10,134,495	10,134,495	10,745,593
Less Accumulated Depreciation	(2,054,610)	(2,038,283)	(1,956,649)
<b>Net Property, Plant &amp; Equip.</b>	<b>8,079,885</b>	<b>8,096,212</b>	<b>8,788,944</b>
Loans Receivable - Noncurrent Portion <sup>(Net of \$202,125 Allow for Bad Debt)</sup>	841,614	855,398	882,490
Equity Investment in Genesee Agri-Business, LLC <sup>(3)</sup>	2,562,240	2,562,240	3,220,240
<b>Other Assets</b>	<b>3,403,854</b>	<b>3,417,638</b>	<b>4,102,730</b>
<b>Total Assets</b>	<b>14,222,020</b>	<b>14,217,968</b>	<b>15,263,626</b>
<b>LIABILITIES:</b>			
Accounts Payable <sup>(4)</sup>	96,494	64,493	47,314
Unearned Revenue <sup>(5)</sup>	55,280	54,010	39,255
Security Deposits	109,944	109,944	109,944
Loans Payable - Current Portion	81,513	81,242	79,875
Bonds Payable - Current Portion	147,433	147,299	144,871
<b>Total Current Liabilities</b>	<b>490,664</b>	<b>456,988</b>	<b>421,259</b>
Loans Payable - Noncurrent Portion	2,220,408	2,227,324	2,261,585
Bonds Payable - Noncurrent Portion	2,600,884	2,613,713	2,682,494
<b>Total Noncurrent Liabilities</b>	<b>4,821,292</b>	<b>4,841,037</b>	<b>4,944,079</b>
<b>Total Liabilities</b>	<b>5,311,956</b>	<b>5,298,025</b>	<b>5,365,338</b>
<b>EQUITY</b>	<b>\$ 8,910,064</b>	<b>\$ 8,919,943</b>	<b>\$ 9,898,288</b>

**Significant Events:**

1. Grants Receivable - YTD decrease due to receipt of 241 Knapp Solar II funding supporting Workforce Development initiatives and the overall Economic Development Program.
2. Other Current Assets - Prepaid D&O Insurance and general liability insurance.
3. Equity Investment in Genesee Agri-Business, LLC - YTD decrease due to distribution from GAB,LLC in May 2021; ties to corresponding GAB,LLC financial statements.
4. Accounts Payable - Grant for continuing Economic Development Program Support and MedTech Centre Property Management.
5. Unearned Revenue - MedTech Centre rent received in advance etc.

<sup>(A)</sup> Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund.

<sup>(B)</sup> Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds.

**Genesee Gateway Local Development Corp.**  
**June 2021 Dashboard**  
**Profit & Loss - Accrual Basis**

	Month to Date		YTD		2021	2021
	6/30/21	6/30/20	2021	2020	Board Approved Budget	YTD % of Budget
<b>Operating Revenues:</b>						
Grants (1)	\$ -	\$ -	\$ 50,000	\$ 218,000	\$ 997,648	5%
Interest Income on Loans	1,028	2,474	8,925	11,017	23,724	38%
Rent (2)	61,403	59,610	367,318	344,194	708,787	52%
Common Area Fees - Parks	-	-	500	500	500	100%
Fees	3,000	-	3,000	2,900	-	N/A
Other Revenue	-	-	27	2,544	-	N/A
Land Sale Proceeds (3)	-	-	337,500	-	-	N/A
<b>Total Operating Revenues</b>	<b>65,431</b>	<b>62,084</b>	<b>767,270</b>	<b>579,155</b>	<b>1,730,659</b>	
<b>Operating Expenses:</b>						
Operations & Maintenance	12,112	12,515	72,359	70,522	145,838	50%
Professional Services	7,611	6,707	57,911	58,479	156,535	37%
Econ. Dev. Prog. Support Grant	25,000	25,000	150,000	150,000	300,000	50%
Site Development Expense	-	7,350	14,625	465,498	93,000	16%
Cost of Sales	-	-	621,489	-	-	N/A
Grant Expense (4)	-	-	658,145	-	1,044,148	63%
Real Estate Dev. (Capitalized)	-	-	100	-	15,000	1%
Buildings/Furniture/Equip. (Capitalized)	-	-	-	-	5,000	0%
Balance Sheet Absorption	-	-	(100)	-	(20,000)	1%
Depreciation	16,327	16,408	97,961	98,443	195,922	50%
<b>Total Operating Expenses</b>	<b>61,050</b>	<b>67,980</b>	<b>1,672,490</b>	<b>842,942</b>	<b>1,935,443</b>	
<b>Operating Expense</b>	<b>4,381</b>	<b>(5,896)</b>	<b>(905,220)</b>	<b>(263,787)</b>	<b>(204,784)</b>	
<b>Non-Operating Revenues (Expenses):</b>						
Other Interest Income	285	450	1,719	8,020	4,800	36%
Interest Expense	(14,545)	(21,006)	(84,723)	(124,244)	(168,156)	50%
<b>Total Non-Operating Exp.</b>	<b>(14,260)</b>	<b>(20,556)</b>	<b>(83,004)</b>	<b>(116,224)</b>	<b>(163,356)</b>	
<b>Change in Net Assets</b>	<b>(9,879)</b>	<b>(26,452)</b>	<b>(988,224)</b>	<b>(380,011)</b>	<b>(368,140)</b>	
<b>Net Assets - Beginning</b>	<b>8,919,943</b>	<b>9,896,439</b>	<b>9,898,288</b>	<b>10,249,998</b>		
<b>Net Assets - Ending</b>	<b>\$ 8,910,064</b>	<b>\$ 9,869,987</b>	<b>\$ 8,910,064</b>	<b>\$ 9,869,987</b>		

**Significant Events:**

1. Grant Revenue YTD - Two solar projects closed (3104 & 3232 Batavia Solar) and grant revenue was recognized supporting Workforce Development initiatives and the overall Economic Development Program.
2. Rent - includes YSG Solar extension of due diligence period.
3. Land Sale Proceeds - YTD includes Mega Properties land sale at Gateway II Corporate Park.
4. Grant Expense - YTD includes grant to Genesee Valley BOCES to acquire equipment for mechatronics workforce training.

**Genesee Gateway Local Development Corp.**  
**June 2021 Dashboard**  
**Statement of Cash Flows**

	<u>June 2021</u>	<u>YTD</u>
<b>CASH PROVIDED (USED) BY OPERATING ACTIVITIES:</b>		
Grant Income	\$ -	\$ 75,000
Interest Income on Loans	1,020	10,341
Rental Income	62,681	383,403
Common Area Fees - Parks	-	500
Fees	3,000	3,000
Other Revenue	-	5,500
Net Land Sale Proceeds	-	327,209
Operations & Maintenance	(9,953)	(120,817)
Professional Services	(650)	(43,072)
Economic Development Program Support Grant	-	(75,000)
Site Development Expense	-	(18,507)
Improvements of Land Held for Dev. & Resale	-	(100)
Grant Expense	-	(658,145)
Issuance of Loans	-	(150,000)
Repayment of Loans	10,817	222,462
Net Cash Provided (Used) By Operating Activities	<u>66,915</u>	<u>(38,226)</u>
<b>CASH FLOWS USED BY CAPITAL &amp; RELATED FINANCING ACTIVITIES:</b>		
Principal Payments on Bonds & Loans	(19,340)	(118,587)
Interest Paid on Bonds & Loans	(14,545)	(84,723)
Net Cash Used By Capital & Related Financing Activities	<u>(33,885)</u>	<u>(203,310)</u>
<b>CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:</b>		
Interest Income	-	1,434
Distribution from GABLLC	285	658,285
Net Cash Provided By Investing Activities	<u>285</u>	<u>659,719</u>
Net Change in Cash	33,315	418,183
Cash - Beginning of Period	2,399,086	2,014,218
Cash - End of Period	<u>\$ 2,432,401</u>	<u>\$ 2,432,401</u>
<b>RECONCILIATION OF OPERATING REVENUE (EXPENSE) TO NET CASH USED BY OPERATING ACTIVITIES:</b>		
Operating Revenue (Expense)	\$ 4,381	\$ (728,338)
Adjustments:		
Depreciation Expense	16,327	97,961
Decrease in Land Held For Dev. & Resale	-	434,216
Decrease in Grants/Accounts Receivable	82	32,520
Decrease (Increase) in Other Current Assets	2,037	(12,252)
Decrease in Loans Receivable	10,817	72,462
Increase Operating Accounts Payable	32,001	49,180
Increase (Decrease) in Unearned Revenue	1,270	16,025
Total Adjustments	<u>62,534</u>	<u>690,112</u>
Net Cash Provided (Used) By Operating Activities	<u>\$ 66,915</u>	<u>\$ (38,226)</u>



**Genesee Gateway Local Development Corp.**  
**June 2021 Dashboard**  
**Balance Sheet - Accrual Basis**

	GGLDC		GABLLC		COMBINED	
	6/30/21	6/30/21	Eliminations	6/30/21	Per Audit 12/31/2020	
<b>ASSETS:</b>						
Cash - Unrestricted	\$ 462,507	\$ -	\$ -	\$ 462,507	\$ 410,759	
Cash - Restricted (A)	494,812	-	-	494,812	512,822	
Cash - Reserved (B)	1,475,082	1,043,632	-	2,518,714	2,786,172	
Cash - Subtotal	<u>2,432,401</u>	<u>1,043,632</u>	<u>-</u>	<u>3,476,033</u>	<u>3,709,753</u>	
Grants Receivable	5,406	-	-	5,406	30,406	
Accts Receivable - Current	770	-	-	770	8,290	
Loans Receivable - Current	286,580	-	-	286,580	318,166	
Other Current Assets	13,124	-	-	13,124	872	
<b>Total Current Assets</b>	<u>2,738,281</u>	<u>1,043,632</u>	<u>-</u>	<u>3,781,913</u>	<u>4,067,487</u>	
Land & Improvements	2,885,776	2,452,174	-	5,337,950	5,949,048	
Buildings & Improvements	7,202,120	-	-	7,202,120	7,202,120	
Furniture, Fixtures & Equipment	46,599	-	-	46,599	46,599	
Total Property, Plant & Equip.	<u>10,134,495</u>	<u>2,452,174</u>	<u>-</u>	<u>12,586,669</u>	<u>13,197,767</u>	
Less Accumulated Depreciation	(2,054,610)	-	-	(2,054,610)	(1,956,649)	
<b>Net Property, Plant &amp; Equip.</b>	<u>8,079,885</u>	<u>2,452,174</u>	<u>-</u>	<u>10,532,059</u>	<u>11,241,118</u>	
Loans Receivable - Noncurrent	841,614	-	-	841,614	882,490	
Equity Investment in GAB, LLC	2,562,240	-	(2,562,240)	-	-	
<b>Other Assets</b>	<u>3,403,854</u>	<u>-</u>	<u>(2,562,240)</u>	<u>841,614</u>	<u>882,490</u>	
<b>TOTAL ASSETS</b>	<u>14,222,020</u>	<u>3,495,806</u>	<u>(2,562,240)</u>	<u>15,155,586</u>	<u>16,191,095</u>	
<b>LIABILITIES:</b>						
Accounts Payable	96,494	-	-	96,494	47,314	
Unearned Revenue	55,280	-	-	55,280	39,255	
Security Deposits	109,944	-	-	109,944	109,944	
Loans Payable - Current Portion	81,513	-	-	81,513	79,875	
Bonds Payable - Noncurrent Portion	147,433	-	-	147,433	144,871	
<b>Total Current Liabilities</b>	<u>490,664</u>	<u>-</u>	<u>-</u>	<u>490,664</u>	<u>421,259</u>	
Loans Payable - Noncurrent Portion	2,220,408	-	-	2,220,408	2,261,585	
Bonds Payable - Noncurrent Portion	2,600,884	-	-	2,600,884	2,682,494	
<b>Total Noncurrent Liabilities</b>	<u>4,821,292</u>	<u>-</u>	<u>-</u>	<u>4,821,292</u>	<u>4,944,079</u>	
<b>TOTAL LIABILITIES</b>	<u>5,311,956</u>	<u>-</u>	<u>-</u>	<u>5,311,956</u>	<u>5,365,338</u>	
<b>EQUITY</b>	<u>\$ 8,910,064</u>	<u>\$ 3,495,806</u>	<u>\$ (2,562,240)</u>	<u>\$ 9,843,630</u>	<u>\$ 10,825,757</u>	

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund, Grant Funds.

