

Buffalo Urban Development Corporation

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**Governance Committee Meeting
Monday, November 20, 2023
BUDC Offices, 95 Perry Street – 4th Floor
Vista Room
12:00 pm**

Agenda

1. Approval of Minutes of January 11, 2023 Meeting (*Action*) (*Enclosure*)
2. Northland Corridor Property Management & Leasing Services RFP – Conflict of Interest Disclosure Discussion (*Informational*) (*Enclosure*)
3. Adjournment (*Action*)

**Minutes of the Governance Committee Meeting
of
Buffalo Urban Development Corporation**

**95 Perry Street
Buffalo, New York
January 11, 2023
12:00 p.m.**

Call to Order:

Committee Members Present:

Dennis W. Eisenbeck
Thomas Halligan
Thomas A. Kucharski (Committee Chair)
Brendan R. Mehaffy
Dennis M. Penman
Karen Utz

Committee Members Absent:

Hon. Byron W. Brown

Officers Present:

Brandye Merriweather, President
Rebecca Gandour, Executive Vice President
Mollie M. Profic, Treasurer
Kevin J. Zanner, Secretary
Atiqa Abidi, Assistant Treasurer

Others Present: Alexis M. Florczak, Hurwitz Fine P.C.; Soma Hawramee, ECIDA Compliance Officer; Laurie Hendrix, ECIDA Administrative Coordinator; and Antonio Parker, BUDC Project Manager.

Roll Call: Mr. Penman called the meeting to order at 12:05 p.m. A quorum of the Committee was present. Mr. Mehaffy and Mr. Kucharski joined the meeting during the presentation of agenda item 2. Ms. Utz left the meeting prior to the presentation of agenda item 3.

- 1.0 Approval of Minutes of the June 23, 2022 Meeting** – The minutes of the June 23, 2022 meeting of the Governance Committee were presented. Mr. Eisenbeck made a motion to approve the minutes. The motion was seconded by Mr. Halligan and unanimously carried (4-0-0).
- 2.0 Draft BUDC Videoconferencing Procedures** – Ms. Merriweather presented her January 11, 2023 memorandum regarding video-conferencing procedures for BUDC meetings. Recent amendments to the NYS Open Meetings Law authorize remote meeting participation by Board members of public entities under specified circumstances. Ms. Merriweather noted the draft resolution and procedures are being presented to the Committee for informational purposes and asked for Committee input. A Committee discussion followed Ms. Merriweather's presentation. While there are some benefits to remote participation in promoting Board engagement and transparency, members of the Committee noted that the in-person quorum requirement under the new legislation is a limiting factor. The Committee requested that BUDC staff seek feedback from other public entities that have adopted videoconferencing procedures and report back at a future Committee meeting.

- 3.0 Draft BUDC Litigation Policy** – Ms. Merriweather presented her January 11, 2023 memorandum regarding a proposed litigation policy. Members of the Committee commented favorably regarding the intent of the policy, specifically the aspect of the policy that provides BUDC discretion in contracting with a business that is in active litigation against BUDC. Mr. Kucharski noted that there is pending state legislation regarding contractor registration requirements that may provide additional context for further modification and evaluation of the draft policy.
- 4.0 BUDC New Board Member Orientation** – Ms. Merriweather reported that a new Board member orientation is scheduled to take place January 23, 2023 for new Board members Nathan Marton, Commissioner of the Department of Public Works, and Scott Bylewski, Director of Erie County Real Property Tax Services.
- 5.0 PAAA Training Update** – Ms. Merriweather reported that BUDC staff is preparing for the March Governance Committee and Board of Directors meetings. Ms. Profic added that Soma Hawramee will oversee the annual Board self-evaluation surveys.
- 6.0 Adjournment** – There being no further business to come before the Governance Committee, upon motion made by Mr. Penman, seconded by Mr. Eisenbeck and unanimously carried, the January 11, 2023 meeting of the Governance Committee was adjourned at 12:42 p.m.

Respectfully submitted,

Kevin J. Zanner, Secretary

BUFFALO URBAN DEVELOPMENT CORPORATION CODE OF ETHICS

This Code of Ethics is adopted in accordance with Section 2824 of the Public Authorities Law and applies to all directors, officers and employees of the Buffalo Urban Development Corporation, its affiliated entities, and any other affiliated entities that may hereafter be established by BUDC (hereinafter collectively referred to as "BUDC").

