

**TOWN OF UNION
LOCAL DEVELOPMENT CORPORATION
MEETING MINUTES
THURSDAY, SEPTEMBER 29, 2022**

SYNOPSIS OF MEETING

The Town of Union Local Development Corporation met for a special meeting on Thursday, September 29, 2022 in the Town of Union Board Meeting Room.

I. THE MEETING WAS CALLED TO ORDER AT 8:01 A.M.

MEMBERS PRESENT: Stephen Trichka, Diane Julian, Gary Leighton, James Peduto, Jeffrey L'Amoreaux, Timothy Strong

MEMBERS ABSENT: Mary O'Malley-Trumble

OTHERS PRESENT: Rosemarie Pope (LDC Board Attorney)
Richard Materese (Town Supervisor)
Scott Burto (Town ARPA Grant Coordinator)
Gina Middleton (Coughlin & Gerhart)

STAFF PRESENT: Joseph Moody (LDC Director), Robin Shimer (Admin. Asst.)

II. APPROVAL OF THE MINUTES

The Minutes of the regular LDC Board Meeting of September 22, 2022 were reviewed and approved, as written.

Motion: Tim Strong
Motion 2nd: Jeff L'Amoreaux
Motion: To approve the regular LDC Board Meeting Minutes of September 22, 2022, as written.
Vote: Motion approved [6 - Yes, 0 - No, 1 - Absent, 0 - Abstain]

III. PRESIDENT'S REMARKS

President Trichka advanced the discussion of the meeting's principal topic.

IV. DIRECTOR'S REMARKS

Director Moody offered opening remarks about the proposed Board action.

V. OLD BUSINESS

- A. Mr. Moody presented the Draft 2021 American Rescue Plan Act (ARPA) funding agreement between the Town of Union and the Town of Union Local Development Corporation, as prepared by Counselor Pope. He noted Mr. Burto's ARPA work and asked him to share insight about the process for performing his Town and LDC duties as they relate to the funding agreement, a.k.a. the Agreement. Subsequent discussion established a principal meeting format of LDC Board questions and direct responses.

Mr. Trichka noted his forthcoming questions related primarily to Agreement structure. He cited Section 6.2 (Agreement Commencement, Completion, and Renewal) and its sentence “The LDC may use funds to reimburse itself for allowable costs of activities paid for or invoiced to the LDC as defined in the Scope of Work.” He asked if the sentence meant the time Mr. Moody and Mr. Shimer spend on ARPA matters could or should be charged back to the Agreement. Or is that work outside of regular duties? Mr. Moody said he considers time spent on ARPA tasks to be within regular duties. Mr. Trichka said, with Ms. Julian’s concurrence, such reimbursement would simply reduce the amount of money coming from the normal funds. Mr. Trichka noted the referenced sentence’s use of the word “may,” implying optional action.

Mr. Trichka referenced Section 7.2 (Internal Controls) and inquired if the LDC has accounting policies in place regarding that section. His question was based on the Agreement’s citation of “written accounting procedures” as among LDC operational policies. Mr. Moody said the LDC does not have such procedures. Mr. Burto said the Agreement was likely referring to the LDC’s normal accounting procedure for issuing grant payments, which occurs after the LDC Board’s selection of grant recipients. Mr. Moody said a checks and balances process is in place whereby the Town Comptroller (i.e., Mr. Burto due to comptroller absence) will authorize, via recommendation to Mr. Moody, LDC reimbursement payments to recipients. No payments will be issued until Mr. Burto affirms ARPA guidelines have been met. Mr. Burto will report LDC grant payments to the Town Board and for Town records for its federal reports. Mr. Moody said Mr. Burto will continue to review ARPA funds after a comptroller is hired.

Mr. Leighton asked Mr. Burto if he would be recording his time for Town and LDC duties. Mr. Burto said he could do so if needed, although the Town is not requiring dual recordkeeping. Mr. Moody indicated it’s his understanding that the Town is assuming full payment for work performed by Mr. Burto for the LDC with use of either Town and/or Broome County ARPA funds. The Board supported the Town’s decision of not requiring separation recordkeeping (due to mutual benefit of Mr. Burto’s services). Mr. Leighton asked if the LDC will receive the \$1.5 million funds all at once or as needed. Mr. Moody said the intent is to receive the funds as a whole and to place the funds in a newly created LDC checking account from which individual ARPA grant checks will be processed.

Mr. Trichka noted a possible overlap between Agreement Sections 7.3 (Monitoring) and 7.8 (Audits and Inspections). Counselor Pope said there may be overlap, which is not uncommon in agreements. She enhanced Section 7.8 so it now addresses a prior concern articulated by Mr. Peduto, and stipulates that all audits requested by the Town will be paid for by the Town. Mr. Moody noted Section 7.8’s directive for an audit if the LDC spends more than \$750,000.00 from federal awards. He sought verification that the basis of the federally required audit is the LDC’s receiving for disbursement the \$1.5 million of ARPA funds, and not LDC fiscal year expending of \$750,000.00. Mr. Burto affirmed Mr. Moody’s understanding was correct. Also, Mr. Trichka asked about and Mr. Moody affirmed that quarterly reports will be provided to the Town as requested.

