

City of Albany Industrial Development Agency

Project Approval and Monitoring

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OFFICE OF THE NEW YORK STATE COMPTROLLER
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Report Highlights

City of Albany Industrial Development Agency

Audit Objective

Determine whether:

- The Board of Directors (Board) approved projects that provide for net tax exemptions with appropriate and measurable goals.
- Officials monitored projects to ensure goals were met and the Board took action when goals were not met.

Key Findings

- The City of Albany Industrial Development Agency (CAIDA) did not incorporate goals into project agreements.
- Thirteen of the 15 projects met or exceeded their job creation and/or retention goals. These 13 projects had 2015 and 2016 employment goals to create and/or retain 1,034 and 1,270 full time equivalent (FTE) jobs and reported a total of 1,666 and 1,876 FTE jobs, respectively.
- The CAIDA did not monitor project performance for investment or revitalization goals.

Key Recommendations

The Board should:

- Monitor the new project evaluation and assistance framework (framework) and provide a standard exemption policy.
- Ensure projects are approved with measurable goals that are carried forward to agreements.
- Monitor goals and document project performance and action taken.

CAIDA officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix C includes our comments on issues raised in the IDA's response letter.

Background

The CAIDA is an independent public benefit corporation established in 1974 at the request of the City of Albany (City). The CAIDA's Board is composed of seven members, who are appointed by the City's Common Council and responsible for the CAIDA's general management and financial and operational affairs. The Board-appointed chief executive officer and chief financial officer are responsible for day-to-day operations. The CAIDA funds its operations primarily with fees charged for processing applications and administering financial assistance and supports operations through a professional service agreement with the Capitalize Albany Corporation, a not-for-profit corporation. The CAIDA annually reports information for approved projects. The 2015 and 2016 reports included projects approved between 1993 and 2016. The Board approved four projects in 2015 and one in 2016.

Quick Facts

2015 Reported Projects	96
2016 Reported Projects	89
2015-16 Tax Exemptions	\$22.8 million
2015-16 Payments in Lieu of Taxes (PILOT)	\$8.6 million

Audit Period

January 1, 2015 – October 31, 2017

Project Approval

The purpose of an industrial development agency (IDA) is to promote, develop, encourage and assist in acquiring, constructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreational facilities. The overall goal of an IDA is to advance the job opportunities, health, general prosperity and economic welfare for the people of the State. The powers and duties of IDAs are set forth under the General Municipal Law (GML).

According to its mission statement, the CAIDA was established to assist in the City's economic enhancement and diversity by acting in support of projects within the City that create and/or retain jobs and/or promote private sector investment utilizing the CAIDA's statutory powers as set forth under GML. The CAIDA offers financial assistance to businesses, including mortgage, sales and real property tax exemptions, by taking title or entering into lease-leaseback agreements¹ for the property owned or leased by the business, facilitating the provision of the financial assistance as the property is tax-exempt under the IDA statute. In return, many projects receiving CAIDA financial assistance promise to create new jobs or retain existing jobs in the community, invest in new buildings or in the renovation of existing buildings and agree to make annual PILOTs for affected tax jurisdictions to help offset the loss of revenues from the tax exemptions² provided and increase the tax base. Payments are made in accordance with PILOT agreements governed by the CAIDA's Uniform Tax Exemption Policy (UTEP). The chief executive officer (CEO) reviews project applications for compliance with the policy and distributes a copy of the application summary and documentation to the Board, counsel and City officials, as deemed appropriate. CAIDA staff submit the application to the finance committee, made up of five Board members, for preliminary review and consideration; the finance committee makes a recommendation to the Board to approve or deny the project.

In June 2016, new legislation became effective to increase the accountability and improve the efficiency and transparency of IDA operations.³ Effective January 2017, the CAIDA developed a framework to encourage commercial real estate investments in the City, which included the application process that had been followed since 2012. Prior to submitting an application, applicants meet with

1 In a lease-leaseback agreement, the IDA takes possession of the project's property. With the ending of the project term, the project is leased back to the operator, its exemption from property taxes ceases and it is usually returned to the tax roll.

2 Tax exemptions include sales tax exemptions, mortgage recording tax exemptions and real property tax exemptions.

3 Chapter 563 of the Laws of 2015. For new projects starting June 15, 2016, 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 agreements, annual assessments on project progress including job creation and retention, as well as policies to recapture, suspend or discontinue financial assistance (including the amount of tax exemptions), or modify PILOT agreements. We included portions of the new legislation where applicable to our objectives and findings.

