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Robert T. Armistead, Chairman  
Board of Directors  
Orange County Industrial Development Agency  
104 Crotty Lane, Suite 100  
New Windsor, New York 12553

Report Number: S9-15-66

Dear Chairman Armistead and Members of the Board of Directors:

A top priority of the Office of the State Comptroller is to help local officials manage their resources efficiently and effectively and, by so doing, provide accountability for public dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments and certain other public entities statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits can also identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six Industrial Development Agencies (IDAs) throughout New York State. The objective of our audit was to determine whether the IDA Board of Directors provides effective oversight of the IDA's projects. We included the Orange County IDA (Agency) in this audit. Within the scope of this audit, we examined the Agency policies and procedures and reviewed records and project files for the audit period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to May 17, 2006. This audit was conducted pursuant to Article X, Section 5 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This draft report of examination letter contains our findings and recommendations specific to the Agency. We discussed the findings and recommendations with Agency officials and considered their comments, which appear in Appendix B, in preparing this report. Agency officials generally agreed with our recommendations and indicated they plan to initiate corrective action. At the completion of our audit of the six IDAs, we prepared a global report that summarizes the significant issues we identified at the IDAs audited.

## Summary of Findings

We found the Board of Directors (Board) could do more to provide effective oversight of the Agency's operations. While the Board uses a standard project application, it has not developed project selection criteria and does not require applicant information to be verified or confirmed before it approves a project for financial assistance. Although the use of project selection criteria was not required at the time of our audit, legislation that became effective June 2016 requires IDAs to develop and use project selection criteria for new projects. We reviewed the project selection process for five projects and found that Agency officials could not provide criteria that was used to evaluate these projects. Board members use their collective personal knowledge to evaluate the applicant's cost estimates and job creation goals. These projects have collectively received tax abatements of \$4 million and tax exemptions of \$5.2 million.

All projects that have been presented to the Board during our audit period were approved, including three projects that have conflicting job creation goals and one project classifying the construction of a separate showroom for a car dealership to sell upscale cars as a tourist destination. Without criteria for evaluating project applications, there is limited assurance that Agency benefits are awarded through a fair and consistent process.

Historically, the Board did not monitor approved projects and had not developed or implemented monitoring policies and procedures for the Agency to follow. However, in January 2017 the Board adopted a policy to monitor employment during project construction. While not required during our audit period, monitoring of projects allows Agency officials to identify and address performance shortfalls and ensure the community is receiving the expected benefits from the financial assistance provided to projects. Project owners are required to annually provide updated status reports, but not all do, and the Agency does not take any effective enforcement actions. Four of the 37 project owners with active projects (11 percent) did not provide status reports in 2014 and three of these project owners have not provided reports since 2011, yet the projects continue to receive benefits. For example, the Orange County Choppers project has received tax abatements and exemptions of \$1.9 million, but last reported updated project information in 2011. As of the 2016 reporting year, the annual status reports are required by the Agency and Agency officials explained that they will terminate projects for lack of submission. As a result, three of the four non-responders above have now submitted an annual status report.

In addition, the information submitted by project owners was not verified. Although Agency officials were not required by statute to verify submitted project information, Agency officials should ensure that the submitted information reflects the actual results of project activity. The Board did not require project owners to provide documentation to support the number of jobs or salaries the projects were expected to create or retain. However, as of the 2016 reporting year, the Board requires project owners to submit a New York State 45 (NYS-45) wage report to support the number of reported employees. We reviewed 23 approved projects and found eight project owners reported they created and retained the jobs indicated in their project agreements, but there was no documentation to support these assertions. The remaining 15 project owners reported that they did not meet their job goals. Of the 3,660 jobs expected to be created or retained, 2,009 (55 percent) were reported as created or retained. Project owners electing not to provide project information and project owners that did not deliver the jobs they claimed the project would generate or retain continue to receive financial assistance. No effective follow-up actions had been taken by Agency officials to obtain the required information.

While the Board adopted a Uniform Tax Exemption Policy (UTEP), as required, which includes provisions for the recapture or “claw-back” of financial assistance when project goals are not met, the Board has not established procedures for the Agency to follow to implement a claw-back. In addition, the UTEP does not clearly state when financial assistance should be recovered or terminated. Agency officials said the policy was intended to be vague so they have flexibility in determining when the provision should be used. During our audit period, the Board had never implemented a “claw-back” or terminated a project for poor performance. However, on May 16, 2017 it terminated a project for several events of default from the project agreement, including improper leasing of property without IDA prior approval and late payment of real estate taxes.

We also found the Board has not developed adequate policies and procedures to obtain and report reliable project information from project owners. As a result, statutory information the Agency must provide in an annual report to the New York State Authorities Budget Office and the Office of the State Comptroller is not always accurate.

