

# FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY  
JULY 12, 2022  
8:00 A.M.

PLANNING DEPARTMENT CONFERENCE ROOM

## AGENDA

PRESENT:

\_\_\_ JOSEPH SEMIONE, CHAIRMAN  
\_\_\_ MIKE FITZGERALD, VICE CHAIRMAN  
\_\_\_ TODD RULISON, TREASURER  
\_\_\_ JOSEPH GILLIS, SECRETARY  
\_\_\_ DAVID D'AMORE, MEMBER  
\_\_\_ SUE COLLINS, MEMBER  
\_\_\_ DR. GREG TRUCKENMILLER, MEMBER  
\_\_\_ JAMES MRAZ, EXECUTIVE DIRECTOR  
\_\_\_ KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC  
\_\_\_ SCOTT HENZE, PLANNING DIRECTOR  
\_\_\_ WARREN GREENE, FULTON COUNTY CENTER FOR REGIONAL GROWTH  
\_\_\_ JACK WILSON, LIAISON, ECONOMIC DEVELOPMENT AND ENVIRONMENT COMMITTEE

### **I. MINUTES FROM JUNE 14, 2022 MEETING:**

MOTION :  
MADE BY :  
SECONDED :  
VOTE :

### **II. BUDGET REPORT:**

MOTION :  
MADE BY :  
SECONDED :  
VOTE :

### III. **COMMITTEE REPORTS:**

#### A. Nominating Committee:

- No report.

#### B. Audit Committee:

- Monthly Bank Reconciliation Report: Joe Semione

#### C. Governance Committee:

- No report.

#### D. Finance Committee:

- No report.

### IV. **FULTON COUNTY/FULTON COUNTY CENTER FOR REGIONAL GROWTH (FCCRG) REPORTS:**

1. Fulton County Report: Jack Wilson
2. FCCRG Report: (See attached.) Warren Greene

### V. **OLD BUSINESS:**

#### A. **Fulton County Site Inventory Report:**

##### 1. Status Report:

- FCCRG's Site Committee met on June 23, 2022 to review final report.

#### B. **Nexus Renewables Project:**

##### 1. Status Report:

- Nexus is reissuing an RFP to Engineering, Procurement and Construction (EPCs) companies for new pricing.

##### 2. Option Term:

- At June 14, 2022 meeting, IDA Board agreed to extend Option Term in Lease Agreement to December 31, 2022 contingent upon Nexus paying IDA's legal fee invoice sent to Nexus on March 2, 2022.
- Jim Mraz emailed Nexus regarding the Board decision.
- To date, no payment has been received.

IDA DISCUSSION:

### **C. Vireo Health Project:**

1. Sale of Vireo Health to Verano Holdings:
  - Both companies are seeking shareholder approval of the proposed sale.
  - Verano has made some changes to the interior layout of the 324,000 sf building currently under construction.
  
2. Status of Construction:
  - Construction ongoing.
  - Exterior walls complete.
  - Site work ongoing.
  - Work on interior should commence soon.
  
3. PILOT/Lease:
  - Working with Vireo Health to complete the Lease/PILOT Agreements for its 324,000 SF building.
  
4. Sales Tax Exemption:
  - a. Background:
    - 1) On July 13, 2021, the IDA Board adopted a Resolution regarding the Vireo Health Project that:
      - a) Appointed Vireo Health as the IDA's Project Agent.
      - b) Established the total project cost to be \$55,000,000.
      - c) Approved granting up to \$2,251,520 in sales tax exemptions.
      - d) Set July 31, 2022 as the date when the sales tax exemptions expire.
  
  - b. Requests from Vireo Health:
    - 1) Vireo Health has submitted a formal request to:
      - a) Increase the project cost from \$55,000,000 to \$77,465,438.
      - b) Increase the amount of sales tax exemptions they can take from \$2,251,520 to \$3,284,535.
      - c) Extend the deadline for taking sales tax exemptions from July 31, 2022 to May 31, 2023.
  