Mr. Trichka inquired about the extent of personal liability insurance coverage of LDC Board members. Mr. Moody affirmed there is existing coverage for the Board and the Director. However, the Agreement necessitates greater coverage that is additional to the LDC’s current Philadelphia Insurance Companies policy. Counselor Pope has

discussed the topic with the Town Board, and the LDC will now be added to the Town's commercial and general liability policy (Section 11, Insurance). The enhanced LDC coverage is essential to the LDC's signing of agreements conveying county-held ARPA funds to the Town of Union and to the Town of Union LDC.

Mr. Trichka asked about the requirement status of LDC compliance with the Davis-Bacon Act. That federal law requires payment of local prevailing wages on federally funded or assisted contracts exceeding \$2,000.00 for the construction, alteration or repair of public buildings or public works. However, as affirmed by Mr. Moody and Mr. Burto, ARPA has received a waiver from Davis-Bacon requirements. The U.S. Treasury determined Davis-Bacon Act wage requirements are inapplicable to projects whose federal funding is comprised solely with ARPA Local Fiscal Recovery Funds.

Mr. Trichka referenced the Termination of Convenience Section 19.2 uniqueness of requiring both parties' consent to effect Town-desired termination. He asked if there are costs for which the LDC would be liable for damages, and noted in termination agreements usually the performing party gets to recover costs. He said it appears the LDC is not collecting costs separately and ultimately the dual consent is not harmful.

Mr. Peduto inquired about the Agreement's Section 2A, 13C. Mr. Peduto said he assumed the LDC is not collecting any indirect cost reimbursements. Mr. Moody said Mr. Peduto's assumption was correct. The only cost to grant applicants is a commitment fee, which is due to prior applicants' reversal of grant funding requests.

Mr. Peduto sought affirmation that the LDC will be permitted to acquire interest on the \$1.5 million checking account deposit. Mr. Moody said, the Town Board has taken such an approach with the ARPA funds it has received. Mr. Burto affirmed that interest-bearing account use is permitted.

Mr. L'Amoreaux inquired if earned interest could be used for marketing the LDC's ARPA programs. Discussion demonstrated LDC Board support of funding use for promotional purpose.

Mr. Strong inquired if the received ARPA funding could be split to maximize earnings. Mr. Moody said he would discuss the matter with M&T Bank following the initial checking account deposit of the grant funds.

Mr. Trichka asked Counselor Pope if there were any other aspects of the proposed Agreement for LDC Board review. Counselor Pope said the Town Attorney is nearing completion of his review. Mr. Moody sought the Board's timeframe preference for Agreement approval. He suggested the options of LDC Board approval at the October meeting or approval in form at the September 29th meeting (barring material changes in negotiations with the Town Board). The LDC Board preferred the second option.

Mr. Leighton asked about the status of need for competitive bidding. Mr. Moody said the LDC will encourage grant applicants to obtain several quotes for their projects, although multiple bids are unrequired. Also, although contractors may perform their own work the LDC can set its desired requirements.

After the completion of discussion, President Trichka requested a motion approving

in form, and barring any material changes in negotiations with the Town Board, the Draft 2021 American Rescue Plan Act (ARPA) funding agreement between the Town of Union and the Town of Union Local Development Corporation.

Motion: Jeff L'Amoreaux

2nd Motion: Jim Peduto

Motion: To approve as final the Draft 2021 American Rescue Plan Act (ARPA) funding agreement between the Town of Union and the Town of Union Local Development Corporation in form, barring any material changes in negotiations with the Town of Union Town Board.

Vote: Motion approved [6- Yes, 0 - No, 1 - Absent, 0 - Abstain]

Following the LDC Board's vote Counselor Pope received an e-mail message from the Town Attorney identifying only minor revisions to the adopted ARPA Agreement.

VI. NEW BUSINESS

VII. OTHER BUSINESS

- A. Mr. Moody updated the Board about the Village of Johnson City's Downtown Revitalization Initiative (DRI) pending October 13th presentation. Mr. Moody assisted the village with its DRI application and submittal to Empire State Development.
- B. Mr. Leighton inquired about existing performance guarantees for grant applicants. Mr. Moody said such guarantees are unrequired. While discussing potential recovery actions, Counselor Pope recommended using a note versus a type of contract. She said if a default occurs and the LDC needs to collect the money back, it would be easier to foreclose on a note than bring breach of performance action. She advised utilization of a business agreement and attaching a personal guarantee to the promissory note.
- C. Supervisor Materese inquired if the grant recipient agreements will include a deadline date for performance. Mr. Moody said funds will not be disbursed until projects are completed and agreements will have a deadline for project completion.

VIII. ADJOURNMENT

- A. President Trichka inquired if there were additional topics for the LDC Board members' consideration. Due to there being no other matters to come before the Board, he then requested a motion to adjourn the meeting.

Motion: Tim Strong

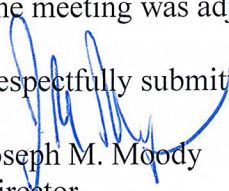
Motion 2nd: Jim Peduto

Motion: To adjourn the special LDC Board meeting of September 29, 2022.

Vote: Motion approved [6 - Yes, 0 - No, 1 - Absent, 0 - Abstain].

The meeting was adjourned at 8:30 a.m.

Respectfully submitted,


Joseph M. Moody
Director