The Agency has also acted outside of its statutory authority by administering grant funds on behalf of the Millennium Pipeline Company (Company). The Company received a PILOT abatement from the Agency and agreed to provide \$1,080,000 over a 10-year period to the Agency for economic development in the County. The Board agreed to accept and administer the grant and used the funds to make a \$108,000 short-term loan to a business. These actions are not within the Agency’s statutory authority. The Board updated the Agency by-laws on July 6, 2016. The revised by-laws no longer allow the Agency to administer grants.

## **Background and Methodology**

An IDA is an independent public benefit corporation whose purpose is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation and certain other facilities. The overall goal of an IDA is to advance the job opportunities health, general prosperity and economic welfare of the people of the State.

IDAs are authorized to provide financial assistance for certain type of projects. Financial assistance includes the issuance of bonds by the IDA to finance construction of a project and straight-lease transactions. Since the property and activities of IDAs are tax exempt, the IDA may pass the benefits of certain tax exemptions (e.g., real property, sales and mortgage recording taxes) to the private entities that undertake the projects. The loss of revenue associated with these tax exemptions can be offset with an agreement for payments in lieu of taxes (PILOTs), under which the private entity agrees to pay all or a portion of the taxes that would otherwise have been imposed had the project not been an IDA project. The role of the IDA is not just to act as the conduit for financial assistance, but also to monitor the success, progress and cost-benefit of projects, including whether projects are honoring their commitments and agreements.

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.<sup>1</sup> For new projects, the law requires standard application forms for requests for financial assistance, uniform criteria for the evaluation and selection for each category of projects for which financial assistance is provided, uniform project

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<sup>1</sup> Chapter 563 of the Laws of 2015.

agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, discontinue or modify financial assistance or tax exemptions.

The Agency, created in 1972, is governed by the Board composed of seven members who are appointed by the County Legislature. The Board is responsible for the general management and control of the Agency. A Board member's role and responsibilities include executing direct oversight of the Agency's officers; understanding, reviewing and monitoring financial controls and operating decisions; adopting organizational policies; and performing their duties "in good faith and with the degree of diligence, care and skill which an ordinary prudent person in a like position would use under similar circumstances."<sup>2</sup> An Executive Director and Associate Executive Director (officers) manage the Agency's day-to-day operations.

For calendar year 2014, the Agency's annual report included 41 active projects including six active bonds, 31 active PILOT agreements and four tax exemptions. The Agency had approximately \$2.5 million in expenditures in 2014, funded primarily with fees charged for processing project applications and for administering benefits granted to approved projects.

To complete our objective, we interviewed the Board members and Agency officials and we examined Agency records and project files for the period January 1, 2014 through May 31, 2015. For selected projects, we expanded the audit period back to May 17, 2006.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

## **Project Approval**

The Board is responsible for reviewing the merits of each project and then making project approval or denial decisions. Because tax benefits granted by the Board to approved projects result in a cost to the community, it is important for the Board to evaluate the merit of each project and the benefits the community should realize from the Agency's investment. Promoting the use of a standard application when project owners request financial assistance from the Agency can help ensure consistency in the evaluation of projects. Although not required at the time of our audit, the Board should adopt uniform criteria for the evaluation and selection of each category of projects (e.g., manufacturing, wholesale, distribution, retail, tourism and housing) for which financial assistance would be provided. Such practices should also include documenting the rationale for approving financial assistance and verifying information provided in the application.

As a matter of good business practice, a standard application should include, among other things:

- A description of the proposed project, including the amount and type of financial assistance requested and an estimate of the capital costs of the project;

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<sup>2</sup> New York State Public Authorities Law, Section 2824

- The number of and estimates of salary and fringe benefits for full-time equivalent jobs that would be retained or created if the financial assistance is provided and the projected timeframes for creation of new jobs;
- A statement acknowledging the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemptions claimed as a result of the project;
- A statement that the information is true under penalty of perjury;
- A statement that Agency assistance is necessary to undertake the project; and
- A statement that the project owner is in substantial compliance with all laws, rules and regulations.

Good business practices also promote that an IDA's uniform evaluation criteria should, at a minimum, require that prior to approval of any financial assistance, the IDA should verify and evaluate all material information provided with the application. It should also undertake a written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector investment generated or likely to be generated by the proposed project, the likelihood of accomplishing the proposed project in a timely manner, and the extent to which the proposed project will provide additional revenue for municipalities and school districts.

We found that the Board uses a standard project application. However, although not required during our audit period, the Board did not develop uniform project selection criteria and it does not document its rationale for awarding financial assistance. We also found that, although the application includes a description of the project, cost and performance estimates, and other pertinent information, the Board does not require information such as job creation and retention estimates to be verified or confirmed before the Board votes on awarding financial assistance to the applicant. Board members use their collective personal knowledge to evaluate the applicant's cost estimates and job creation goals.