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Metropolitan Area Redevelopment Loan Funds, Grant Funds.

**Genesee Gateway Local Development Corp.**  
**June 2021 Dashboard**  
**Profit & Loss - Accrual Basis**

	<b>GGLDC</b>		<b>GABLLC</b>		<b>COMBINED</b>	
					6/30/21	6/30/21
<u>Operating Revenues:</u>						
Grants	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Income on Loans	1,028	-	-	-	1,028	2,082
Rent	61,403	2,448	-	-	63,851	130,340
Common Area Fees - Parks	-	-	-	-	-	-
Fees	3,000	-	-	-	3,000	3,000
Other Revenue	-	-	-	-	-	27
Land Sale Proceeds	-	-	-	-	-	337,500
<b>Total Operating Revenues</b>	<b>65,431</b>	<b>2,448</b>	<b>-</b>	<b>-</b>	<b>64,879</b>	<b>372,764</b>
<u>Operating Expenses:</u>						
Operations & Maintenance	12,112	-	-	-	12,112	80,750
Professional Services	7,611	-	-	-	7,611	57,911
Econ. Dev. Program Support Grant	25,000	-	-	-	25,000	150,000
Site Development Expense	-	-	-	-	-	14,625
Cost of Sales	-	-	-	-	-	621,489
Grant Expense	-	-	-	-	-	658,145
Real Estate Development (Capitalized)	-	-	-	-	-	100
Balance Sheet Absorption	-	-	-	-	-	(100)
Depreciation	16,327	-	-	-	16,327	97,961
<b>Total Operating Expenses</b>	<b>61,050</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>61,050</b>	<b>1,680,881</b>
<b>Operating Expense</b>	<b>4,381</b>	<b>2,448</b>	<b>-</b>	<b>-</b>	<b>6,829</b>	<b>(900,047)</b>
<u>Non-Operating Revenues (Expenses):</u>						
Other Interest Income	285	94	-	-	379	2,643
Interest Expense	(14,545)	-	-	-	(14,545)	(84,723)
<b>Total Non-Operating Rev (Exp)</b>	<b>(14,260)</b>	<b>94</b>	<b>-</b>	<b>-</b>	<b>(14,166)</b>	<b>(82,080)</b>
<b>Change in Net Assets</b>	<b>(9,879)</b>	<b>2,542</b>	<b>-</b>	<b>-</b>	<b>(7,337)</b>	<b>(982,127)</b>
<b>Net Assets - Beginning</b>	<b>8,919,943</b>	<b>3,493,264</b>	<b>(3,220,240)</b>	<b>-</b>	<b>9,850,967</b>	<b>10,825,757</b>
<b>Adjustment <sup>(1)</sup></b>	<b>-</b>	<b>-</b>	<b>658,000</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net Assets - Ending</b>	<b>\$ 8,910,064</b>	<b>\$ 3,495,806</b>	<b>\$ (2,562,240)</b>	<b>\$ -</b>	<b>\$ 9,843,630</b>	<b>\$ 9,843,630</b>

Updated through 6.30.21 [7.29.2021]

**Genesee Gateway Local Development Corp. (GGLDC)**

**Strategic Investments - SUMMARY**

**Fiscal Years 2021 - 2026**

	2021	2022	2023	2024	2025	2026	6 Yr Totals:	Comments
<b>Sources of Funds: Available for GGLDC Project Investments &amp; Operations Support</b>								
Opening GGLDC "Reserved for Strategic Investments" Cash Balances	2,144,036	1,479,506	1,067,560	821,533	556,130	(199,130)	2,144,036	
NYS Homes & Community Renewal Loan Repayments	181,743	147,220	147,220	127,545	-	-	603,728	Includes loan repayments from: First Wave Technologies, HP Hood (\$500K loan disbursed in March 2019 to be repaid at \$100K/year beginning in 2020) and Freightliner (\$234K loan disbursed in July 2019 to be repaid monthly over 5 years).
Mega Properties 2021 Land Sale - Net Proceeds	327,387						327,387	
Other:								
Solar Projects - Funding for: Workforce Development & Econ. Dev. Program Support	75,000						75,000	Solar projects agree to pay \$25K each at the completion of their projects to support Workforce Development Initiatives, along with the overall ED Program. Eight community solar projects have closed to date.
Genesee County Chamber of Commerce CDBG Loan Repayments	8,499						8,499	Represents actual collections only - opportunity for future loan payments to be received.
Internal Borrowings/Repayments - Due to Strategic Investment Funds					137,382		137,382	Borrowed from and to be repaid to strategic investment funds; Majority used to repay loan from GCEDC related to BETP land purchase; Strategic investments will be reimbursed with future BETP land sale proceeds.
<b>Total Sources of Funds</b>	<b>2,736,665</b>	<b>1,626,726</b>	<b>1,214,780</b>	<b>949,078</b>	<b>693,512</b>	<b>(199,130)</b>	<b>3,296,032</b>	
<b>Uses: Strategic and Operational Investments:</b>								
<b>Real-Estate Development / Shovel-Ready Site Development Related:</b>								
Other								
Other								\$500,000 Housing Directional investment repurposed to a committed investment for the purpose of establishing the Batavia Micropolitan Area Redevelopment Fund [\$100K loaned in 2014/\$150K loaned in 2017/\$120K loaned in May 2020]. [Amount reserved includes cash remaining from original \$500K commitment, plus interest earned on reserved funds.]
Other								Reserve established for future shovel-ready requirements @ MedTech Centre - Potentially reclass to reserve for Project Infrastructure Financing
Other								Engineering, bidding, construction inspection for drainage solution.
<b>6 Yr Totals:</b>								



36

Updated through 6.30.21 [7.29.2021]

**Genesee Gateway Local Development Corp. (GGIDC)  
Strategic Investments - SUMMARY  
Fiscal Years 2021 - 2026**

	2021	2022	2023	2024	2025	2026	6 Yr Totals:	Comments
Other								
Reserved Funds - Project Infrastructure Financing								Placeholder - Would be repaid by future project revenues.
Subtotal Real-Estate Development / Shovel-Ready Site Development	(152,374)				(500,000)		(652,374)	
<b>Economic Development Program Support:</b>								
Economic Development Program Grant (GGIDC to GCEDC)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)	(1,800,000)	Approvals necessary for 2022 forward.
LDC Operations Costs & Site Infrastructure Maint. (excluding MTC)	(85,000)	(85,000)	(85,000)	(85,000)	(85,000)	(85,000)	(510,000)	Memo Only - Funds insurance, mowing, Fire District fees/property taxes, GGIDC audit fee, legal fees and other misc operating expenses (unreimbursable H. Sichertman services, GABILLC operating expenses, etc)
<b>Subtotal Investments in Economic Development Program:</b>	(385,000)	(385,000)	(385,000)	(385,000)	(385,000)	(385,000)	(2,310,000)	
<b>Strategy, Workforce Development &amp; Entrepreneurship:</b>								
Edge Factor Membership Support / Mechanics / STEM Activities Support / Other WFD Initiatives	(1,447)						(1,447)	The Board authorized commitment of 50% of the Pearl Solar funding toward Workforce Development Initiatives.
BOCES - Purchase of Training Equipment & Working Capital	(684,000)						(684,000)	WFD Agreement with BOCES approved 3.25.21
Training - HP Hood & Upstate Niagara		(50,000)					(50,000)	WFD Agreements with HP Hood and Upstate Niagara approved 3.25.21
Workforce Development Reserve	(34,375)	(115,625)					(150,000)	Reserve of Cash on Hand from Solar Project funding; Eight community solar projects have closed to date. Funding from two was previously spent/committed. Includes training for Seneca Nation members.
Workforce Development Consultant		(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	(180,000)	Board authorized - continued efforts for workforce development consultant as critical pillar to GCEDC/GGIDC Tech Based Economic Development Model. Any eligible funding secured will be used to offset this appropriation/funding. [Contract runs Aug Aug; Current contract ends Aug 2021; Future approvals necessary to extend commitment beyond current contract.
<b>Subtotal Workforce Development &amp; Entrepreneurship Investments</b>	\$ (749,822)	\$ (195,625)	\$ (30,000)	\$ (30,000)	\$ (30,000)	\$ (30,000)	\$ (1,065,447)	
<b>Other Cash Activity:</b>								
Common Area Charges - GVAB & BETP	\$ 6,771	\$ 6,771	\$ 6,771	\$ 6,771	\$ 6,771	\$ 6,771	40,626	
Land Lease Payments	\$ 27,298	\$ 14,688	\$ 14,982	\$ 15,281	\$ 15,587	\$ 15,899	103,735	
Internal (Borrowings) Repayments - thru date of worksheet	\$ (5,406)						(5,406)	
Interest Income	\$ 1,374						1,374	

12



36

Updated through 6.30.21 [7.29.2021]

**Genesee Gateway Local Development Corp. (GGLDC)  
Strategic Investments - SUMMARY**

Fiscal Years 2021 - 2026

	2021	2022	2023	2024	2025	2026	6 Yr Totals:	Comments
Subtotal - Other	\$ 30,037	\$ 21,459	\$ 21,753	\$ 22,052	\$ 22,358	\$ 22,670	\$ 140,329	
<b>Total Uses of Funds</b>	<b>(1,257,159)</b>	<b>(559,166)</b>	<b>(393,247)</b>	<b>(392,948)</b>	<b>(892,642)</b>	<b>(392,330)</b>	<b>(3,887,492)</b>	
<b>Cumulative Year-End Cash Balances</b>	<b>1,479,506</b>	<b>1,067,560</b>	<b>821,533</b>	<b>556,130</b>	<b>(195,130)</b>	<b>(591,460)</b>	<b>(591,460)</b>	
OCR Loan Repayments - HP Hood & Upstate Niagara (Loan Closings Pending)		146,800	293,600	440,400	587,200	734,000	-	
Cumulative Year-End Cash Balances with Workforce Development Overlay	1,479,506	1,214,360	1,115,133	996,530	388,070	142,540	(591,460)	
<b>Opportunities:</b>								
DOL MedTech Centre Reserve (\$500K) could be removed in the future.								
- Potentially reclass to Reserve for Project Infrastructure Financing								
Grant funds to cover a portion of Workforce Development Consultant expenses.								
Genesee County Chamber of Commerce CDBG Loan Portfolio - Additional Repayments								
YSG Solar - Workforce Development & Ec. Dev. Program Support Funding (\$25K) [Final approval anticipated at 8/5/21 meeting]								
YSG Solar - Annual Lease Payments (starting at \$12K/yr), \$7,200 Lease Amendment Payment [Final approval anticipated at 8/5/21 meeting]								
Additional Solar Projects w/ \$25K each committed to Workforce Development & Ec. Dev. Program Support								
<b>Land Sales:</b>								
- Gateway GS, LLC (approx. 14 acres remaining - \$466,000 Proceeds, Net of Purchase Credit for Roadway & Waterline)								
- GYAB - HP Hood (\$1,521,000 Gross Proceeds)								
<b>OCR Projects:</b>								
- HP Hood (\$367K OCR Loan Repayments over 5 Years)								
- Upstate Niagara (\$367K OCR Loan Repayments over 5 Years)								
<b>Risks:</b>								
First Wave Technologies - Repayment of loan (term ends April 2021) - REMOVED - Loan has been fully repaid								

13



## 2021 Assessment of the Effectiveness of Internal Controls

### Purpose of the Genesee Gateway Local Development Corporation (GGLDC)

The GGLDC was created in 2004 with a focus on economic development opportunities related to real estate and corporate park development.