CAIDA staff to discuss the scope of the project and familiarize the applicant with the CAIDA's framework, process, procedures and policies. After the application is submitted and deemed complete by staff, the applicant prepares and provides a preliminary presentation to the finance committee; the finance committee provides observations, asks questions, requests supplemental information and provides direction to staff. Once the review is complete, the finance committee makes a recommendation to the Board. Next, the Board requests a public hearing where the applicant provides a presentation about the project and financial assistance requested, providing the public with an opportunity to make comments. Last, assuming the project has met City requirements, the Board considers the analysis and recommendations of the finance committee and public comments from the public hearing before taking action and determining if a project and the financial assistance is in the best interest of the community.

How Should The Board Approve Projects?

Tax exemptions provided through the IDA lease-leaseback agreements discussed earlier often result in a significant cost to the community; as such, for projects approved since June 2016 IDAs are required to, and for projects prior to that date, IDAs as a best practice should, consider a project's merits and develop uniform project evaluation criteria, which should be consistently applied when making project selection decisions for the same type of projects. IDAs are required to establish a UTEP to provide the Board with detailed guidelines for the claiming of tax exemptions and provides a mechanism to provide exemptions on a consistent basis.

IDAs are required to approve projects that further their overall mission of advancing the job opportunities, health, general prosperity and economic welfare for the people of the State. Best practices require that criteria be incorporated into project agreements in the form of measurable project goals (i.e., capital investment or job creation). Measurable goals allow IDA officials to evaluate project success and determine that a project is serving their mission. For projects prior to June 2016, IDAs should, and for projects after that, IDAs must, prepare a written cost-benefit analysis for each proposed project, comparing the cost of the requested assistance to the intended benefits to the community, to assist in their decision to approve or deny a project. Taxpayers must also be given sufficient information to understand the costs and benefits of IDA activities.

The CAIDA's UTEP addresses when projects will be granted tax exemptions and states that the CAIDA reserves the right to deviate from the general policy in special circumstances and identifies factors to consider. The UTEP defines the amounts of PILOT payments for projects receiving real property tax exemptions,

addresses the IDA's "Urban Reinvestment Tax Incentive Program (URTIP)"⁴ and identifies the need for deviation from the UTEP. The UTEP includes procedures for deviations and specific information for troubled projects and unusual projects. The UTEP requires the reasons for deviations to be documented in the written notice to each affected tax jurisdiction.

Best practices and the 2015 IDA Legislation⁵ require IDAs to incorporate recapture or "claw-back" provisions in project agreements to allow IDAs to recoup previously granted financial assistance if job creation or retention, or other economic goals or terms of the agreements are not met. Other penalties for non-performance could include prohibiting a company from reapplying for financial assistance. A recapture provision may be based on the number of new jobs created or other factors determined by IDA officials.

The Board Approved PILOT Agreements With Deviations

We selected and reviewed 15 of the 47 ongoing projects with exemptions reported by the CAIDA in 2016.⁶ Fourteen projects included PILOT agreements⁷ including two that were approved in line with the CAIDA's UTEP for affordable housing, two that were approved in line with the URTIP and 10 that deviated from CAIDA's UTEP. The UTEP allows for exemptions for five tax years with PILOT payments of no less than 50 percent of the difference between the final assessed value of the property⁸ and the assessed value of the property at the time a certificate of eligibility⁹ was issued, with exemptions decreasing by 10 percent each year.

The provisions in the 10 agreements that deviated from the UTEP included approvals for longer terms that ranged from 10 years to 31 years. PILOT schedules were inconsistent and varied significantly. One project is scheduled

4 The IDA's URTIP requires applicants to meet certain additional criteria and allows project owners additional financial assistance. The additional criteria required by the URTIP is addressed further in the next section. For purposes of this report, we have assumed the legal propriety of the URTIP.

5 The 2015 IDA Legislation requires IDAs to include recapture provisions in project agreements for all projects approved on or after June 15, 2016. Although projects approved prior to this date were not required by law to include such provisions, best practices dictate that they be included to allow IDAs to recoup previously granted financial assistance when project goals are not met.

6 Our population included projects that were included on available annual reports (2015 and 2016). Selected projects were approved on various dates between January 2004 and June 2015 and were not necessarily subject to certain requirements; however, best practices still apply. See Appendix A for additional project information and Appendix D for more information on our sampling methodology.