In addition, the standard application did not include statements that information is accurate under penalty of perjury or that false information can lead to termination of financial assistance, IDA assistance is necessary to complete the project and that the applicant is compliant with all laws and regulations. The standard application used by the Agency also does not require the submission of information on fringe benefits estimates for jobs created or retained or the timeframes for any jobs to be created. While this information was not required to be part of a project agreement at the time of our audit, it is required under the new legislation for new projects. As a result, on May 12, 2016 the Board adopted a revised standard application which contains the best practices detailed above.

We judgmentally selected five projects with project costs totaling about \$116 million to review the project selection process (Figure 1).

<b>Figure 1: Summary of Five Projects Reviewed</b>		
<b>Project Approval Date</b>	<b>Description</b>	<b>Project Cost</b>
Airport Properties II 9/20/2006	Construction of a 97,743 square foot extended stay hotel	\$15,179,083
CRH Realty II 2/20/2008	Purchase of 11.95 acres of land and site plan approval for a four-story, 127,000 square foot medical facility, including associated parking and improvements	\$2,720,000
Leentjes Amusements 5/17/2006	Construction of a 45,000 square foot building to house a roller-skating rink, laser tag area, 200-seat restaurant, rock climbing area, indoor arcade and go-kart slick tracks	\$4,122,000
Millennium Pipeline Company 7/19/2006	Replacement of an existing 24-inch diameter natural gas line that runs for 32 miles through Orange County with a 30-inch diameter gas line	\$80,700,000
Orange County Choppers 12/20/2006	Construction of headquarters building and on-site restaurant	\$13,400,000

Agency officials could not provide criteria that was used to evaluate the five projects, and the Board did not document how it arrived at its decision to approve these projects. Board minutes reflected only that the projects were approved to receive assistance. Agency officials were also not able to provide the actual value of the tax exemptions they authorized or future tax exemptions the projects will receive. However, we were able to calculate that four projects received almost \$4 million in property tax abatements. Officials were unable to determine the property tax abatements one project received and will receive in the future because the tax abatements are based on a consumption rate. The Agency does not have sufficient information to calculate the abatements. Figure 4 in Appendix A provides additional details on the tax exemptions received by these projects.

In addition to the lack of criteria for evaluating projects, we also found two of the five projects (CRH Realty II and Orange County Choppers) were sold to third parties while receiving IDA benefits. The project owners met with the Board to obtain approval for the sale of the buildings and to ask for the continuance of the PILOT agreements. The CRH Realty II project owner indicated they needed an immediate decision. The project owners told Board members that, upon the transfer of their respective properties, they would enter into a triple-net-lease agreement with the new owners. Generally, under this type of lease agreement, the person leasing the property is responsible for the property taxes. For CRH Realty II, the same night the requests were made, the Board approved the property sales and kept the PILOT agreements, in effect, without confirming the lease agreements were in place or whether the project owners created and retained the jobs detailed in the project agreements. We could not confirm the lease agreements were entered into because the Agency could not provide them. The two projects included:

- CRH Realty II: This project was approved in February 2008 to receive property tax exemptions. The Board approved the sale of the facility and continuance of the PILOT agreement in August 2013. The CRH Realty lessee paid the 2014 property taxes. Although the project agreement indicated 350 new jobs would be created and 725 jobs would be retained, as of December 31, 2014, the project had 416 jobs, 659 fewer jobs than the project owner stated would be created and retained. The project has already received \$1.6 million

in property tax abatements, and it will likely receive another \$746,000 in property tax abatements in future years.

- **Orange County Choppers:** This project was approved in December 2006 to receive property tax exemptions. The Board approved the sale of the facility and continuance of the PILOT agreement in 2011. However, the 2014 property taxes were paid by the mortgage holder and not Orange County Choppers. The project agreement indicated 60 new jobs would be created. As of December 31, 2011 (the last date the project owner reported jobs data), the project had 46 jobs, 14 or 23 percent fewer jobs than the project owner stated would be created. Although the project has received about \$1.4 million in property tax abatements, it will likely receive another \$356,000 in property tax abatements in future years.

Although not required during our audit period, the Board has not developed criteria to use in evaluating projects that apply for financial assistance and does not verify the information provided on applications. All 14 projects that have been presented to the Board during our audit period were approved, including a project to build a showroom for a car dealership's Cadillac line that the Agency classified as a tourist destination<sup>3</sup> and three projects that had conflicting job goals in their project applications. Without documented and specific criteria for evaluating projects, residents do not have assurance that Agency benefits are awarded through a fair and consistent process.