### Internal Controls

The accounting, financial reporting, and cash management functions are carried out relying on a multitude of internal controls. A Financial Procedures document details all aspects of the financial controls in place. To be efficient and cost effective and in accordance with the goal of developing shovel-ready sites to assist in the enabling of IDA assisted projects, the staff of the GGLDC's sole owner, the Genesee County Industrial Development Agency d/b/a/ Genesee County Economic Development Center (GCEDC), provides services which enhance the internal controls of the GGLDC. Examples of some of the controls used are listed below:

- All invoices must be reviewed and verified by the Treasurer or GCEDC's CFO, CEO or Sr. VP of Operations. All checks require two Board Member signatures. GCEDC's CFO opens and reviews all bank statements and bank reconciliations. – **Multiple persons signing off on the process and the GCEDC's CFO opens and reviews bank statements and does not have authorization to sign checks.**
- All checks received by the GGLDC are recorded and stamped "for deposit only" by GCEDC's Operations Assistant or Finance Assistant and given to GCEDC's Operations Manager for review. GCEDC's Operations Manager ensures that all funds are coded, and that each transaction is recorded in the accounting software. The deposit slips are then prepared by GCEDC's Finance Assistant and deposited in the bank. The deposit receipt from the bank is then attached to the appropriate back up for the deposit. – **Bank verification and receipts make this low risk.**
- Computers are password protected. Accounting software is separately password protected. Access to the accounting software is limited to the Operations Manager, Finance Assistant and CFO. – **Password protection and limited access to accounting software makes this low risk.**

Note: Internal controls are reviewed continuously and adjustments are made as necessary.

The system of controls applicable to the GGLDC was last reviewed by the GGLDC's Audit & Finance Committee on August 3, 2021. The Audit & Finance Committee's review affirmed that there are no material control weaknesses to be reported. The GGLDC undergoes an annual financial audit by an independent CPA firm. While auditors are not engaged to perform an audit of internal controls, auditors do provide management letter comments when they encounter internal weaknesses. No material weaknesses in internal controls have been identified by the independent auditors.

In summary, the present internal control structure appears to be sufficient to meet internal control objectives that pertain to the prevention and detection of errors and irregularities.



**Client Name: Genesee County Industrial Development Agency  
dba Genesee County Economic Development Center  
Genesee Gateway Local Development Corporation**

**GGLDC administrative tasks are performed by GCEDC employees**

**Audit & Finance Committee Last Reviewed: 8/3/2021**

**CASH CONTROL ACTIVITIES**

***Cash Receipts***

The GCEDC/GGLDC does not routinely handle cash. When cash is received, it's generally once a year at the annual meeting location via registration fees paid. Mail is opened by the Operations Assistant. All receipts are immediately marked "for deposit only". The cash receipts are deposited every 3 – 5 days in the appropriate cash account either in Five Star Bank, Key Bank, or The Bank of Castile. Posting of cash receipts to accounts receivable is done by the Finance Assistant. The postings are done promptly and accurately recorded as to customer account, amount and period. The Operations Manager reviews deposits and postings to customer accounts and general ledger accounts. Any adjustments to cash accounts are approved by the CFO. Cash held on site is stored in a locked file cabinet and kept independent of mail receipts. A PayPal account is used for annual meeting registration fees paid. Email notifications are received when payments have been made. PayPal deposits are recorded in the general ledger weekly by the Finance Assistant and the Operations Manager reviews the monthly activity.

***Cash Disbursements***

Cash disbursements are made by check, online payments, online bill pay or bank wire, except for small amounts from petty cash. Online payments and online bill pay are only made to ensure that bills are paid on time and to prevent late payment charges.

All checks require two signatures. GCEDC checks must be co-signed by at least one board member. GGLDC checks are signed by two board members. The GCEDC and GGLDC Audit & Finance Committee members are authorized bank signers.

All GCEDC line of credit withdrawals must be co-signed by at least one board member. GGLDC line of credit withdrawals must be signed by two board members.

Checks are pre-numbered and the sequence is accounted for regularly. All blank checks are kept in a secure location. All cash disbursement records are matched against accounts payable/open invoice files by the Operations Manager.

Invoices received are date stamped by the Operations Assistant and given to the Finance Assistant for review, tracking against contracts in place, to make sure supporting documentation is attached, and to ensure that the appropriate person signs off for approval of payment. All invoices are then reviewed by the Operations Manager and the CFO prior to disbursement checks being prepared. Checks are prepared by the Finance Assistant, only after proper matching of supporting documentation. Supporting documentation is marked with the check number when a check is prepared. The check signer reviews all supporting documentation. Purchasing documents are accounted for and controlled by the Operations Manager. Signed disbursement checks are returned to the Finance Assistant / Operations Assistant for mailing.  
*Mitigating controls: The CFO opens and reviews bank statements and does not have authorization to sign checks.*

All bank and interfund transfers are authorized by the CFO and the Sr. VP of Operations.

### ***Electronic/Online Payments***

Online bill pay can be used for payments to vendors that are on the Audit & Finance Committee pre-approved list. The same cash disbursement control procedures are followed, except that payments are acknowledged by two authorized bank signers after the online payment is complete.

### ***Bank Account Reconciliations***

Bank accounts are reconciled monthly by the Finance Assistant and reconciliations are reviewed by the Operations Manager and the CFO. All reconciling items are appropriate and supported. All bank statements received in the mail are delivered unopened to the CFO who opens, reviews and signs off prior to reconciliations being performed.

### ***Journal entries***

Non-standard journal entries are recorded in the general ledger by Operations Manager and the Finance Assistant and reviewed by the CFO.

## **SUPPORT, PROGRAM SERVICE FEES, REVENUE AND RECEIVABLE CONTROL ACTIVITIES**

### ***Program Service Receivables***

Invoices are prepared once a month by the Finance Assistant. All invoices are numbered and issued in sequential order. Invoices are posted to the accounting system as payment is received. The individual(s) charged with the billing duties is also responsible for accounts receivable with the Operations Manager monitoring and reviewing the process.

### ***Pledges Receivable (Not Applicable)***

### ***Collections***

There are no established credit policies.

When cash payments are received they are posted to customer accounts by the Finance Assistant. The GCEDC/GGLDC does not prepare regular customer statements. Invoices for rent and revolving loan fund payments are mailed once a month and outstanding invoices older than 30 days are followed up via telephone by the VP of Business Development, Senior VP of Operations, or CFO.

### ***Trial Balance***

The accounts receivable aging is maintained separately from the general ledger. The aging is reconciled once a month by the Operations Manager. Program revenues recorded are compared with the budget monthly by the Operations Manager and any significant deviations from budget are investigated and explained.

### ***Allowance for Doubtful Accounts Program Services fee write-offs:***

All write-offs to rent or revolving loan fund accounts are approved by the GCEDC/GGLDC Board of Directors. The accounts receivable aging is reviewed monthly by the Operations Manager. Accounts are deemed possibly uncollectible and written off to the allowance for doubtful accounts when they meet the following criteria: When the board of directors determines that all efforts to collect have been exhausted.



## **INVESTMENTS AND DERIVATIVE CONTROL ACTIVITIES**

*The GCEDC and GGLDC's Investment Policies are provided separately.*

## **EXPENSES FOR PROGRAM AND SUPPORTING SERVICES AND ACCOUNTS PAYABLE AND PURCHASES CONTROL ACTIVITIES**

### ***Purchasing (Other than Inventory)***

Purchasing is done by the Operations Assistant. For all purchases (other than items of inventory), the purchases are supported by approvals and authorizations. The GCEDC/GGLDC does not require pre-numbered purchase orders. Individuals with the right to approve and authorize purchases are the President/CEO, CFO, and Senior VP of Operations. The Operations Manager approves purchases of supplies, equipment and postage that are within budget as well as any other purchases that were planned for within the budget.

### ***Receiving, Recording Payable and Expense***

When the ordered items are received they are inspected for condition and counted by the Operations Assistant. Due to the small nature of the organization, full segregation of duties is not possible. The individual responsible for receiving is also responsible for purchasing, with oversight by Operations Manager or Finance Assistant.

The invoices subsequently received from vendors are matched up to the purchase orders and receiving reports and compared for quantities received, product ordered, pricing and clerical accuracy by the Operations Manager. For any goods that are returned, the shipping documents are maintained and reviewed and matched to vendor credit memos.

The payables are paid approximately twice a month by the Finance Assistant. The checks are reviewed and signed by two authorized bank account signers.

### ***Trial Balance***

The accounts payable aging is maintained separately from the general ledger. The aging is reconciled monthly by the Operations Manager. The GCEDC/GGLDC does not prepare monthly vendor statements. The President/CEO, CFO and the Audit & Finance Committee review the detailed monthly financial statements and compare the balances in expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained.

## **GCEDC PAYROLL AND EMPLOYEE BENEFITS CONTROL ACTIVITIES**

### ***Payroll***

Employees are paid biweekly out of the Five Star Bank primary checking account. Funds are transferred into the account used for payroll from the Five Star Bank primary savings account by the Operations Manager. The GCEDC transfers funds to cover payroll as needed. All fund transfers are authorized by the CFO and Senior VP of Operations. Employees are never paid in cash.

Salaried employees are not required to submit weekly time records however; a record of absence is to be maintained by each employee, kept current and electronically stored in a common location as directed. Employees must have vacation compensation approved by the President/CEO or CFO. The individuals responsible for approving time are not responsible for processing or recording payroll.

Hourly employees are required to submit bi-weekly time records to their supervisor to report hours worked.

Complete Payroll Processing is the service provider used to process payroll. All the payroll information provided to the service organization such as pay rates and withholdings is authorized by the President/CEO and/or CFO. Bi-weekly payroll information is submitted to Complete Payroll Processing by the Operations Manager after compiling adequate support for the time worked by the employees. The registers produced by the service are reviewed after processing and approved by Operations Manager. The review is done to ensure the payroll transactions are only for authorized employees and that the correct pay rate is used. GCEDC does not pay commission to its employees.

All payroll checks are pre-numbered and used in sequence and any unissued checks are controlled by Complete Payroll Processing.

When new employees are hired they complete the appropriate paperwork including withholding forms and authorizations for payroll deductions that are maintained in personnel files by the Operations Manager and are entered into the payroll system by the Operations Manager. When employees are terminated they are removed from the payroll system by the Operations Manager. When there are raises or changes in pay rates, they are approved by the President/CEO or CFO and entered into the payroll system by the Operations Manager. All changes in personnel data are reported promptly so they can be properly taken care of in the payroll database.

The timely remittance of payroll taxes and of the payroll tax returns is overseen by Complete Payroll Processing.

### ***Employee Benefits***

For all benefits provided to employees such as health insurance, retirement plans, and fringe benefits, support is maintained in the personnel files authorizing deductions by the Operations Manager. Individuals with the appropriate level of knowledge are responsible for monitoring employee benefit matters and for ensuring withholdings such as 403(b) or NYS Deferred Compensation deferrals and cafeteria plan withholdings are remitted timely. These individuals include the CFO and Operations Manager.

### ***Trial Balance***

The Operations Manager reviews the monthly financial statements and compares the balances in the payroll and employee benefit expense accounts to budgeted amounts and any significant deviations from expectations are investigated and explained. The detailed payroll records are also reconciled by the Operations Manager to the payroll tax returns quarterly, and the total W-2s are reconciled to the general ledger at year end by the Operations Manager.

When necessary the appropriate payroll accruals including accruals for compensated absences are made to the general ledger by the Operations Manager.

### **Computers / IT**

All computers are password protected. Peachtree is password protected. Each user has an independent password. Those with access to the Peachtree system are the Operations Manager, Finance Assistant, and CFO. The CFO does not post or change any data in the system; he/she reviews data only.

All employee computer files are backed up to the server and the server is backed up to an off-site location (Erie County IDA) on a nightly basis. The back-up is monitored by the IT Consultant and the Operations Manager.

*GCEDC Employee Reimbursements*

Employee reimbursement requests are submitted to and approved by the Senior VP of Operations and CFO. The President/CEO must sign off on requests submitted by the Senior VP of Operations or CFO. Two Board members must sign off on requests submitted by the President/CEO.

*GCEDC Travel Authorization*

Travel involving overnight accommodation or travel outside of New York State requires prior approval of the President & CEO (or the Chairman or Vice-Chairman of the Board, in the case of the CEO's travel).

Signed travel authorization forms are attached to subsequent reimbursement requests to verify that expenditures are appropriate and in line with the prior approval.