This Code of Ethics shall serve as a guide for official conduct and is intended to enhance the ethical and professional performance of BUDC's directors, officers and employees and to preserve public confidence in BUDC's mission.

ARTICLE I Standards of Conduct

1. No director, officer or employee of BUDC should accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties.
2. No director, officer or employee of BUDC should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.
3. No director, officer or employee of BUDC should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.
4. No director, officer or employee of BUDC should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or for others.
5. No director, officer or employee of BUDC should engage in any transaction as representative or agent of BUDC with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties
6. No director, officer or employee of BUDC should by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.
7. Each director, officer and employee of BUDC should abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.
8. Each director, officer or employee of BUDC should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

ARTICLE II Conflicts of Interest

1. Purpose. The purpose of this Article is to protect BUDC when it is considering entering into a transaction or arrangement that might benefit the private interest of a Related Party, and to set forth procedures for handling potential or actual Conflicts of Interest and Related Party Transactions.

2. Definitions.

“Conflict of Interest.” A Conflict of Interest exists if an outside interest or activity influences (or reasonably appears to influence) the ability of an individual to exercise objectivity, impairs the individual’s ability or independence in fulfilling his or her duties to BUDC or reasonably tends to conflict with the proper discharge of his or her duties to BUDC.

“Financial Interest.” An individual has a Financial Interest if the individual has, directly or indirectly, through business, investment, or a Relative:

(i) An ownership or investment interest in any entity with which BUDC has a transaction or arrangement;

(ii) A compensation arrangement with BUDC or with any entity or individual with which BUDC has a transaction or arrangement; or

(iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which BUDC is negotiating a transaction or arrangement.

“Key Person” means any person, other than a director or officer, whether or not an employee of BUDC, who: (i) has responsibilities, or exercises powers or influence over BUDC as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages BUDC, or a segment of BUDC that represents a substantial portion of the activities, assets, income or expenses of BUDC; or (iii) alone or with others controls or determines a substantial portion of BUDC’s capital expenditures or operating budget.

“Related Party” means: (i) any director, officer or Key Person of BUDC or any affiliate of BUDC; (ii) any Relative of any director, officer or Key Person of BUDC or any affiliate of BUDC; or (iii) any entity in which an individual described in clauses (i) or (ii) of this paragraph has a thirty five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

“Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a Financial Interest and in which BUDC or any affiliate of BUDC is a participant, except that a transaction shall not be a Related Party Transaction if: (i) the transaction or the Related Party’s Financial Interest in the transaction is de minimis, or (ii) the transaction would not customarily be reviewed by the BUDC Board of Directors or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms.

“Relative” of an individual means his or her (i) spouse, domestic partner, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren.

3. Procedures for Disclosure and Resolution of Conflicts of Interest.

(a) Promptly upon learning of the existence of an actual or potential Conflict of Interest and/or Related Party Transaction, the individual (the "Interested Person") shall disclose the matter and his or her Financial Interest, if applicable. Disclosure shall be made orally at a meeting of the Board or any committee thereof, or by written or electronic communication to the BUDC Ethics Officer or BUDC legal counsel.

(i) If disclosure is made at a meeting of the Board, the Board shall: (A) determine whether a Conflict of Interest and/or Related Party Transaction exists; or (B) direct the matter to the BUDC Governance Committee for such determination.

(ii) If disclosure is made at a meeting of any BUDC committee or to the BUDC Ethics Officer or BUDC legal counsel, the matter will be referred to the Governance Committee for determination of whether a Conflict of Interest and/or Related Party Transaction exists.

(b) The Interested Person shall, at the request of the Board or the Governance Committee, as applicable, explain the circumstances of the actual or potential Conflict of Interest and/or Related Party Transaction. The Interested Person shall not, however, be present at, participate in, or attempt to influence the Board or Governance Committee deliberation or vote regarding whether a Conflict of Interest and/or Related Party Transaction exists.

(i) If the Board or the Governance Committee, as applicable, determines that the agreement, transaction or arrangement is a Related Party Transaction, then the Board or the Governance Committee shall follow the procedures for Related Party Transactions set forth in Section 4 of this Article.