    - 2) Vireo Health is making these requests because:
      - a) Unanticipated costs incurred.
      - b) Significant escalation in cost of building materials.
      - c) Delays in completing project due to proposed acquisition by Verano Holdings and redesigning and re-permitting the project.
  
  - c. Deadline for Receiving Sales Tax Exemptions:
    - IDA Board has been asked to extend the deadline for which Vireo can use their sales tax exemptions from July 31, 2022 to May 31, 2023.

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

d. Public Hearing:

- Vireo's request for an increase in the total sales tax exemptions they can claim will result in providing more than \$100,000 in additional benefits to the project. As a result, a public hearing must be held.
- Public hearing will be held on Tuesday, July 26, 2022, at 10:00 a.m. in Perth Town Hall.
- See attached Resolution.

IDA DISCUSSION:

IDA ACTION:

MOTION: To approve a Resolution authorizing a public hearing with respect to the Vireo Health of New York's Perth Facility Expansion Project in connection with an increase of the authorized sales tax exemption.

MADE BY:

SECONDED:

VOTE:

**D. Hoffman Carwash Project:**

- Construction ongoing.

**E. Winstanley Enterprises Project:**

- Winstanley's Tryon Technology Park website is now up and running:  
[www.tryontechnologypark.com](http://www.tryontechnologypark.com).

**F. Fulton County Sewer District No. 4: Tryon:**

1. Back-up Generator Project:

- EDP has approved Koval's submittal on generator and automatic transfer switch.
- Both items have been ordered by Koval.

2. Sale of Land to Lott Holdings:

- Waiting for survey to close.

3. Survey:

- At March 8, 2022 meeting, IDA Board authorized Ferguson & Foss to complete survey work on three (3) potential parcels of land at Tryon.

- The three (3) parcels included:
    - Two (2) parcels to be deeded to Fulton County Sewer District No. 4.
    - One (1) parcel to be deeded to Lott Holdings.
  - Survey work ongoing.
4. 90-Day Notice to New York State:
- Kara Lais sent the 90-day letter to the State dated June 9, 2022.
  - 90-day period ends on September 8, 2022.
  - On June 28, 2022, the ABO sent an e-mail to the IDA asking for additional information on the personal property being transferred.
  - Jim Mraz provided Kara Lais with a summary of what was being transferred.
  - On June 29, 2022, Kara sent the requested information to the ABO in a revised 90-day notice.

## **VI. NEW BUSINESS:**

### **A. IDA Investments:**

#### 1. Background:

- General Municipal Law authorizes IDA's to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:
  - 1) Special time deposit accounts.
  - 2) Certificates of deposit.
  - 3) Obligations of the United States of America
  - 4) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America.
  - 5) Obligations of the State of New York.
  - 6) Obligations issued pursuant to Local Finance Law '24.00 or '25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than the Agency.
  - 7) Obligations of public authorities, public housing authorities, urban renewal agencies and industrial development agencies where the general State statutes governing such entities or whose specific enabling legislation authorizes such investments.
  - 8) Certificates of Participation (COPs) issued pursuant to GML '109-b.
  - 9) Obligations of this local government, but only with any moneys in a reserve fund established pursuant to GML.
- At present, the IDA invests moneys not immediately needed in a money market account earning 0.01%.
- CD's are paying 0.15%

#### 2. Treasury Bills:

- Treasury or T-Bills are short-term government securities with maturities ranging from a few days to 52 weeks.
- West & Company has advised that the IDA can invest funds in T-Bills.
- Rates change daily. Latest rates are:
 

3 months	:	1.75%
6 months	:	2.50%

9 months	:	2.64%
12 months	:	2.88%

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

**B. Labor Market Analysis Report:**

1. Background:

- In 2014, Fulton County hired DCG Corplan to prepare a Targeted Industry Analysis for the Tryon Technology Park.
- A component of that Analysis was the preparation of a Labor Market Analysis Report.
- The Report contained key information about the labor market that Tryon is located in.
- The Report was completed in March, 2015.
- The information in this Report is what companies look for when evaluating shovel-ready sites.