**GCEDC / GGLDC**

**Pre-Approved List of Vendors That Can Be Paid Online:**

- Tompkins Trust Company (Visa)
- Selective Insurance
- Toshiba Financial Services
- National Grid
- National Fuel
- Level 3 Communications (Internet & Phone)
- Verizon (Elevator security phone)
- Five Star Bank (Loan payments)
- KeyBank (Line of Credit payments)
- Bank of Castile
- Five Star Bank
- Quadient (Postage)
- Traveler's (D&O Insurance)

List Last Reviewed & Approved by Audit & Finance Committee:

GCEDC - 8/3/2021

GGLDC - 8/3/2021



Mark Masse

**Audit & Finance Committee**

**August 5, 2021**

**Workforce Development: John Jakubowski Consultant contract**

**Discussion:** John Jakubowski has provided a consulting agreement for the period of August 15, 2021 through August 14, 2022 to perform the following:

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

Total contract is not to exceed \$29,800 in total between GGLDC and GCEDC.

**Fund commitment:** \$29,800 to be covered under strategic investments.

**Board Action Request:** Approval of consulting contract

## ENGAGEMENT LETTER / CONSULTING AGREEMENT

This Agreement is made this August 15, 2021, for the period August 15, 2021 through August 14, 2022, between the **Genesee Gateway Local Development Corporation/Genesee County Economic Development Center**, collectively (the "Company"), having its principal place of business at 99 MedTech Drive, Batavia, NY 14020 and **John P. Jakubowski**, (the "Consultant"), having a principal place of business at 22 Haverford Lane, Williamsville, NY 14221 (collectively, the "Parties").

### COMPENSATION AND SERVICES RENDERED:

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

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

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

### Fee Schedule:

1. A maximum of Three Hundred and Fifty Dollars (\$350.00) per day. Partial days will be billed at an hourly rate of Fifty Dollars (\$50.00) per hour.
2. Mileage expense is to be reimbursed at the prevailing IRS rate per mile.
3. Total remuneration is not to exceed Twenty-Nine Thousand Eight Hundred Dollars (\$29,800.00), for the period August 15, 2021 through August 14, 2022.

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

### TERM

This Agreement shall remain in effect through **August 14, 2022** or until terminated by providing a thirty (30) day written notice of termination with the date of receipt by the recipient party indicating the initiation of the notice period, by either party to this Agreement. This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties.

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

### WARRANTIES BY THE CONSULTANT

The Consultant represents and warrants to Company that Consultant will provide services to Company in a professional, competent and timely manner; that the Consultant has the power to enter into and perform this Agreement, and that the Consultant's performance of this Agreement shall not infringe or violate any federal, state, or municipal laws. The Consultant shall make no promise or warranty concerning Company's business

August 2021

activity, service or product outside the scope of their responsibilities and the Consultant acknowledges that it has no authority to bind Company to any such promise or warranty made by the Consultant.

### **INDEPENDENT CONTRACTOR / CONFLICTS OF INTEREST**

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

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

### **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND COVENANT NOT TO COMPETE**

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

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

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

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

Or

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

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

### **OWNERSHIP OF WORK PRODUCT**

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



## **ARBITRATION**

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

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

## **NOTICES**

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

## **WAIVER**

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

## **INDEMNIFICATION**

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

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

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

## **ABILITY TO ENTER AGREEMENT**

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

## **RELATIONSHIP OF PARTIES**

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

**SEVERABILITY**

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

**ASSIGNMENT**

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

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

**GOVERNING LAW**

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

**ENTIRE AGREEMENT**

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

**IN WITNESS WHEREOF, Genesee Gateway Local Development Corporation** and John P. Jakubowski have duly executed this Agreement as of the day and year first written above.

Dated:

**Consultant: John P. Jakubowski**

By: \_\_\_\_\_  
John P. Jakubowski  
Consultant

Dated:

**Company: Genesee Gateway Local Development Corporation**

By: \_\_\_\_\_  
Donald S. Cunningham  
President

### **Final engineering, bidding and construction inspection proposal**

**Discussion:** The GGLDC has received a final engineering, bidding and construction inspection proposal to eliminate the drainage from a parcel on the north side of Ag Park Drive from going to the stormwater pond on the south side of Ag Park Drive. A company would like to purchase the acreage on the south side of Ag Park Drive and does not want drainage from property they don't own crossing onto their property. The proposal would be to construct roadside ditching and drainage within the existing ROW to allow the water to drain from east to west along the roadway.

**Fund Commitment:** Not to exceed \$17,800 from Strategic Investments.

**Committee Action Request:** Recommend approval of Final engineering, bidding and construction inspection proposal.





June 29, 2021

Mr. Mark Masse, CPA  
Senior Vice President of Operations  
Genesee County Economic Development Center  
99 MedTech Drive, Suite 106  
Batavia, New York 14020

**RE: AGRI-BUSINESS PARK – POND RELOCATION  
TOWN OF BATAVIA, NY  
PROPOSAL FOR ENGINEERING SERVICES**

Dear Mark:

We are pleased to submit our proposal for civil engineering services related to the design and relocation of an existing pond located on property within the Agri-Business Park in the Town of Batavia, New York.

**Project Understanding**

HP Hood is proposing to expand their existing facility and is seeking to fill in the existing pond to the west of their main facility. A new stormwater management facility will be designed and constructed on the north side of Ag Park Drive West.

This proposal is based on the preliminary information provided and our discussions regarding the project. Our work includes necessary civil engineering services to design the facility and obtain the required permits to construct the project. Engineering will include site design, grading, stormwater design, and approvals. A conceptual site plan is enclosed for reference.

**Scope of Work**

**Final Design**

CPL will prepare final plans using the attached preliminary plan as a basis for design. Final design of the stormwater management facility and storm infrastructure will be completed for bidding purposes.

The CPL portion of the project will include the following:

- *Utility Site Plan* – This plan will depict proposed storm sewers and other prominent site features.
- *Grading, Stormwater and Erosion and Sediment Control Design* – These plans will detail proposed grading and stormwater design throughout the site. They will also detail soil stabilization methods to be utilized during construction including stabilized construction entrance, outlet protection, and silt fences as required for minimization of sediment transport from this property. All stormwater management facilities will be designed in accordance with NYSDEC best management practices. We will prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with NYSDEC requirements. We assume that this project will be designed to meet the 5-day review requirement for the NYSDEC General Permit and that a 60-day review will not be required.



### **Permits & Approvals**

Prepare necessary permit applications and assist the owner in obtaining the required permits and approvals including:

- NYS DEC Stormwater Pollution Prevention Plan.

CPL will complete any necessary revisions to the preliminary plans and specifications for the proposed work described above in accordance with agency comments to obtain required approvals and permits.

### **Bidding**

Provide up to twenty (20) sets of plans, specifications, and contract documents to be issued to prospective bidders.

During the bidding period, we will respond to bidders' questions and issue any addenda required for the interpretation and clarification of the bidding documents.

We will attend the bid opening, review bids for compliance with bid requirements and mathematical correctness, prepare a bid tabulation, investigate bidders' qualifications, and prepare a written recommendation for award of the contract.

### **Construction Administration**

Provide contract administration services which include contract agreement preparation, shop drawing review, processing payment requests, preconstruction and project meetings, schedule coordination, budget tracking, preparation of change orders, final inspection and punch list, and preparation of record drawings based upon information provided by the Contractor.

Provide coordination with the Contractor, GCEDC, Town of Batavia, Genesee County, and regulatory agencies.

### **Construction Inspection**

Provide a qualified Resident Inspector to monitor construction and the Contractor's compliance with the Contract Documents. The Resident Inspector will serve as GCEDC's onsite representative on the project, maintain detailed records of the work performed, document payments to the contractor, handle concerns and complaints from residents affected by the project, and coordinate with regulatory agencies and utilities.

We have assumed a 3-week construction period with part time inspection (4 hours per day).

### **SWPPP Inspection Services**

CPL will complete the following scope of work:

- Complete weekly site inspections and related paperwork per the NYSDEC procedures for the duration of the site construction.
- The actual number of inspections will be determined during construction.
- Inspections will also need to be performed after significant rainfall events for the duration of the project and as required by NYSDEC requirements.
- Inspection of all disturbed areas, erosion control measures, construction entrances, etc.
- Inspection report prepared and sent to construction offices and via email to five (5) different parties within 5 days of inspection.



- Notification to the NYSDEC of any scheduling changes and winter shutdowns.
- Filing of the NOT and related correspondence with the NYSDEC and owner's representative.

Due to the unknown construction timeframe, we propose to bill the SWPPP inspections separately on a per/each basis. CPL will complete the above scope of work for each inspection for **\$300 per inspection**. For budgetary purposes, we have assumed a 3-week construction period and 5 inspections (weekly plus rainfall events) time frame as follows:

$$5 \text{ SWPPP inspections} \times \$300/\text{inspection} = \$1,500$$

A summary of the proposed Tasks and Fees is provided as follows:

<u>Task</u>	<u>Fee</u>
<i>CPL Design</i>	
Final Design	\$6,500
Permits and Approvals	\$1,000
<b>Subtotal</b>	<b>\$7,500</b>
 <i>CPL Bidding and Construction</i>	
Bidding	\$2,000
Construction Administration	\$2,000
Construction Inspection (Hourly)	\$4,800
SWPPP Inspections (Each)	\$1,500
<b>Subtotal</b>	<b>\$10,300</b>
<b>TOTAL</b>	<b>\$17,800</b>

The tasks above will be billed on a lump sum, percentage complete basis except for Construction Inspection and SWPPP inspections. Construction Inspection will be billed hourly and SWPPP Inspections will be billed per each inspection.

**Excluded Services**

The following items have been excluded from our proposal:

- Topography and Boundary survey.
- Property survey for the purpose of purchasing property (ALTA) or obtaining easements or rights-of-way.
- Preparation of easement maps and legal descriptions.
- Preparation of SEQR documents or an Environmental Impact Statement (EIS). It is assumed that the original SEQR documentation will cover the proposed work.
- Performing wetland mitigation plans.
- Floodplain investigations.
- Application, licensing or filing fees.
- Offsite improvements.
- Town of Batavia and Genesee County Site Plan Approval.
- Cost estimating.

If it is determined that these items are needed, CPL will work with GCEDC to develop a specific scope and budget for these items.





We appreciate the opportunity to submit our proposal and look forward to working with all those involved. If you have any questions or require additional information, please contact me at (585) 402-7506 or [akosa@cplteam.com](mailto:akosa@cplteam.com). We would be happy to meet with you at any time to discuss our approach and qualifications in detail.

Very truly yours,

CPL

A handwritten signature in blue ink, appearing to read "Andrew R. Kosa".

Andrew R. Kosa, P.E.  
Principal Associate

Enclosure

**Proposal Accepted By:**

Signature: \_\_\_\_\_  
GCEDC

Date: \_\_\_\_\_



100% PROFESSIONAL ENGINEERING DESIGN  
100% PROFESSIONAL SURVEYING DESIGN  
100% PROFESSIONAL LANDSCAPE ARCHITECTURE DESIGN