## **Project Monitoring**

A significant Board responsibility is to monitor and evaluate the performance of projects receiving financial assistance to determine whether they are meeting the goals included in their applications, such as the number of jobs to be created. The Board should evaluate each project's performance to ensure the project fulfills the commitments made to the residents in exchange for the financial assistance awarded. Although not required at the time of our audit, a uniform project agreement between the IDA and the project owners receiving financial assistance should be in place and used to monitor and evaluate projects' performance. In addition, Agency officials should also use each project's required annual status report to assist in monitoring project performance. Without effective monitoring, the community may not receive the expected benefits from the financial assistance provided.

The Board uses a uniform project agreement, including a UTEP, but does not actively monitor projects and had not developed or implemented monitoring policies and procedures which would be useful for assessing results. For example, the Board has not established an adequate process to obtain or verify employment numbers reported by project owners. Board minutes do not contain discussions pertaining to project performance or job performance goals. While the Agency collects annual data from project owners, the Board has never requested, nor has it been provided with, project status reports detailing the number of jobs each project created or retained compared to each project's job goals. The Board adopted a labor policy in 2016 that, starting in January 2017, requires the confirmation of employees during project construction and also requires the submission of NYS-45 reports to verify annual employment.

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<sup>3</sup> Although the Board approved this project, the project owner later withdrew his application for financial assistance.

Project Agreements – In order to properly monitor projects, IDAs should adopt and use uniform project agreements. Although not required at the time of our audit, a uniform project agreement should, at a minimum, include:

- The Agency purpose to be achieved by the project;
- A description of the project and the financial assistance to be provided;
- A requirement for an annual certification by the project owner, occupant or operator of full-time equivalent jobs created and retained as a result of the financial assistance;
- The dates when PILOT payments are to be made and estimates of the amounts or formulas by which these amounts are calculated;
- A provision for the suspension or discontinuance of financial assistance, or for the modification of any PILOT agreement to require increased payments, for certain defined performance shortfalls;
- A provision for the return of all or a part of the financial assistance provided for in accordance with Agency policy; and
- A provision that the businesses certify, under penalty of perjury, that it is in substantial compliance with all laws, rules and regulations.

The Agency's project agreement contains most of the best practice components. However, for our sample of five projects, we found the project agreements were missing components that could help the Agency more effectively monitor the projects. For example, the agreements do not state the Agency purpose to be achieved, require the annual certification of jobs created and retained, require updated information if salaries or benefits for these jobs change, or state under penalty of perjury that the project owner is compliant with all laws and regulations. The Agency began using an updated uniform project agreement in May 2016. It contains all of the best practice components detailed above.

Job Performance – The Board did not require project owners to provide documentation to support the number of jobs or salaries associated with the jobs they purportedly created or retained. While this documentation was not required during our audit, it would provide Agency officials with information to assess whether each project's stated goals are being met. The Board and Agency officials relied on the project owner's integrity to ensure the number of jobs created and retained are accurately reported. As a result, the Agency did not know whether promised jobs were actually created or retained or whether the employees were paid at rates stated in the project application. Starting in the 2016 reporting year, the Board required NYS-45 wage reports to support the number of reported jobs and salaries.

We reviewed 23 approved projects<sup>4</sup> to determine whether they created and retained the number of jobs specified in their project agreements. We found eight project owners agreed to create and/or retain 939 jobs and they reported they created and retained 1,337 jobs. However, the remaining 15 project owners reported they did not (Figure 2). For example, these projects should have created and retained a total of 3,660 jobs. The 2014 annual reports for the projects indicate that 2,009 jobs were created or retained, a shortfall of 1,651 (45 percent).

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<sup>4</sup> The Agency's 2014 annual report included 41 approved projects. Of these, we reviewed 23 projects that should have created or retained jobs, as they were not in the construction phase, reported twice, inactive, had no job goals or had conflicting job goals.

<b>Figure 2: Projects Falling Short of Job Creation and Retention Goals</b>			
<b>Project<sup>a</sup> Approval Date</b>	<b>Job Creation and Retention Figures</b>		<b>Variance</b>
	<b>Project Agreement</b>	<b>2014 Annual Report</b>	
Airport Properties II 9/20/2006	49	24	(25)
CRH Realty II, LLC 2/20/2008	1,075	416	(659)
CRH Realty VI 6/20/2012	500	287	(213)
Continental Organics 7/21/2010	116	35	(81)
Crystal Run Village 5/17/2006	63	0	(63)
Fairbanks MFG, LLC 6/20/2013	203	173	(30)
First Columbia – 4LA, LLC 8/20/2008	80	41	(39)
IBM 11/28/2007	568	379	(189)
Glen Arden 1/1/1994	238	88	(150)
Mediacom Realty, LLC 7/20/2011	400	352	(48)
Orange County Chamber of Commerce 7/19/2006	24	6	(18)
Advanced Coating Technologies 1/15/2015	127	119	(8)
Satin Fine Foods 10/20/2010	108	71	(37)
Slate Hill Associates 11/28/2007	25	0	(25)
Wallkill Realty Partners, LLC 4/20/2011	84	18	(66)
<b>Totals</b>	<b>3,660</b>	<b>2,009</b>	<b>1,651</b>
<sup>a</sup> Four project owners (NJTT, Orange County Choppers, The Hub 1, LLC and Shamrock Creek, LLC) did not provide job creation/retention data to the Agency in 2014, and are, therefore, not included.			