2. Proposed Update to Labor Market Analysis Report:

- The 2015 Labor Market Analysis Report is now 7 years old. As such, the information in the report is outdated.
- The Pandemic has also had impacts on the labor market.
- Winstanley Enterprises was contacted to see if they would be interested in having an updated Report prepared to assist in their marketing of Tryon. Winstanley offered its support for preparing an updated report.
- The FCCRG was also contacted to see if they would like to see an updated Report prepared. The FCCRG agreed and offered input on the scope of work.
- DCG Corplan was contacted and asked for a quote to prepare an updated Labor Market Analysis Report.
- DCG Corplan's Quote: \$18,500
- Winstanley has offered to pay for 75% or \$13,875 of this cost. The IDA's share would be \$4,625. IDA would pay cost upfront and then seek reimbursement from Winstanley.
- DCG Corplan requested an upfront payment of 1/3 or \$6,105 with the balance due once the final report was prepared.

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

### C. Board Training:

#### 1. Sales Tax Exemptions:

##### a. Background:

- IDA's are authorized to provide sales tax exemptions to eligible projects.
- Sales tax is currently 8%: 4% is State sales tax and 4% is Fulton County's sales tax.

##### b. Appointing an Agent: Form ST-60:

- As a government entity, an IDA is exempt from paying sales taxes on its purchases. However, IDA's typically do not make purchases for an industrial development project. An IDA typically appoints as its Agent for this purpose a:
  - business or developer,
  - contractor, or
  - subcontractor
- Purchases made by a properly appointed Agent within the authority granted to it by the IDA are deemed to be purchases made by the IDA and are exempt from sales tax.
- An IDA must file with the Tax Department **Form ST-60, IDA Appointment of Project Operator or Agent For Sales Tax Purposes**, each time it appoints an Agent to receive sales tax exemption benefits. (See attached.)
- The IDA must file Form ST-60 within 30 days of appointing an agent.
- If the IDA authorizes an Agent to appoint other persons as Agents of the IDA, the Agent making the appointment must inform the IDA that it has appointed someone as Agent and the IDA must file Form ST-60 within 30 days of the date of the new Agent's appointment.
- In addition, an IDA must include the terms and conditions described in General Municipal Law §875(3) in each resolution or project document that:
  - establishes a project, or
  - appoints an Agent
- Each Agent appointed by an IDA must agree to those terms and conditions prior to receiving any sales tax exemption benefits.

##### c. Amending or Revoking an Agent's Appointment:

- If an IDA amends, revokes or cancels its appointment of an Agent, or if an Agent's appointment becomes invalid for any reason, the IDA must, within 30 days, file a statement with the Tax Department at the address listed on Form

ST-60 that identifies the Agent and explains that the Agent's appointment has been:

- amended, revoked, canceled, or is otherwise no longer valid; and
- the effective date of the change

- The IDA should attach a copy of the original Form ST-60 filed for the Agent's appointment to the letter.

d. Recordkeeping and Reporting Requirements:

- An IDA must keep records of the sales tax exemption benefits it provides.
- It is also required to report the sales tax exemption benefits it provides to an Agent by filing Form ST-60 with the Tax Department within 30 days of conferring the exemption benefit.
- If the IDA fails to report the sales tax exemption benefits or make records available to the Department upon request, the IDA shall be prohibited from providing sales tax benefits until the IDA comes into compliance with all such requirements.

e. Annual Compliance Report: Form ST-62:

- An IDA must file Form ST-62, IDA Annual Compliance Report – State Sales Tax Recapture, within 90 days of the end of the IDA's fiscal year. (See attached.) The report must include details of:
  - the terms and conditions of each of its projects;
  - the IDA's activities and efforts to recapture any State sales tax exemption benefits due; and
  - any other information required by either the:
    - o Commissioner of Taxation and Finance, or
    - o Commissioner of Economic Development.
- The IDA must file the ST-62 with the:
  - Commissioner of Taxation and Finance,
  - Director of the Budget,
  - Commissioner of Economic Development,
  - State Comptroller, and
  - Board of Supervisors
- The IDA annually files Form ST-62 in February.