PROJECT NUMBER: \_\_\_\_\_

DATE: \_\_\_\_\_

SCALE: \_\_\_\_\_

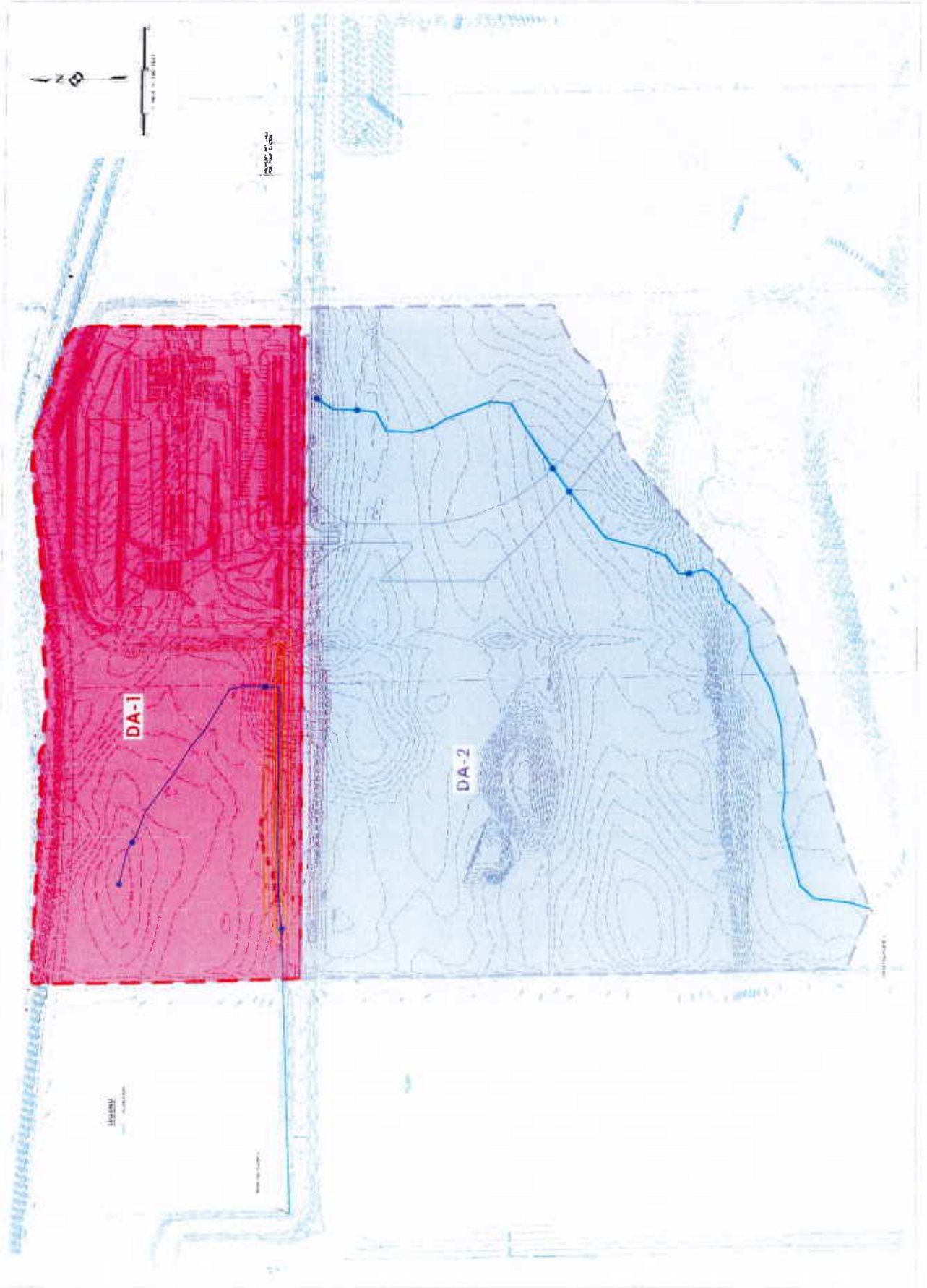
NOTIFICATION  
FOR REVIEW ONLY  
CONSTRUCTION

PROJECT TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT NUMBER: \_\_\_\_\_

FIG. 2



3e

31

**GGLDC**  
**2021 -22 Workforce Development Fund**

**Sources** **Comments**

Solar Projects	Collected \$150,000	
<b>Total Sources</b>	<b>\$150,000</b>	

**Uses** **Comments**

BEA Premier Membership	2021 \$2,500	2022	BEA to assist with Mechatronics planning and recruiting events and materials in k-12, annual fee
GLOW with Your Hands Event	\$2,500		GOLD sponsorship level, annual fee
* Batavia Police Community Night Out	\$250		Silver sponsorship August 10th on Southside of Batavia (St. Anthony's)

<b>Total Uses</b>	<b>\$5,250</b>	<b>\$0</b>
<b>Net</b>	<b>\$144,750</b>	<b>\$144,750</b>

\* note Pending Additional Funding in System approved (not closed)

Fore Front Solar	\$	25,000.00
NY EOG Genesee I	\$	25,000.00
YSG Solar	\$	25,000.00
Solar Liberty 1	\$	25,000.00
Solar Liberty 2	\$	25,000.00
Trousdale Solar	\$	25,000.00
Trousdale Solar II	\$	25,000.00
<b>Total</b>	<b>\$</b>	<b>175,000.00</b>





# City of Batavia

Dear Event Supporter,

I am excited to announce that the City of Batavia Police Department has partnered with The City Church to host the 2021 **Batavia Police Community Night Out**. The event will be held on August 10<sup>th</sup>, 2021 from 5:30 PM to 8:00 PM at St. Anthony's located at 114 Liberty St, Batavia. The event will also serve as a fundraising opportunity for the City of Batavia Police K-9 Program.

**Batavia Police Community Night Out** is an annual community-building campaign that promotes strong police-community partnerships and neighborhood camaraderie to make our neighborhoods safer. In essence, the event is aimed to enhance the relationship between neighbors and law enforcement while bringing back a true sense of community.

As previously stated, our event will be held at St. Anthony's with portions of Central Ave. and Liberty St will be closed to traffic during the event. Various organizations and businesses are being invited to be part of the event in varying ways.

Please consider this letter as a personal invitation to be a part of **Batavia Police Community Night Out**. We are requesting your presence and/or donation to make the event a success. If you would like to have an interactive booth/display please fill out the attached form to provide further details. If you are interested in donating to the event, please use the attached to make a donation. All responses should be received by July 23, 2021.

If you have any questions, please feel free to contact Detective Matthew Wojtaszczyk at 585-345-6357 or via email [mwojtaszczyk@batavianewyork.com](mailto:mwojtaszczyk@batavianewyork.com).

Thank you for helping us to make this a great event!

Sincerely,

Chief Shawn Heubusch  
City of Batavia Police Department

Police Department  
10 W Main Street  
Batavia, New York 14020



Phone: 585-345-6350  
Fax: 585-344-1878  
Records: 585-345-6303  
Detective Bureau: 585-345-6370  
[www.batavianewyork.com](http://www.batavianewyork.com)

### **Review of Purchase and Sale Agreement for BETP Property**

**Discussion:** The GGLDC has received a Purchase and Sale Agreement from Nexgistics, Inc. to acquire approximately 29.25 acres (10+/- buildable acres) out of tax parcel 19.-1-13 for \$50,000 per buildable acre with a total sale price of \$500,000.

**Fund Commitment:** Legal fees to Harris Beach not to exceed \$7,500.00 for the transaction.

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

**PURCHASE AND SALE CONTRACT  
FOR VACANT LAND**

**PURCHASER(S):** Stacy Northman and Richard Star on behalf of an Entity to be formed,  
425 Cayuga Road, Suite 200, Cheektowaga, New York 14225,

**SELLER(S):** Genesee Gateway Local Development Corp., a New York 501(c)(3) not-for-profit corporation with an address at 99 MedTech Drive, Batavia, NY 14020

**OFFER TO PURCHASE**

Purchaser offers to purchase the property described below from Seller on the following terms:

1. **PROPERTY DESCRIPTION:** Property known as part of land owned by the Genesee Gateway Local Development Corp., approximate size of 29.25 acres (10.0 +/- acres buildable). The Property is depicted per attached Exhibit "A" and consists of tax parcel 19.-1-13 (to be subdivided at Purchaser's sole cost and expense) situated in the Town of Pembroke (the "Property"). The actual acreage to be purchased by the Purchaser from the Seller shall be determined based on an accurate survey of the Property to be paid for by the Purchaser pursuant to this Contract.

2. **PRICE; AMOUNT AND HOW IT WILL BE PAID:** The purchase price to be paid by the Purchaser to the Seller (the "Purchase Price") shall be \$50,000 per buildable acre with a maximum purchase price of \$500,000 and the maximum purchase price shall apply if the size of the Property exceeds 10.0 +/- buildable acres based on the updated survey to be provided by the Seller to the Purchaser provided said difference is less than .5 acres. Should the difference exceed .5 acres, based upon the agreed upon calculation of buildable acres, there shall be a pro rata downward adjustment in the Purchase Price based upon a per acre price of \$50,000.

The Purchaser shall receive a credit at closing for any deposit made hereunder. The balance of the Purchase Price shall be paid as follows: (Check and complete applicable provisions.)

- (A) By official bank draft, wire or certified check at closing.  
 (B) Other

3. **CONTINGENCIES:** Purchaser makes this offer subject to the following contingencies to be satisfied or waived by March 31, 2022, (hereinafter known as the "Contingency Period"):

- a. Enter into an acceptable agreement with the Genesee County Industrial Development Agency regarding various benefits as specified in paragraph 8 below. Said agreement with the Genesee County Industrial Development Agency and with the Seller shall be mutually contingent upon each other and shall close simultaneously with the purchase of said real property and constructions loan.
- b. Financing for the purchase of the Property and construction loan for the development of a warehouse and distribution center and related accessory uses reasonably acceptable to Purchaser.



- c. Due Diligence pursuant to paragraph 16, acceptable to Purchaser in its sole and absolute discretion.
- d. All of the Purchaser's required approvals for its intended use as a warehouse and distribution operation, including subdivisions, at Purchaser's sole cost and expense with Seller's cooperation.

4. **CLOSING DATE, PLACE, AND POSSESSION:** Transfer of title shall take place at the Genesee County Clerk's Office or at the offices of the Seller's attorney within thirty (30) days of the waiver or satisfaction of Purchaser's Contingencies.

5. **TITLE AND RELATED DOCUMENTS:** Seller shall provide the following documents in connection with the sale:

- A. **Deed.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with covenant against grantor's acts and subject to trust fund provisions of Section 13 of the Lien Law.
- B. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days from the Contract Date, at Seller's expense, fully guaranteed tax, title and United States Court Searches dated or re-dated after the date of this Contract with a local tax certificate for Town, Village or City and School District taxes, if any (collectively, the "Title Evidence"). Purchaser will pay for continuing such searches to and including the day of closing so long as the closing occurs within six (6) months of the date of the initial searches.
- C. **Instrument Survey Map.** The Purchaser shall arrange for, at Purchaser's cost, an instrument survey of the Property being purchased and shall have markers placed on the angle points and pins on the corners ("the Instrument Survey Map"). The Instrument Survey Map shall be prepared by a licensed surveyor and dated or re-dated after the date of this Contract. The Instrument Survey Map shall show acreage inclusive of the rights of way, if any, along with a calculation of buildable acreage and shall be furnished to the parties and their attorneys within thirty (30) calendar days from the receipt of the Title Evidence. The Instrument Survey Map shall be certified to meet the standard requirements of the Genesee County Bar Association and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the Property is located.
- D. **Corporate Documents.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days before the Closing Date, at Seller's expense, a current Certificate of Good Standing.
- E. **Tax Bills.** Seller shall furnish copies of receipted real estate tax bills for the Premises for the past twelve (12) months within twenty (20) calendar days from the Date of Acceptance.
- F. **Permits.** To the extent in Seller's possession, custody or control, Seller shall furnish copies of current Certificates of Occupancy, Sump Pump Certificates (if applicable), and other municipal code compliance certificates, etc., and also all licenses, permits or similar documents affecting or relating to the Property within twenty (20) days from the Date of Acceptance.

- G. Other Documents. To the extent in Seller's possession, custody or control, Seller shall also furnish copies of all appraisals, plans, drawings, specifications, environmental impact statements and other written documentation affecting or relating to the Property, within twenty (20) days of the Date of Acceptance.

**6. MARKETABILITY OF TITLE:**

- A. The deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the Property in fee simple, free and clear of all liens and encumbrances. However, Purchaser agrees to accept title to the Property subject to: (i) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these restrictions have not been violated, or if they have been violated, that the statute of limitations for any party to seek to enforce such violations has expired; (ii) the lien of current real estate taxes not due and payable; (iii) public utility easements along lot lines as long as the Purchaser has determined those easements do not interfere with any buildings now on the Property or with any improvements Purchaser may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the Property; and (iv) the Award (defined below) (the "Permitted Exceptions"). Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.
- B. THE PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, THAT PURCHASER IS FULLY FAMILIAR WITH THE CONDITION OF THE PROPERTY, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER OF ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS SECTION SHALL SURVIVE CLOSING.

7. **OBJECTION TO TITLE:** If Purchaser raises a valid written objection to Seller's title, other than Permitted Exceptions, within twenty (20) days of receipt of all Title Evidence, which indicates that the title to the Property is unmarketable, Seller may cancel this Contract by giving prompt written notice of cancellation to Purchaser and Purchaser's Deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable, then this Contract shall continue in force until the closing date, subject to the Seller curing the title objection and/or providing insurable title at Seller's expense. If Seller fails to cure the title objection or provide insurable title on or before the closing date, Purchaser may cancel this Contract by giving prompt written notice of cancellation to Seller, Purchaser's Deposit shall be returned and the parties shall have no further obligation to one another except for those obligations which explicitly survive termination of this contract.