7 The other project only had sales tax exemptions.

8 Determined upon completion of the new construction work.

9 Certificates of eligibility are issued by the City's Industrial and Commercial Incentive Board upon determining that the applicant has obtained professional engineer or architect approved plans for the construction or otherwise has complied with the law and that the construction of such commercial structure at the proposed location is in the public interest.

to make PILOT payments only on the project property's base assessed value for the first 12 years that amounted to 10 percent of the normal tax on the assessed value of the improvements for the remaining eight years. Another project is scheduled to make PILOT payments that were fixed for the first eight years, then 20 percent of the normal tax in the ninth year, fixed payments for 11 more years and then 85 percent of the normal tax for the remaining 10 years of the agreement.

The CEO stated that most applicants request deviations because they believe their projects need and merit greater assistance and the UTEP is more restrictive than certain exemptions under the Real Property Tax Law (RPTL) that could apply irrespective of IDA financial assistance.¹⁰ However, according to the PILOT deviation letters,¹¹ deviations were requested to permit the applicant to charge lower lease payments to tenants; to pass the real property tax savings on to proposed tenants in the form of market lease payments; to meet financing requirements; to ensure financial stability while building to full capacity; and to provide a net benefit to affected tax jurisdictions. For two projects, the reasons for deviation were unclear because the deviation letters included a variety of factors without specifically identifying which factors created the need for deviation. For those projects that deviated from the UTEP to allow applicants to charge lower lease payments to tenants, CAIDA officials did not require supporting documentation, such as lease agreements, or otherwise verify that applicants passed the exemptions on to tenants in the form of reduced lease payments. CAIDA officials stated that the City's high tax rates and other obstacles to development create a disparity for developers between economically feasible rents and market rents.

Additionally, CAIDA's policy does not specifically define the criteria to qualify for the URTIP. The policy states that an applicant will be considered for participation in the URTIP upon satisfaction of the conditions described in an appendix to the policy. However, the referenced appendix is the URTIP application, which generally includes the same factors as part of the regular application process.¹²

In 2016, the CAIDA developed a new framework to evaluate projects that request deviations effective in January 2017.¹³ The framework includes baseline

¹⁰ The City's local law No. 6-1984, which amended City Code Section 333-47, allows exemptions for 5-year terms whereas similar exemptions provided for by RPTL 485-A and 485-B allow 10- and 12-year terms, depending on the program.

¹¹ IDAs are required to notify affected tax jurisdictions of proposed deviations, including the reasons for the deviations.

¹² In addition to job creation, the URTIP application requests information regarding whether the proposed project is located in a business improvement district or an economic development zone, or is a project which qualifies for Community Development Block Grant Assistance. The application also asks if the completion of the proposed project will result in an increase of the assessed valuation of project site by at least 50 percent.

¹³ Because the framework became effective in January 2017 and only one project had gone through this approval process during our scope, we did not test its effectiveness.

eligibility requirements and community benefit characteristics and allows for additional assistance based on further community commitment. In developing the framework, the CAIDA engaged a third-party specialist to evaluate the existing process and previous projects, analyze the City's market conditions, research industry standards and test realistic capital, operating and financial assumptions for each prospective land use. CAIDA officials noted that, although the framework was recently developed, the characteristics are similar to the characteristics in prior approvals.

When CAIDA officials approve projects with deviations from the standard exemptions without always clearly documenting how the deviations are in the best interest of the community, there is a risk that applicants are treated inconsistently and the UTEP is not effective.

The Board Approved Projects Without All Goals Being Measurable

The Board approved projects based on characteristics in three categories: investment (e.g., capital investment in the property), revitalization (e.g., a project is located in a targeted geographic area such as in an area of high vacancy) and employment (e.g., job creation or retention).

Because the IDA approved projects based on one or more of these characteristics, to ensure they are achieved, they should be included in project agreements as goals.

Generally, goals related to investment and employment can be measured. For example, certain applicants indicated they intended to make a specified financial investment in the construction of a facility and the IDA can measure success by obtaining information related to the actual investment. Other applications indicated that the applicant would achieve specific job creation and/or retention goals and the IDA can measure success by obtaining employment data.

However, because revitalization characteristics are not easily related to a goal as they often relate to a state of being for the applicant at the time of application¹⁴ or other difficult to measure characteristics such as historical preservation, other measureable goals should be developed or additional reasoning should be provided to address why specific revitalization characteristics result in an approved project.

Each of the 15 projects we reviewed included one or more revitalization characteristic that we could not relate to a measurable goal. One project indicated that it would promote and maintain the general prosperity and economic welfare

¹⁴ A project could be approved based upon being located in a distressed census tract but it would be difficult to measure an improvement in this area, and specifically directly attributable to the project.

of the citizens of the City and improve their standard of living. However, CAIDA officials could not explain how these goals would be measured.