Status Reports – Although project owners are required to annually provide an updated status report, including reporting the number of jobs created and retained, four of the 37<sup>5</sup> project owners who had active projects did not provide a 2014 annual report. Three of these project owners have failed to provide an annual report for several years, as shown in Figure 3. During our audit period, additional letters were sent to project owners requesting the information, but the Board did not take any enforcement actions when project owners ignore the Agency’s requests for updated

<sup>5</sup> The Agency’s 2014 annual report includes 41 approved projects. Three projects are not active and one project was reported twice, leaving 37 active, approved projects.

project information. However, for the 2016 annual reporting period, three of the four projects (Orange County Choppers, The Hub 1, LLC and Shamrock Creek, LLC) provided a status report. Officials continue to try to obtain an updated project status report from North Jersey Trailer and Truck Service, Inc.

**Figure 3: Years Annual Reports Were Not Filed**

Project	Annual Report - Not Filed		
	2012	2013	2014
Orange County Choppers	X	X	X
The Hub 1, LLC			X
Shamrock Creek, LLC	X	X	X
North Jersey Trailer and Truck Service, Inc. (NJTT)	X	X	X

At the cost to residents, each of these project owners continued to benefit from financial assistance without any accountability to their job creation and retention commitments. For example:

- Orange County Choppers last reported updated project information in 2011. Although the company has not provided updated project information in several years and the project owner last reported creating 23 percent fewer jobs than agreed at project approval in 2006, the Board did not claw-back any benefits. This project’s PILOT agreement reduced property taxes by \$1,388,037, of which \$704,496 is for tax years 2012 through 2015. However, the project owner recently provided the Agency with a 2016 project report the reports 40 jobs have been created/retained.
- The Shamrock Creek project was approved in April 2011 and its project application stated it would create 40 jobs and retain 15 jobs. This project did not create or retain any jobs. However, the project’s estimated property tax abatements of \$315,000 remain in place. In August 2011, Hurricane Irene severely damaged Shamrock Creek’s property, caused a partial bridge collapse and a nearly complete collapse of the access road. Bridge and road repairs were completed in the summer of 2015. However, the property is still not cleaned up. The project owner has not responded to the Agency’s request for updated project information. Given the severe property damage that significantly impacts the project’s viability, the Board had not taken sufficient action to obtain information needed to determine its best course of action.
- The application for the NJTT project, approved in August 2008, stated the project would create 18 jobs and retain four jobs. To date, the project owners have not reported any job creation or retention. However, the PILOT agreement continues to reduce their property taxes by an estimated total of \$150,000.

Although the Board adopted a UTEP which includes provisions for the recapture or claw-back of financial assistance when project goals are not met, the Board has not established UTEP implementation procedures and has never recaptured financial assistance or terminated a project for poor performance. However, on May 16, 2017 the Agency terminated a project because the project owner failed to comply with the project agreement, including improperly leasing the property and making late real estate tax payments. In addition, the UTEP does not clearly state when financial assistance should be recovered or terminated. Agency officials said the policy was

intended to be vague so they have flexibility in determining when the provisions should be used. Agency officials also said the variances between expected and actual jobs created and retained can likely be attributed to project owners overstating job creation and retention figures in their applications or running businesses more efficiently.

By not adequately monitoring ongoing projects or verifying reported employment data, the Board does not know whether project owners are fulfilling their job goal commitments. As a result, there is an increased risk that projects received tax benefits and Agency financing without fulfilling their commitments to the community.

## **Annual Reporting**

IDAs are required to maintain specific information on all projects for which they approve financial assistance. While the project owner is responsible for providing project information to the IDA, the IDA is responsible for collecting and reporting the data. IDAs use this information to submit an annual report of its operations and financial activity, including information on projects which receive financial assistance, to the Authorities Budget Office and the Office of the State Comptroller. Before the Agency submits its annual report, the Board should review the information for accuracy. The Agency's chief financial officer (CFO) must then certify that it is complete and accurate. Good business practices require the Board to establish policies and procedures for obtaining and reporting reliable project information.