8. **RECORDING COSTS, MORTGAGE TAX, TRANSFER TAXES AND CLOSING ADJUSTMENTS:** Seller will pay the real property transfer tax and real property gains tax, if



applicable. Purchaser will pay for recording the deed and the mortgage, and for the entire mortgage tax subject to any terms contained in an incentive package, if any, from GCIDA. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Purchaser as of the date of closing, excluding any delinquent items, interest and penalties: current taxes or special district fees computed on a fiscal year basis, rent payments, fuel oil on the Property, water charges, pure water charges, sewer charges, current common charges or assessments. If there is a water meter at the Property, Seller shall furnish an actual reading to a date not more than 30 days before the closing date set forth in this Contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. **ZONING:** Seller represents that the Property is zoned for use as a Commercial and Industrial Park.

10. **RISK OF LOSS:** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Contract without any further liability to Seller. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

11. **DEPOSIT TO SELLER:** Purchaser shall make a \$10,000.00 deposit ("Deposit") upon signing of the contract to be held in escrow by Seller's attorney Harris Beach PLLC, 99 Garnsey Road, Pittsford, NY 14534. Such Deposit shall be refundable until the expiration of the Contingency Period, as may be extended as set forth herein, at which time it shall become non-refundable and payable to the Seller but shall be credited against the Purchase Price at Closing. Should this Contract be terminated by Purchaser prior to the expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall be refunded to the Purchaser. In the event of Seller's default under this Purchase and Sale Contract, the Deposit shall be paid to the Purchaser as its sole and exclusive remedy.

12. **REAL ESTATE BROKER:** Seller and Purchaser acknowledge that no broker brought about this transaction. Seller and Purchaser warrant and represent that they have not dealt with any other brokers in connection with the sale embraced in this Contract and agree to indemnify and hold each other harmless from the claims of any other brokers for commissions.

13. **RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY:** If more than one person signs this Contract as Purchaser, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Purchaser in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. Purchaser shall not have the right to assign its rights, duties and obligations pursuant to this Contract or any of its rights hereunder without prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed; provided, however, Purchaser shall be permitted to assign this Contract to an affiliate, parent or subsidiary of Purchaser herein without obtaining Seller's consent so long as the Purchaser named herein remains fully responsible for the performance of all of Purchaser's obligations under this Agreement. No assignment shall be effective unless and until Purchaser provides Seller with a notice of assignment together with a copy of the applicable assignment and assumption agreement.



**14. ENTIRE CONTRACT:** This Contract when signed by both Purchaser and Seller will be the record of the complete agreement between the Purchaser and Seller concerning the purchase of the Property. No verbal agreements or promises made by either the Seller or the Purchaser shall be binding.

**15. NOTICES.** All notices under this Contract shall be in writing and shall be deemed validly given if sent by certified mail or by overnight delivery via a commercial courier to the addresses specified below by either party or its counsel. Any notice issued by or on behalf of the Seller or Purchaser with respect to this Contract must also simultaneously be provided to the counsel for the receiving party to be effective as follows:

Seller:

Genesee Gateway Local Development Corp.  
Attn: Mark A. Masse  
99 MedTech Drive  
Suite 106  
Batavia, New York 14020

Counsel for Seller:

F.L. Gorman, Esq.  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Tel: 585.419.8628  
Fax: 585.419.8816  
E-mail: flgorman@harrisbeach.com

Purchaser:

NEXGISTICS, LLC,  
425 Cayuga Road, Suite 200  
Cheektowaga, New York 14225  
ATTN: Steven Northman

Counsel for Purchaser:

Richard H. Cole, Esq.,  
Cole Sorrentino, Hurley, Hewner and Gambino, P.C.  
37 Franklin Street, Suite 900  
Buffalo, New York 14226  
Tel: 716.856-3646 ext. 125  
Fax: 726-856-3656  
E-mail: rcole@cole-sorrentino.com

**16. ACCESS TO PROPERTY/DUE DILIGENCE.** At any time after the date upon which this Contract is executed by both Purchaser and Seller ("Date of Acceptance"), Purchaser may inspect, survey, examine and/or test the Property and conduct such tests thereon as it deems appropriate, including any such non-invasive inspection, surveying, examination, and/or testing required to conduct such activities in support of locating the planned economic development project at the site to and including any activities necessary for the SEQR process, by agent or otherwise. Purchaser acknowledges and agrees that it shall have no right to conduct drilling, soil boring or other invasive testing on the Property without first obtaining Seller's prior written consent, which consent shall be exercised in Seller's sole and absolute discretion and shall be predicated upon Purchaser presenting Seller with a detailed map of the location of where such invasive testing shall be conducted, a description of the nature of such invasive testing and whatever environmental or engineering reports upon which Purchaser is basing its request for such drilling, soil boring or other invasive testing. Purchaser and/or its agents and employees shall have access to the Property at any reasonable time for purposes of making the foregoing inspections on prior reasonable notice to Seller. Unless otherwise agreed to in writing between the Purchaser and Seller, Purchaser shall bear all costs associated with the foregoing inspections and associated activities of the Property performed or conducted by Purchaser, or at the request of Purchaser, by its agent(s) or otherwise. Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including, but not limited to, reasonable attorneys' fees) arising from: (a) any personal injury or property damage caused by Purchaser's negligence during the inspection of the Property; (b) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from Purchaser's foregoing inspections; and (c) Purchaser's presence (or that of Purchaser's representatives, agents, employees, lenders, contractors, appraisers, architects and engineers) on or at the Property during the term of this Contract, which indemnity shall survive closing or the earlier termination of this Contract. Purchaser agrees to return the Property in as near as possible its condition prior to Purchaser's entry thereon.

**17. INTEREST IN PROPERTY.** Except for the Seller there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights in respect to the Property or any part thereof. Any possessions, occupancy and/or possessory rights of any persons other than Seller, shall be terminated by Seller on or prior to the closing date.

**18. COMMON AREA CHARGES; COMMUNITY FEES.** The common area charges, association fees or other community fees or assessments (including, but not limited to, any charges, dues or fees due in connection with the Business Park) shall not exceed One Hundred Fifty Dollars (\$150.00) annually.

**19. APPLICABLE LAW.** This Contract shall be governed by, and construed in accordance with, the laws of the State of New York. The parties further agree that for the purposes of litigation arising between the parties, venue shall be laid in Genesee County Supreme Court. The prevailing party shall be entitled to attorney fees.

**20. COUNTERPARTS.** This Contract may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Contract. Any counterpart delivered by electronic mail or facsimile transmission shall have the same force and effect as an original thereof.

21. **AUTHORITY**. Purchaser certifies to Seller that the execution, delivery and performance by Purchaser of this Contract and the performance of the Purchaser of the transactions contemplated hereunder have been duly authorized by Purchaser and that the individual signing this Contract on behalf of Purchaser has the full authority of Purchaser to enter into this Contract.

22. **ENVIRONMENTAL**. Seller represents and warrants to the best of its actual knowledge without independent investigation or inquiry that it has not received written notice that the Property is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws"). Seller further represents and warrants that it will provide any appraisals, plans, drawings, specifications, surveys, engineering reports, environmental studies, environmental impact statements related to the Property in its possession, custody or control within twenty (20) days of the Date of Acceptance.

Seller certifies to the Purchaser that the Seller owns the Property and that the individual signing this Contract on behalf of the Seller has the full authority of the Seller to enter into this Contract. Seller accepts the offer and agrees to sell on the terms and conditions set forth above.

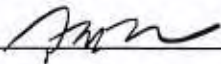
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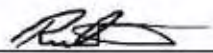
**GENESEE GATEWAY LOCAL DEVELOPMENT CORP.**

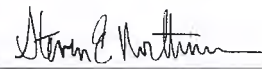
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

WITNESS: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

**PURCHASER:**

By:   
Name: Stacy M. Northman  
Title: Chief Operating Officer  
Date: July 29, 2021

By:   
Name: Richard J. Star  
Title: Principal  
Date: July 29, 2021

WITNESS:   
Print Name: Steven E. Northman  
Date: July 29, 2021



**AUTHORIZING RESOLUTION**

*(Purchase and Sale of Real Property – Northman and Star o/b/o an Entity to be Formed)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, \_\_\_\_\_, 2021.

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

Resolution No. \_\_\_/2021 - \_\_\_\_\_

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF CERTAIN AGENCY OWNED REAL PROPERTY TO STACY NORTHMAN AND RICHARD STAR O/B/O AN ENTITY TO BE FORMED, (ii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, AND (iii) A DEED, AND RELATED DOCUMENTS IN CONNECTION WITH THE CLOSING OF THE PURCHASE AND SALE OF THE REAL PROPERTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately twenty-nine point four (29.4) acres of vacant land located at Allegheny Road, in the Town of Pembroke, Genesee County, New York and described as part of tax map no. 19.-1-13 (10.0± acres buildable) (the "Land");

WHEREAS, **STACY NORTHMAN AND RICHARD STAR** o/b/o an entity to be formed and their permitted assigns (the "Company") has offered to purchase the Land in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Land to the Company (ii) the execution of the Purchase and Sale Agreement, and (iii) a deed and related documents in connection with the purchase and sale of the Land (the "Closing Documents"); and

WHEREAS, the Purchase and Sale Agreement in connection therewith has been negotiated and is presented to this meeting for approval and execution.

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

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

Section 2. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement and the Closing Documents in connection with the closing of the purchase and sale of the Land.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$7,500.00 subject to no substantive title issues, municipal approval issues and/or environmental issues arising in connection with the purchase and sale of the Land.

Section 5. These Resolutions shall take effect immediately.

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

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

The Resolutions were thereupon duly adopted.

**CERTIFICATION**

*(Purchase and Sale of Real Property – Northman and Star)*

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

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

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on June 6, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Secretary

**EXHIBIT A**

**Form of Purchase and Sale Agreement**

(Attached Next Page)



**Review of Purchase and Sale Agreement for BETP Property**

**Discussion:** The GGLDC has received a Purchase and Sale Agreement from Fancher to acquire approximately 2.6 acres out of tax parcel 19.-1-74 for \$50,000 per buildable acre with a total sale price of \$130,000.

**Fund Commitment:** Legal fees to Harris Beach not to exceed \$7,500.00 for the transaction.

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

PURCHASE AND SALE CONTRACT  
FOR VACANT LAND

**PURCHASER(S):** J & R Fancher Property Holdings, LLC, a New York limited liability company with an address at 13661 Main Street, Akron, New York 14001

**SELLER(S):** Genesee Gateway Local Development Corp., a New York 501(c)(3) not-for-profit corporation with an address at 99 MedTech Drive, Batavia, NY 14020

OFFER TO PURCHASE

Purchaser offers to purchase the property described below from Seller on the following terms:

1. **PROPERTY DESCRIPTION:** Property known as part of land owned by the Genesee Gateway Local Development Corp., approximate size of 2.60 acres. The Property is depicted per attached Exhibit "A" and consists of a portion of tax parcel 19.-1-74 (to be subdivided at Purchaser's sole cost and expense) situated in the Town of Pembroke (the "Property"). The actual acreage to be purchased by the Purchaser from the Seller shall be determined based on an accurate survey of the Property to be paid for by the Purchaser pursuant to this Contract.

2. **PRICE; AMOUNT AND HOW IT WILL BE PAID:** The purchase price to be paid by the Purchaser to the Seller (the "Purchase Price") shall be \$50,000 per buildable acre with a maximum purchase price of \$130,000 and the maximum purchase price shall apply if the size of the Property exceeds 2.60 +/- buildable acres based on the updated survey to be provided by the Seller to the Purchaser provided said difference is less than .5 acres.

The Purchaser shall receive a credit at closing for any deposit made hereunder. The balance of the Purchase Price shall be paid as follows: (Check and complete applicable provisions.)

- (A) By official bank draft, wire or certified check at closing.  
 (B) Other

3. **CONTINGENCIES:** Purchaser makes this offer subject to the following contingencies to be satisfied or waived by September 30, 2022:

- a. Financing for the purchase of the Property and development of an apartment building and mixed use commercial space and related accessory uses reasonably acceptable to Purchaser.
- b. Due Diligence pursuant to paragraph 16, acceptable to Purchaser in its sole and absolute discretion.
- c. All of the Purchaser's required approvals for its intended use, including subdivisions, at Purchaser's sole cost and expense with Seller's cooperation.