In addition, 14 projects were approved on the basis of having both investment and employment characteristics and one project was approved with investment goals but without employment goals. However, the CAIDA did not have an adequate or consistent system to incorporate goals into project agreements even though the projects were approved based on specific characteristics. Generally, only goals related to employment were incorporated in project agreements when a project benefits agreement was included.¹⁵ Lease agreements¹⁶ typically included the following representations, warranties and covenants:

- Projects will not result in the removal of the company from one area of the State to another or in the abandonment of the company.
- Companies will list new employment opportunities created as a result of the project with specific entities.
- Facilities will be used for agreed upon purposes unless written consent is granted by the CAIDA.
- The project facility will be acquired and reconstructed promptly and in accordance with plans and specifications.

Six projects had goals of less than 10 jobs to be created or retained, one of which had no job creation or retention goals. Each of the six deviated from the CAIDA's UTEP. The project that had no job creation or retention goals was granted a 10-year exemption from taxes with PILOT payments of approximately 37 percent of the estimated real property taxes that would have been paid over the term of the project. Of the 15 projects, the cost per estimate of jobs created¹⁷ over the life of each project ranged from a benefit to affected tax jurisdictions of approximately \$72,473 to a cost of approximately \$6.9 million; the average cost per job created and/or retained was approximately \$749,173.¹⁸ In 2016, the net exemption per job gained across the State was \$3,424 for the year, while CAIDA's net exemption per job gained for 2016 was \$1,216.¹⁹

¹⁵ The Board adopted new policies in 2015 that require project benefits agreements to be included. However, two projects approved before the policies were in effect included project benefits agreements. One of these projects was approved in 2015, but the application was received before the policy was actually in effect. CAIDA officials could not explain why these agreements were entered into for some but not all projects.

¹⁶ Lease agreements were entered into for all projects.

¹⁷ Cost per job – used estimated net exemptions over total jobs estimated to be created and retained for the term of the agreement.

¹⁸ Averages based on other CAIDA projects may differ because projects varied as to expected job creation and retention, investments and other agreed upon goals.

¹⁹ Additional information on IDAs across the State can be found at http://www.osc.state.ny.us/localgov/pubs/research/ida_reports/2018/ida-performance.pdf and <http://www1.osc.state.ny.us/localgov/ida/2018/ida-data-by-region.htm>

While CAIDA officials indicated that projects are typically approved in line with various City plans for economic improvement, without clear measurable goals, it is difficult to gauge success or failure, making it important to take additional steps to make the determination easier and more transparent.

The CAIDA Did Not Consistently Verify Applicant Information

The CAIDA relied on representations by applicants without independently verifying the accuracy and reliability. The applications include a questionnaire for an economic impact analysis regarding various aspects of the project and costs and benefits. It asks for the value of the real property tax exemption, the applicant's projections for investment, profit, construction employment impact, permanent employment impact and operating impact and estimates for the impact on existing real property taxes and new PILOTs and a brief description for the impact of other economic benefits expected to be produced. The questionnaire requires a certification from an individual on behalf of the applicant, noting that the responses were provided to the best of his/her knowledge and they are true, correct and complete.

The documentation for six projects²⁰ showed no evidence that CAIDA staff independently verified information. For nine projects, either a staff memo was prepared or other supporting evidence was provided.²¹ The CEO indicated that, in recent years, staff members began preparing memos for the finance committee and the Board regarding their analyses of projects. The first project to include a staff memo was approved in July of 2012. Applicants have a significant interest in their projects being approved; as such, when material information, especially related to future tax assumptions (i.e., rates and assessed values) and cost and benefit calculations and estimates, is not independently verified there is a risk that project costs and benefits are not reliable or accurate and that applicants may receive exemptions they are not entitled to.

The Board Did Not Historically Include Recapture Provisions

The CAIDA's policies for recapture provisions were approved in 2015, prior to when the 2015 IDA Legislation became effective. The policies require applicants to enter into a project benefits agreement where the applicant agrees that the CAIDA will be entitled to recapture some or all of the financial assistance granted if the project is unsuccessful in whole or in part in delivering the promised public benefits. The policies provide for the CAIDA Board to determine whether a recapture event has occurred and what actions to take. Projects approved prior to

²⁰ All approved prior to July 2012.

²¹ Some additional documentation was available for two earlier projects, approved in 2006 and 2008, but CAIDA staff and officials were unable to determine who had prepared the documentation.

these policies generally did not include project benefit agreements and, as such, did not include recapture provisions.