To develop the annual report, the Agency sends a letter to each project owner requesting updated project information, including current employment numbers. To determine whether the Agency correctly reported project information, we compared the 2014 annual report, which included 41 projects, to project documentation maintained by Agency officials. We found numerous errors with the information included in the annual report. For example:

- Three project applications contained inconsistent job creation and retention numbers, so we could not determine the employment goals for these projects.
- Three projects were reported as active; however, the projects ended years ago and should have been removed from the report.
- One project was reported twice in the annual report.
- Ten projects had incorrect job creation and retention numbers. For example, the Agency has consistently reported that the Millennium Pipeline project would create 350 new jobs. However, the project application indicated 27 jobs would be created, but it did not state that these jobs would be in Orange County. According to Agency officials, the project was never expected to create jobs.
- Two projects were sold and were improperly reported. When ownership is transferred, the Agency's annual report should reflect a new project.

An Agency staff member is responsible for collecting and tracking the project information received from project owners and reviewing the project data, while the CFO is responsible for reviewing

only the Agency's financial information. Although the CFO certified the annual report, the Agency's review did not identify the erroneous project information. We believe the errors were caused, in part, because the Board has not established adequate policies and procedures to obtain and report reliable project information. The implementation of adequate policies and procedures and a review of the information by the Board prior to the CFO's certification of the annual report might have identified these errors and helped ensure accurate project information was publicly reported. Since the audit field work, Agency officials removed the three inactive projects and the project reported twice from the 2015 annual report.

## Grants

New York State Public Authorities Law grants local authorities only those powers explicitly granted or necessarily implied by statute. Accordingly, local authorities may engage in only those activities and exercise those powers which are expressly authorized in law or which are incidental to performing their statutory purposes. A local authority, unless otherwise empowered under the law, may not grant or loan its monies to public or private corporations, private businesses or interests, civic associations, charitable groups, educational institutions, not-for-profit corporations, or any other social religious, fraternal or cultural organization. An IDA may not, under any circumstances, award grants or make loans of its own monies<sup>6</sup> and cannot administer a grant on behalf of another company.

During our audit period, the Agency's bylaws, however, defined the Agency's mission as "...the Agency shall: (1) seek, outreach and process applications for financial assistance...; (2) consider and make grants to qualified applicants for eligible economic development projects;..." Since 2009, the Agency has administered grant funds on behalf of the Millennium Pipeline Company (Company), which is not within the Agency's statutory authority.

According to the Agency's Board minutes, the Board approved the Company's request for a PILOT abatement for a project to upgrade its existing pipelines.<sup>7</sup> At the time the PILOT was authorized, the Company made a significant commitment to the Agency<sup>8</sup> and agreed to contribute \$1,080,000 over a 10-year period for economic development in the County, beginning 60 days after commercial operation of the project.<sup>9</sup>

A grant commitment letter dated December 4, 2008 sets forth the terms for administering the grant funds. Under the agreement, the Agency will administer the Company's grant and determine the criteria for eligibility, qualifications, credit standards and terms and conditions of the use of the funds. The first grant payment of \$108,000 was received from the Company on February 23, 2009, and the Company has provided the Agency with annual grant payments since 2009. In 2010, the Board approved the use of the grant funds as a short-term loan to another business, Continental Organics. As of 2012, the grant funds are paid to the Orange County Funding Corporation, a non-profit corporation the Agency controls.

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<sup>6</sup> Authorities Budget Office Policy Guidance No. 15-01

<sup>7</sup> May 17, 2006 Board minutes

<sup>8</sup> March 18, 2009 Board minutes

<sup>9</sup> December 17, 2008 Board minutes

By agreeing to accept a grant and administering the grant funds in consideration for approving a PILOT agreement and also making a short-term loan to a project owner, the Board has acted outside its statutory authority. The Board updated the Agency bylaws on July 6, 2016. The revised bylaws no longer allow the Agency to administer grants.

## **Recommendations**

The Board should:

1. Develop and implement uniform project selection criteria and document the rationale for awarding financial assistance to project owners.
2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.
3. Ensure it has sufficient information, including an assessment of a project owner's job performance achievements, before approving the sale of a project and continuance of a PILOT agreement.
4. Develop and implement project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.
5. Develop and implement UTEP implementation policies and procedures, including but not limited to, clearly defining when a claw-back should occur and repercussions when project owners do not provide annual status reports.
6. Develop policies to recapture, discontinue or modify financial assistance or tax exemptions.
7. Take appropriate enforcement actions against project owners that do not provide annual status reports.
8. Develop and implement policies and procedures for obtaining and reporting reliable project information for the Agency's annual report.
9. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.
10. Continue to use the updated bylaws to disallow the granting of money.
11. Ensure Agency actions are consistent with its statutory authorities.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to*

*an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Board Secretary's office.

Our office is available to assist you upon request. If you have any further questions, please contact, Ann Singer, Chief Examiner of the Statewide and Regional Projects Unit, at (607) 721-8306.