(ii) If the Board or the Governance Committee, as applicable, determines that a Conflict of Interest exists, but the agreement, transaction or arrangement does not constitute a Related Party Transaction, then the Board or the Governance Committee may proceed with its consideration of the transaction, provided however, that the Interested Person shall abstain from deliberation and voting regarding the transaction.

(iii) If the Board or the Governance Committee, as applicable, determines that a Conflict of Interest does not exist, then the Board or the Governance Committee may proceed with its consideration of the transaction, and the Interested Person may participate in the deliberation and voting regarding the transaction.

(iv) The existence and resolution of the potential Conflict of Interest and/or Related Party Transaction shall be documented in the minutes of the meeting(s) at which the matter was discussed and voted upon.

4. Related Party Transactions.

(a) BUDC may enter into a Related Party Transaction only if the Board or the Governance Committee determines that the transaction is fair, reasonable and in BUDC's best interest at the time of such determination (such determination shall be

documented in the minutes of the meeting at which the Related Party Transaction was approved); provided, however, that prior to entering into the transaction, the Board or the Governance Committee shall consider alternatives to the extent available.

(b) Related Party Transactions shall be approved by not less than a majority vote of the Board or the Governance Committee, as applicable (not counting the Interested Person for purposes of voting or quorum). The Board or Governance Committee shall contemporaneously document in the meeting minutes the basis for approval, including its consideration of alternative transactions.

5. Annual Disclosure. Prior to the initial election of any director or officer, and annually thereafter, he or she shall complete, sign and submit to the Secretary a written statement identifying, to the best of his or her knowledge, any entity of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or as partner), or employee, and with which BUDC has a relationship, and any transaction in which he or she might have a conflicting interest. Compliance with the financial disclosure requirements of the City of Buffalo, if so applicable, shall be deemed compliance with the requirements of this Section.

ARTICLE III

Ethics Officer

The Executive Vice President of BUDC shall serve as the Ethics Officer. In the event of a vacancy, the BUDC Governance Committee Chair shall serve as the Ethics Officer until such time as the BUDC Board appoints a successor.

The Ethics Officer shall report to the Board. The Ethics Officer shall have the duties set forth below, and such other duties as may be prescribed by the Board:

1. Advise in confidence each director, officer or employee of BUDC who seeks guidance regarding ethical behavior.
2. Receive and investigate complaints about possible violations of this Code of Ethics.
3. Dismiss complaints found to be without substance.
4. Prepare investigative reports of his or her findings to be submitted for action by the Chair or the Board.

ARTICLE IV

Reporting Unethical Behavior; Whistleblower Policy

In accordance with Title 12 of Article 9 of the Public Authorities Law, BUDC has adopted a Whistleblower Policy to afford certain protections to individuals who, in good faith, report violations of the Code of Ethics or other instances of potential wrongdoing within BUDC. The Whistleblower Policy provides BUDC directors, officers, and employees with a confidential means to report credible allegations of misconduct, wrongdoing, or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation. Any director, officer or employee who seeks to report a violation of the Code of Ethics or other instances of potential wrongdoing should utilize the reporting procedures set forth in the Whistleblower Policy.

ARTICLE V
Implementation; Annual Review

This Code of Ethics shall be provided to all directors, officers and employees of BUDC upon commencement of employment or appointment and shall be reviewed annually by BUDC's Governance Committee.

Approved and Adopted: 6-2-2009

Reviewed by Governance Committee: 5-24-2010

Re-Adopted: 3-29-2011

Amended and Adopted: 3-27-2012

Re-adopted: 2-26-2013

Re-adopted: 2-25-2014

Amended and Adopted: 3-31-2015

Re-adopted: 3-29-2016

Amended and Adopted: 3-28-2017

Reviewed: 3-5-2018 (Governance Committee of the Board of Directors)

Reviewed: 3-13-2019 (Governance Committee of the Board of Directors)

Reviewed: 3-16-2020 (Governance Committee of the Board of Directors)

Reviewed: 3-4-2021 (Governance Committee of the Board of Directors)

Reviewed: 3-8-2022 (Governance Committee of the Board of Directors)

Re-Adopted: 3/29/2022

Reviewed: 3/14/2023 (Governance Committee of the Board of Directors)

Re-Adopted: 3/28/2023