f. Recapture Requirements: Form ST-65:

- An IDA must recapture any State sales tax exemption benefits that were claimed by an Agent whenever the benefits were:
  - not entitled or authorized to be taken;
  - in excess of the amounts authorized (see ST-340);
  - for unauthorized property or services; or
  - for property or services not used according to the terms of the project contract with the IDA.
- An IDA must remit recaptured sales tax exemption benefits to the Tax Department using Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits. (See attached.) The IDA must file Form ST-65 within 30 days from when the IDA comes into possession of the recaptured funds.

- An Agent must cooperate with the IDA in its effort to recapture State sales tax exemption benefits. Where an Agent fails to cooperate, IDAs have an obligation to commence an action or proceeding against an Agent to recover unauthorized sales tax if necessary.
- Any failure by an Agent to pay over improper sales tax exemption benefits to an IDA could also result in an assessment to the Agent for the State sales tax due, plus applicable penalties and interest. The IDA must cooperate with the Department, for example, by sharing the relevant documents and information in the event that the Department elects to issue an assessment.

g. Agent Activities:

1) Purchases: **Form ST-123:**

- Once appointed, Agents can make purchases to acquire, built, or equip a project exempt from sales tax.
- Exempt purchases are only allowable to the extent provided by the terms of the Agent's IDA project contract.
- To make qualifying purchases exempt from sales tax, Agents use **Form ST-123: IDA Agent or Project Operator Exempt Purchase Certificate**. (See attached.)

2) Reporting Requirements: **Form ST-340:**

- After the end of each calendar year, each Agent appointed directly by an IDA must file with the Tax Department **Form ST-340, Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)**. (See attached.)
- Form ST-340 is used to report the total value of all State and local sales and use taxes exemptions claimed during a calendar year under the terms of the project contract, including the value of the exemptions claimed by:
  - the agent itself; and
  - the agent's sub-agents, contractors, subcontractors, consultants and others, whether or not appointed as agents of the IDA.
- Form ST-340 is due on the last day of February in the following calendar year.
- Agents must file a copy of the ST-340 with the IDA.
- IDA Board must annually review the ST-340 forms to ensure that the Agent is not taking more sales tax exemptions than were authorized by the IDA.

h. Summary:

1) IDA Responsibilities with Sales Tax Exemptions:

- Adopt resolution establishing a project and appointing an Agent.
- File ST-60 when an Agent is appointed.
- File ST-62 every February.
- File ST-65 if recapture of sales taxes if needed.
- Review ST-340 forms.

- 2) Agent Responsibilities with Sales Tax Exemptions:
  - Submit Project Application requesting sales tax exemptions.
  - Once appointed as an Agent, start making purchases using ST-123.
  - File ST-340 with State and IDA.
  - Repay sales tax exemptions if IDA seeks to recapture.
  - Keep records.

**VII. OTHER BUSINESS:**

**A. Executive Session:**

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
  - i. matters which will imperil the public safety if disclosed;
  - ii. any matter which may disclose the identity of a law enforcement agent or informer;
  - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
  - iv. discussions regarding proposed, pending or current litigation;
  - v. collective negotiations pursuant to article fourteen of the civil service law;
  - vi. 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;
  - vii. the preparation, grading or administration of examinations;
  - viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.**

MOTION: To go into Executive Session to discuss the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

MADE BY :  
 SECOND :  
 VOTE :

TIME :

MOTION : To go out of Executive Session.

MADE BY :

SECOND :

VOTE :

TIME :

**VIII. NEXT MEETING:**

Tuesday  
August 9, 2022  
8:00 a.m.

**IX. CLOSE MEETING:**

MOTION :

MADE BY :

SECONDED :

VOTE :

TIME :