We thank Agency officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo  
Deputy Comptroller

## APPENDIX A

<b>Figure 4: Tax Exemptions Provided to Projects</b>					
<b>Project Approval Date</b>	<b>Property Tax Abatement<sup>a</sup></b>		<b>Tax Exemptions</b>		<b>Total</b>
	<b>Received</b>	<b>Pending<sup>b</sup></b>	<b>Sales and Use</b>	<b>Mortgage Recording</b>	
Airport Properties II 9/20/2006	\$652,099	\$91,528	\$561,000	\$130,000	\$1,434,627
CRH Realty II, LLC 2/20/2008	\$1,625,563	\$745,922	\$97,885	\$300,000	\$2,769,370
Leentjes Amusements 5/17/2006	\$338,064	\$91,643	\$200,000	\$45,000	\$674,707
Millennium Pipeline Company 7/19/2006	n/a <sup>c</sup>	n/a <sup>c</sup>	\$3,413,573	\$0	\$3,413,573
Orange County Choppers 12/20/2006	\$1,388,037	\$356,229	\$487,500	\$0	\$2,231,766
<b>Total</b>	<b>\$4,003,763</b>	<b>\$1,285,322</b>	<b>\$4,759,958</b>	<b>\$475,000</b>	<b>\$10,524,043</b>
<sup>a</sup> Amounts were calculated using records from the County Tax Assessor's office and information in the project agreements. <sup>b</sup> Assumes a 2 percent annual tax rate increase. <sup>c</sup> These property tax exemptions are based on consumption rates. Sufficient information was not available to determine the property tax abatements.					

## **APPENDIX B**

### **RESPONSE FROM AGENCY OFFICIALS**

The Agency officials' response to this audit can be found on the following pages.

**Unit Name:** Office of the State Comptroller  
Division of Local Government and School Accountability

**Audit Report Title:** Orange County Industrial Development Agency

**Audit Report Number:** S9-15-66

**BOARD OF DIRECTORS**

**Robert T. Armistead**  
- CHAIRMAN

**Mary Ellen Rogulski**  
- VICE CHAIRMAN

**John Steinberg, Jr.**  
- SECOND VICE CHAIRMAN

**Stephen Brescia**  
- SECRETARY

**Edward A. Diana**  
- ASSISTANT SECRETARY

**Robert S. Schreiber, Sr.**

**Michael Bonura**

July 10, 2017

Gabriel F. Deyo,  
Deputy Comptroller  
Division of Local Government and School Accountability  
Officer of the State Comptroller  
110 State Street  
Albany, NY 2236

Dear Mr. Deyo:

The Orange County Industrial Development Agency appreciates the opportunity to respond to the Office of the State Comptroller’s Draft Audit Report dated May 2017. Please accept this letter as the Orange County Industrial Development Agency’s response to the audit, as well as serving as the Corrective Action Plan (“CAP”).

**OPERATIONS STAFF**

**Laurie Villasuso**  
- CHIEF OPERATING OFFICER &  
EXECUTIVE VICE PRESIDENT

**Joel Kleiman**  
- CHIEF FINANCIAL OFFICER

**Kevin T. Dowd**  
- ATTORNEY

The Draft Audit Report has been reviewed by the staff and Board of Directors of the Orange County Industrial Development Agency. The staff and Board are in general agreement with the findings, and appreciates the review of our internal practices and procedures, along with the opportunity to strengthen and enhance both.

As noted in the report, many of the audit recommendations have been successfully addressed by the Orange County Industrial Development Agency in the span of time between the Examiners’ initial visit (June 2015) and the issuance of the Draft Report (May 2017). These changes included, but were not limited to:

- Developed and implemented a policy to monitor employment during project construction
- Updated annual reporting requirements to include that project owners submit a NYS-45 wage report to support number of reported employees, and NYS ST-340 to support Sales Tax savings figures
- Termination of projects for events of default
- Updated by-laws that no longer allow the Agency to administer grants
- Updated standard application that contain best practices as mentioned in the report

- Updated Uniform Project Agreement to include all best practice components detailed in the report
- Corrected inactive and duplicate entries in the annual report.

In addition to the changes listed, the IDA has seen a turnover in management and legal representation. The Orange County Industrial Development Agency Board, in 2016, put in place a new management staff that includes a Chief Operating Officer and Managing Director to execute operations under the oversight of the IDA Board. In 2012, local legal counsel retired, and new legal counsel was retained.

In an effort to continue to improve the IDA's efficiency, transparency, and compliance, the Orange County Industrial Development Agency Board and staff are committed to the following Corrective Action Plan, which be fully implemented by January 1, 2018. This CAP will be implemented by the Chief Operating Officer and Managing Director, with oversight from the Orange County IDA Board.

Per the Draft Audit Report dated May 2017, the following recommendations were made.