4. **CLOSING DATE, PLACE, AND POSSESSION:** Transfer of title shall take place at the Genesee County Clerk's Office or at the offices of the Seller's attorney prior to October 1, 2022.

5. TITLE AND RELATED DOCUMENTS: Seller shall provide the following documents in connection with the sale:

- A. **Deed.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with covenant against grantor's acts and subject to trust fund provisions of Section 13 of the Lien Law.
- B. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days from the Contract Date, at Purchaser's expense, fully guaranteed tax, title and United States Court Searches dated or re-dated after the date of this Contract with a local tax certificate for Town, Village or City and School District taxes, if any (collectively, the "Title Evidence"). Purchaser will pay for continuing such searches to and including the day of closing.
- C. **Instrument Survey Map.** The Seller shall furnish at Purchaser's cost an instrument survey of the Property being purchased and shall have markers placed on the angle points and pins on the corners ("the Instrument Survey Map"). The Instrument Survey Map shall be prepared by a licensed surveyor and dated or re-dated after the date of this Contract. The Instrument Survey Map shall show acreage inclusive of the rights of way, if any and shall be furnished to the parties and their attorneys within thirty (30) calendar days from the receipt of the Title Evidence. The Instrument Survey Map shall be certified to meet the standard requirements of the Genesee County Bar Association and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the Property is located.
- D. **Corporate Documents.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days before the Closing Date, at Seller's expense, a current Certificate of Good Standing.
- E. **Tax Bills.** Seller shall furnish copies of receipted real estate tax bills for the Premises for the past twelve (12) months within twenty (20) calendar days from the Date of Acceptance.
- F. **Permits.** To the extent in Seller's possession, custody or control, Seller shall furnish copies of current Certificates of Occupancy, Sump Pump Certificates (if applicable), and an other municipal code compliance certificates, etc., and also all licenses, permits or similar documents affecting or relating to the Property within twenty (20) days from the Date of Acceptance.
- G. **Other Documents.** To the extent in Seller's possession, custody or control, Seller shall also furnish copies of all appraisals, plans, drawings, specifications, environmental impact statements and other written documentation affecting or relating to the Property, within twenty (20) days of the Date of Acceptance.

6. MARKETABILITY OF TITLE:

- A. The deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the Property in fee simple, free and clear of all liens and encumbrances. However, Purchaser agrees to accept title to the Property subject to: (i) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these



restrictions have not been violated, or if they have been violated, that the statute of limitations for any party to seek to enforce such violations has expired; (ii) the lien of current real estate taxes not due and payable; (iii) public utility easements along lot lines as long as the Purchaser has determined those easements do not interfere with any buildings now on the Property or with any improvements Purchaser may construct in compliance with all present restrictive covenants of record and zoning and building codes applicable to the Property; and (iv) the Award (defined below) (the "Permitted Exceptions"). Seller agrees to furnish any documents required by federal or state laws for transfer of title to real property.

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

7. **OBJECTION TO TITLE:** If Purchaser raises a valid written objection to Seller's title, other than Permitted Exceptions, within twenty (20) days of receipt of all Title Evidence, which indicates that the title to the Property is unmarketable, Seller may cancel this Contract by giving prompt written notice of cancellation to Purchaser and Purchaser's Deposit shall be returned. However, if Seller is able to cure the title objection on or before the closing date, or if the title objection is insurable, then this Contract shall continue in force until the closing date, subject to the Seller curing the title objection and/or providing insurable title at Seller's expense. If Seller fails to cure the title objection or provide insurable title on or before the closing date, Purchaser may cancel this Contract by giving prompt written notice of cancellation to Seller, Purchaser's Deposit shall be returned and the parties shall have no further obligation to one another except for those obligations which explicitly survive termination of this contract.

8. **RECORDING COSTS, MORTGAGE TAX, TRANSFER TAXES AND CLOSING ADJUSTMENTS:** Seller will pay the real property transfer tax and real property gains tax, if applicable. Purchaser will pay for recording the deed and the mortgage, and for the entire mortgage tax subject to any terms contained in an incentive package, if any, from GCIDA. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Purchaser as of the date of closing, excluding any delinquent items, interest and penalties: current taxes or special district fees computed on a fiscal year basis, rent payments, fuel oil on the Property, water charges, pure water charges, sewer charges, current common charges or assessments. If there is a water meter at the Property, Seller shall furnish an actual reading to a date not more than 30 days before the closing date set forth in this Contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. **ZONING:** Seller represents that the Property is zoned for use as a Commercial and Industrial Park.

10. **RISK OF LOSS:** Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Contract without any further liability to Seller. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

11. **DEPOSIT TO SELLER:** Purchaser shall make a \$10,000.00 deposit ("Deposit") upon signing of the contract to be held in escrow by Seller's attorney Harris Beach PLLC, 99 Garnsey Road, Pittsford, NY 14534. Such Deposit shall be refundable until the expiration of the Contingency Period, as may be extended as set forth herein, at which time it shall become non-refundable and payable to the Seller but shall be credited against the Purchase Price at Closing. Should this Contract be terminated by Purchaser prior to the expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall be refunded to the Purchaser. In the event of Seller's default under this Purchase and Sale Contract, the Deposit shall be paid to the Purchaser as its sole and exclusive remedy.

12. **REAL ESTATE BROKER:** Seller and Purchaser acknowledge that no broker brought about this transaction. Seller and Purchaser warrant and represent that they have not dealt with any other brokers in connection with the sale embraced in this Contract and agree to indemnify and hold each other harmless from the claims of any other brokers for commissions.

13. **RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY:** If more than one person signs this Contract as Purchaser, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Purchaser in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. Purchaser shall not have the right to assign its rights, duties and obligations pursuant to this Contract or any of its rights hereunder without prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed; provided, however, Purchaser shall be permitted to assign this Contract to an affiliate, parent or subsidiary of Purchaser herein without obtaining Seller's consent so long as the Purchaser named herein remains fully responsible for the performance of all of Purchaser's obligations under this Agreement. No assignment shall be effective unless and until Purchaser provides Seller with a notice of assignment together with a copy of the applicable assignment and assumption agreement.

14. **ENTIRE CONTRACT:** This Contract when signed by both Purchaser and Seller will be the record of the complete agreement between the Purchaser and Seller concerning the purchase of the Property. No verbal agreements or promises made by either the Seller or the Purchaser shall be binding.

15. **NOTICES.** All notices under this Contract shall be in writing and shall be deemed validly given if sent by certified mail or by overnight delivery via a commercial courier to the addresses specified below by either party or its counsel. Any notice issued by or on behalf of the Seller or Purchaser with respect to this Contract must also simultaneously be provided to the counsel for the receiving party to be effective as follows:

Seller:



Genesee Gateway Local Development Corp.  
Attn: Mark A. Masse  
99 MedTech Drive  
Suite 106  
Batavia, New York 14020

Counsel for Seller:

F.L. Gorman, Esq.  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Tel: 585.419.8628  
Fax: 585.419.8816  
E-mail: flgorman@harrisbeach.com

Purchaser:

J&R Fancher Property Holdings, LLC  
13661 Main Street  
Akron, NY 14001

Counsel for Purchaser:

Alyssa M. Gross, Esq.  
William C. Moran & Associates, PC  
6500 Main Street, Suite 5  
Williamsville, NY 14221

16. ACCESS TO PROPERTY/DUE DILIGENCE. At any time after the date upon which this Contract is executed by both Purchaser and Seller ("Date of Acceptance"), Purchaser may inspect, survey, examine and/or test the Property and conduct such tests thereon as it deems appropriate, including any such non-invasive inspection, surveying, examination, and/or testing required to conduct such activities in support of locating the planned economic development project at the site to and including any activities necessary for the SEQR process, by agent or otherwise. Purchaser acknowledges and agrees that it shall have no right to conduct drilling, soil boring or other invasive testing on the Property without first obtaining Seller's prior written consent, which consent shall be exercised in Seller's sole and absolute discretion and shall be predicated upon Purchaser presenting Seller with a detailed map of the location of where such invasive testing shall be conducted, a description of the nature of such invasive testing and whatever environmental or engineering reports upon which Purchaser is basing its request for such drilling, soil boring or other invasive testing. Purchaser and/or its agents and employees shall have access to the Property at any reasonable time for purposes of making the foregoing inspections on prior reasonable notice to Seller. Unless otherwise agreed to in writing between the Purchaser and Seller, Purchaser shall bear all costs associated with the foregoing inspections and associated activities of the Property performed or conducted by Purchaser, or at the request of Purchaser, by its agent(s) or otherwise. Purchaser agrees to indemnify, defend and hold Seller harmless from all actual suits, causes of action, losses, payments and expenses (including, but not limited to, reasonable attorneys' fees) arising from: (a) any personal injury or property damage caused by Purchaser's negligence during the inspection of the Property; (b) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from



Purchaser's foregoing inspections; and (c) Purchaser's presence (or that of Purchaser's representatives, agents, employees, lenders, contractors, appraisers, architects and engineers) on or at the Property during the term of this Contract, which indemnity shall survive closing or the earlier termination of this Contract. Purchaser agrees to return the Property in as near as possible its condition prior to Purchaser's entry thereon.

17. INTEREST IN PROPERTY. Except for the Seller there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights in respect to the Property or any part thereof. Any possessions, occupancy and/or possessory rights of any persons other than Seller, shall be terminated by Seller on or prior to the closing date.

18. COMMON AREA CHARGES; COMMUNITY FEES. The common area charges, association fees or other community fees or assessments (including, but not limited to, any charges, dues or fees due in connection with the Business Park) shall not exceed One Hundred Fifty Dollars (\$150.00) annually.

19. APPLICABLE LAW. This Contract shall be governed by, and construed in accordance with, the laws of the State of New York. The parties further agree that for the purposes of litigation arising between the parties, venue shall be laid in Genesee County Supreme Court. The prevailing party shall be entitled to attorney fees.

20. COUNTERPARTS. This Contract may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Contract. Any counterpart delivered by electronic mail or facsimile transmission shall have the same force and effect as an original thereof.

21. AUTHORITY. Purchaser certifies to Seller that the execution, delivery and performance by Purchaser of this Contract and the performance of the Purchaser of the transactions contemplated hereunder have been duly authorized by Purchaser and that the individual signing this Contract on behalf of Purchaser has the full authority of Purchaser to enter into this Contract.

22. ENVIRONMENTAL. Seller represents and warrants to the best of its actual knowledge without independent investigation or inquiry that it has not received written notice that the Property is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws"). Seller further represents and warrants that it will provide any appraisals, plans, drawings, specifications, surveys, engineering reports, environmental studies, environmental impact statements related to the Property in its possession, custody or control within twenty (20) days of the Date of Acceptance.

Seller certifies to the Purchaser that the Seller owns the Property and that the individual signing this Contract on behalf of the Seller has the full authority of the Seller to enter into this Contract. Seller accepts the offer and agrees to sell on the terms and conditions set forth above.