The Board should:

1. Develop and implement uniform project selection criteria and document the rationale for awarding financial assistance to project owners.
2. Require financial assistance application information to be verified and confirmed before the Board approves new projects.
3. Ensure it has sufficient information, including an assessment of a project owner's job performance achievements, before approving the sale of a project and continuance of a PILOT agreement.
4. Develop and implement project monitoring policies and procedures to determine whether project owners are meeting the goals included in their agreements, such as job creation and retention goals.
5. Develop and implement UTEP implementation policies and procedures, including but not limited to, clearly defining when a claw-back should occur and repercussions when project owners do not provide annual status reports.
6. Develop policies to recapture, discontinue or modify financial assistance or tax exemptions.
7. Take appropriate enforcement actions against project owners that do not provide annual status reports.

8. Develop and implement policies and procedures for obtaining and reporting reliable project information for the Agency's annual report.
9. Ensure the annual report filed with the Authorities Budget Office and the Office of the State Comptroller is accurate.
10. Continue to use the updated by-laws to disallow the granting of money.
11. Ensure Agency actions are consistent with its statutory authorities.

### **Corrective Action Plan**

The OCIDA is developing a uniform project selection criteria with documented rationale for awarding financial assistance to project owners. These documents will include but are not limited to: a pre-application, formal project application, and a selection criteria/project approval matrix. The criteria will be administered by IDA staff executives (the COO and Managing Director), under the oversight of the OCIDA board.

A Pre-Application process will allow IDA staff executives to do an early determination of the strength of the project seeking benefits, and any issues will be discussed early in the process.

Upon acceptance of the information on the Pre-Application, and the determination that the projects fits into the selection criteria of the OCIDA Board, a formal application will be administered which will collect much more detailed project information for further verification.

The IDA staff will subject the formal application to the selection criteria matrix, and the result will be shared with OCIDA Board Members, prior to a project award. The criteria will highlight desirable industries to consider for assistance, quality and sustainability of long-term jobs created (salary and fringe benefits), likelihood of achieving these goals, project timelines, and a cost benefit analysis.

A recommendation to assist the project will include verification of all application information before project approval. The project review will not go forward without full verification of information.

Project monitoring policies and procedures, such as Labor Policy Audits, will be updated and performed routinely by IDA staff, and reported to the Board. Ongoing site visits and audits throughout the life of the PILOT agreement will assess adherence to agreement goals, such as job creation and retention. Third party assistance will be engaged as needed to verify project reporting information submitted in the Agency's annual report. This will include verification of NYS-45 and employment figures. Clearly defined enforcement actions against project owners that do not annually report will be implemented.

The Agency's UTEP will be updated (last updated 02/15/2012) with a more clearly defined claw back clause. In addition, the Orange County Industrial Development Agency will develop and implement a policy to recapture, discontinue, or modify financial assistance or tax exemptions when a violation of the tax benefit agreement is identified.

Management will implement a process for Annual Report data collection, entry, and submission. The report will be reviewed by the OCIDA Chair and Vice Chair, along with management, who will validate the accuracy of the annual report filed with the Authorities Budget Office and the Office of the State Comptroller.

The IDA makes a commitment to continued use and enforcement of our updated by-laws which disallow granting of money.

Lastly, through continued review of IDA related policies, we will assure our consistency with statutory authorities.

The Orange County Industrial Development Agency is strongly committed to its mission and responsibilities. The IDA Board and staff will continue to develop, implement, and enforce policies and procedures that assure our compliance, while also ensuring the success of Orange County and its projects.

**For any further information regarding the Orange County Industrial Development Agency's response, please do not hesitate to contact the IDA office at (845) 234-4192.**

**Thank you again for your time and attention.**

Sincerely,

**Robert T. Armistead, P.E.**  
**Chairman**  
**Orange County Industrial Development Agency**

CC: Orange County Industrial Development Agency Board Members  
Laurie Villasuso, COO  
Vincent Cozzolino, Managing Director  
Kevin Dowd, Attorney  
Joel Kleiman, CFO

## **APPENDIX C**

### **AUDIT METHODOLOGY AND STANDARDS**

The objective of our audit was to determine if the Agency's Board was providing effective oversight responsibilities of the Agency's operations for the period January 1, 2014 through May 31, 2015. For selected projects, we extended our audit period back to the date of their inception.

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed the Board and Agency officials to understand and assess the Agency's processes and procedures.
- We reviewed the Agency's policies, including the UTEP, to identify written criteria outlining an applicant's eligibility for sponsorship and the benefits that are offered.
- We judgmentally selected five projects to obtain a sample of various sizes and types of projects for further review and testing. This testing included comparing amounts projected to be spent and amounts actually spent, comparing the reported actual job numbers by the businesses to projected jobs on the application and reviewing PILOT agreements and payments to ensure that they were accurate and complied with the agreements.
- We reviewed Board minutes to identify project monitoring or job creation discussions and reports to the Board regarding projects failing to achieve project goals.
- We reviewed the Agency's project application, project agreements and any applicable evaluation criteria and compared them to the new legislation.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.