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GENESEE GATEWAY LOCAL DEVELOPMENT CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

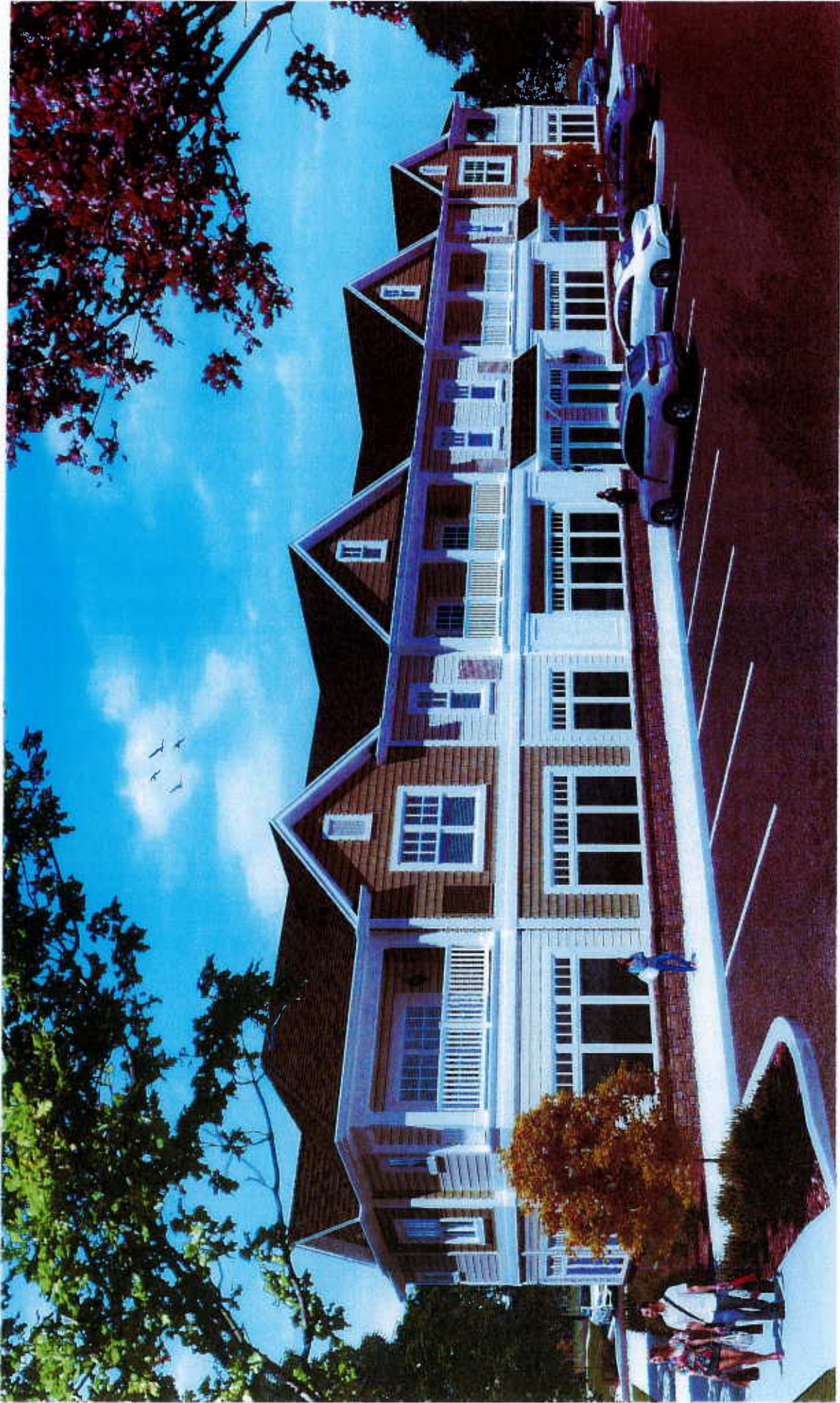
WITNESS: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_, 2021

PURCHASER:

By:   
Name: Randall D. Fancher  
Title: President  
Date: July 27, 2021

WITNESS:   
Print Name: JEFF FANCHER  
Date: JULY 27, 2021



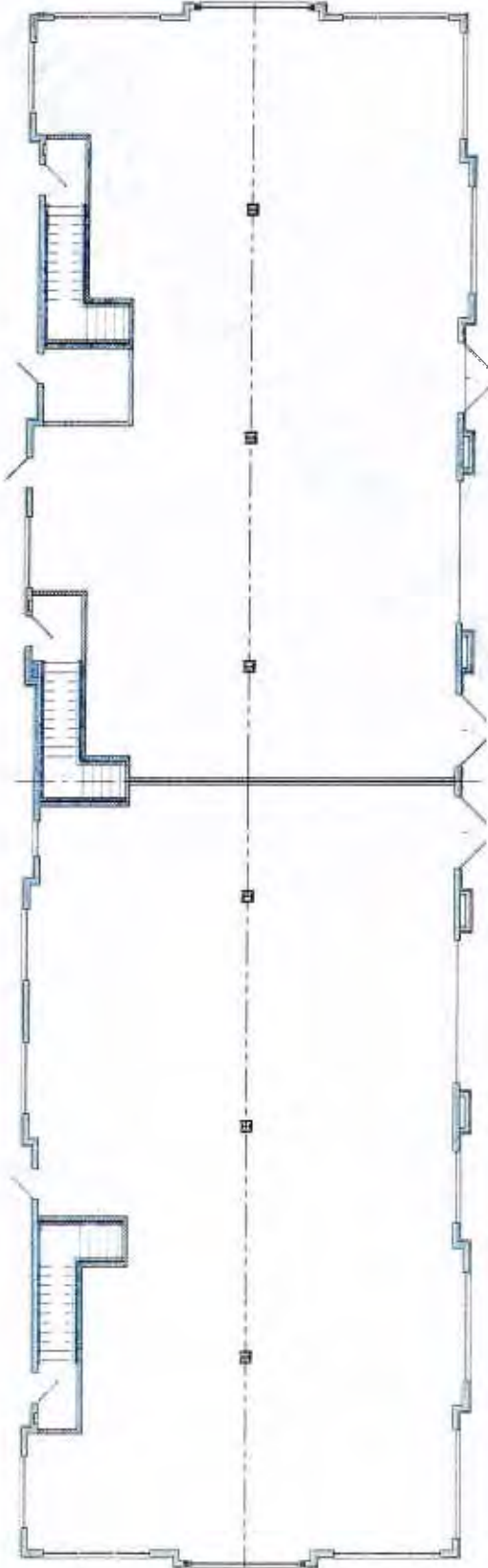


Front Elevation  
2-Story Mixed Use Building  
6-Unit Building

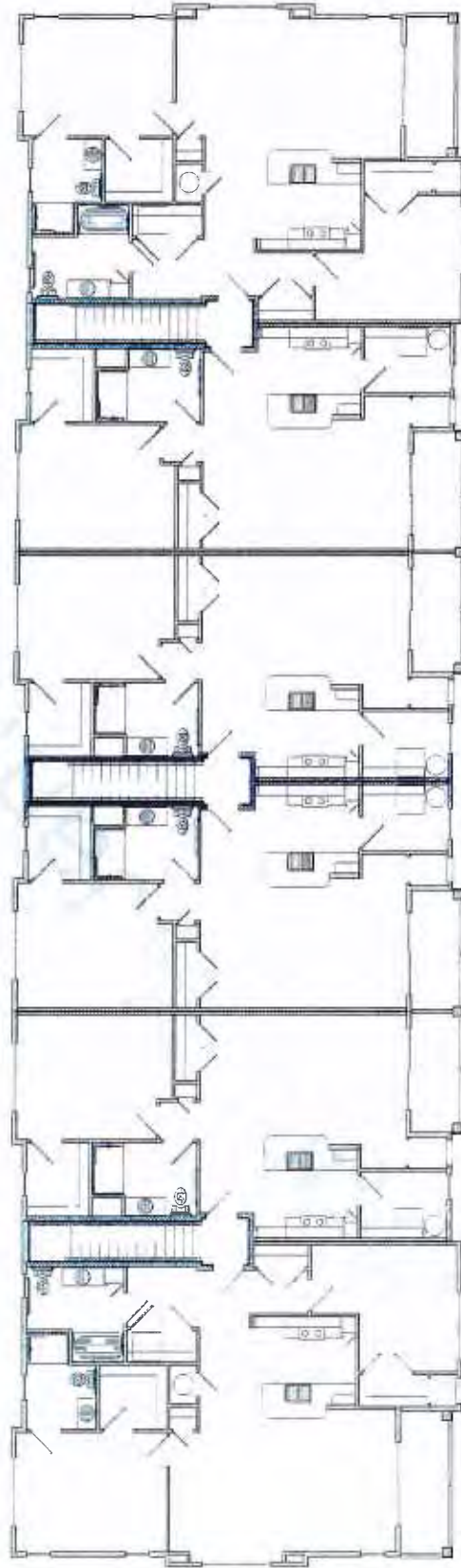


James Fally Design  
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James Fally Design  
100-1000-1000-1000



( ) MAIN FLOOR PLAN



( ) SECOND FLOOR PLAN

GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION

AUTHORIZING RESOLUTION

(Sale of Land to J & R Fancher Property Holdings, LLC)

A regular meeting of the Genesee Gateway Local Development Corporation (the "Corporation") was convened on \_\_\_\_\_, \_\_\_\_\_, 2021, at 4:00 p.m.

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

Resolution No. # \_\_\_/2021 - \_\_\_

RESOLUTION OF THE GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION AUTHORIZING (I) THE SALE OF CERTAIN LANDS TO J & R FANCHER PROPERTY HOLDINGS, LLC COMPRISING APPROXIMATELY 2.60 +/- ACRES LOCATED IN THE TOWN OF PEMBROKE, GENESEE COUNTY, NEW YORK, AND KNOWN AS PART OF TAX PARCEL 19.-1-74 (THE "LAND"), AND (II) THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT FOR THE CONVEYANCE OF THE LAND AND THE EXECUTION AND DELIVERY OF DOCUMENTS NECESSARY AND INCIDENTAL THERETO

WHEREAS, pursuant to the purposes and powers contained within Section 1411 of the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended (hereinafter collectively called the "Act"), and pursuant to its certificate of incorporation filed on September 20, 2004 (the "Certificate"), the GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION (the "Corporation") was established as a not-for-profit local development corporation of the State with the authority and power to own, lease and sell personal and real property for the purposes of, among other things, acquiring, constructing and equipping certain projects exclusively in furtherance of the charitable or public purposes of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, by encouraging the development of, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, among other property, the Corporation owns approximately 16.6+/- acres of vacant land located at Alleghany Road, Town of Pembroke, Genesee County, New York; and

WHEREAS, J & R FANCHER PROPERTY HOLDINGS, LLC and its permitted assigns (the "Company") has offered to purchase a portion of the Land in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement").

WHEREAS, the Corporation desires to transfer to the Company, for and in consideration of \$50,000.00 per buildable acre, an approximately 2.60+/- acre parcel of land located in the



Buffalo East Tech Park (the "Park") at Alleghany Road, in the Town of Pembroke, Genesee County, New York, known as part of tax parcel 19.-1-74 (the "Land"); and

WHEREAS, the Corporation desires to adopt a resolution authorizing (i) the sale of the Land to the Company, (ii) the execution of the Purchase and Sale Agreement, and (iii) a deed and related documents in connection with the purchase and sale of the Land (the "Closing Documents"); and

WHEREAS, the Purchase and Sale Agreement in connection therewith has been negotiated and is presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF THE GENESEE GATEWAY LOCAL DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. The Corporation hereby finds and determines that:

(A) By virtue of the Act and the Certificate, the Corporation 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 the Certificate; and

(B) The Corporation has the authority to take the actions contemplated herein pursuant to the Act and the Certificate; and

(C) The Corporation finds that the proposed transfer of the Land constitutes a "Type II action" pursuant to New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), and therefore is exempt from review under SEQRA.

Section 2. The Corporation hereby authorizes the transfer of the Land (such metes and bounds description to be agreed upon by the Buyer and the Corporation), subject to compliance with all applicable law, including, without limitation, the New York State Public Authorities Accountability Act and the execution and delivery of all documents necessary and incidental thereto.

Section 3. The Chairman, Vice Chairman, President/Chief Executive Officer and/or Senior Vice President of Operations of the Corporation are hereby authorized, on behalf of the Corporation, to do all acts and things required and to execute and deliver all such deeds, certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Corporation with all of the terms, covenants and provisions of the documents executed for and on behalf of the Corporation.

Section 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$7,500.00 subject to no substantive title



issues, municipal approval issues and/or environmental issues arising in connection with the purchase and sale of the Land, in which event, additional attorney fees are authorized as necessary to resolve such foregoing issues.

Section 5. These Resolutions shall take effect immediately upon adoption.

	<i>Yea</i>		<i>Nay</i>		<i>Absent</i>		<i>Abstain</i>	
Donald Cunningham	[	]	[	]	[	]	[	]
Thomas H. Felton	[	]	[	]	[	]	[	]
Sarah Noble-Moag	[	]	[	]	[	]	[	]
Paul Battaglia	[	]	[	]	[	]	[	]
Todd Bender	[	]	[	]	[	]	[	]
Craig Yunker	[	]	[	]	[	]	[	]
Gregg Torrey	[	]	[	]	[	]	[	]
Pete Zeliff	[	]	[	]	[	]	[	]

The Resolutions were thereupon duly adopted.