Two projects included recapture provisions in the event of default, such as failing to complete the acquisition, reconstruction, renovation and installation of the project facility; failing to meet at least 80 percent of the agreed upon employment level requirement; or failing to comply with other CAIDA requirements. These two projects were approved in 2011 and 2015. While CAIDA included recapture provisions in these project agreements before required to do so by their own policies or the 2015 IDA Legislation, CAIDA did not consistently include these provisions in projects previously. Additionally, officials could not explain why only two of the 15 projects included recapture provisions.

The policies passed in 2015 now provide for the inclusion of recapture provisions. However, for those projects approved prior to these policies, without recapture provisions or other penalties for poor performance, the Board's ability to take action may be limited in the event employment goals are not met or other intended benefits are not realized. Specifically, there are no consequences for companies that are not creating the agreed upon jobs or meeting other goals, such as investment levels.

What Do We Recommend?

The Board should:

1. Monitor the use of the new framework and update the CAIDA's UTEP to provide a standard exemption policy. The reasons for deviations from the UTEP should be clearly documented.
2. Ensure projects are approved with measureable goals that are carried forward to agreements and include the benefits expected based on the other reasons for approval where agreed upon goals are not measureable.
3. Require CAIDA staff to verify material applicant information/ representations, including tax assumptions made as well as cost and benefit calculations and estimates, and document those verifications.
4. Continue to include recapture provisions in future agreements as provided for by CAIDA's policy and consistent with the 2015 IDA Legislation.

Project Monitoring and Board Action

How Can Officials Ensure Goals Are Met?

The Board is responsible for establishing a process to monitor and evaluate the performance of companies receiving financial assistance to determine whether they are meeting the goals established in their project agreements, such as creating and retaining jobs. The Board should clearly define expectations and have policies and procedures to hold companies accountable if expectations are not met. The Board should obtain annual performance information, such as employment levels or capital invested, verify the accuracy of that information and determine whether project goals were met and the community is receiving intended benefits. Additionally, the Board should determine whether to exercise agreed upon recapture provisions in the event of a default.²²

CAIDA staff should monitor progress and provide documented status updates to the Board on a regular basis. CAIDA staff should verify the amounts of capital the company invested to ensure that the actual investments agree with the amounts intended. CAIDA officials should monitor PILOT payments to ensure bills are in line with PILOT agreements and that companies are making payments timely and should keep the Board apprised of this information.

The CAIDA Did Not Maintain Adequate Documentation of Monitoring Project Performance

The CAIDA monitors performance on an annual basis by sending annual employment verification/compliance forms to companies with project agreements. These forms require companies to report employment levels, provide explanations when current employment does not equal the original estimate of jobs to be created and retained, confirm that annual PILOT payments were made, and certify that they have read and understand all of the requirements of the project documents. Reported employment levels were not supported and there was no evidence that CAIDA staff verified the levels for all except two projects.²³ However, the framework now requires certain information to be verified by a third party, obtained by the company.

22 For projects starting June 15, 2016, the 2015 IDA Legislation requires IDAs to, at least annually, assess the progress of each project which continues to receive financial assistance or is otherwise active, toward achieving the investment, job retention or creation, or other objectives of the project indicated in the application. Under the 2015 law, the assessments must be provided to IDA board members. The 2015 Legislation also requires IDAs to include in their uniform project agreements a requirement that the project owner occupant or operator receiving financial assistance provide an annual certified statement and documentation enumerating FTE jobs retained or created as a result of the financial assistance and the salary and indicating that fringe benefit averages or ranges for categories of jobs retained and created provided in the application are still accurate. Although projects approved prior to this date were not subject to these requirements, best practices dictate that IDAs implement these processes.

23 CAIDA requests additional forms for employment information as part of its annual employment verification only when projects have entered into a project benefits agreement, which these two projects had.

Furthermore, the CAIDA did not monitor performance for investment²⁴ or revitalization goals, which as noted above, were not included in project agreements despite the CAIDA approving projects based on such goals. The annual employment verification forms did not require companies to report progress on meeting goals other than those related to employment. Without an effective monitoring process and documentation, the Board will not be in a position to effectively identify and address company performance shortfalls and the community may not receive the expected benefits from investments.

Projects Generally Met Job Creation and/or Retention Goals

Thirteen of the 15 projects met or exceeded their job creation and/or retention goals. These 13 projects had 2015 and 2016 employment goals to create and/or retain 1,034 and 1,270 FTE jobs and reported a total of 1,666 and 1,876 FTE jobs, respectively. Two projects did not meet their goals:

- One project was to renovate a full-service hotel. The project application had a job retention goal of 249 employees and a job creation goal of 20 employees. CAIDA officials told us these figures included part-time and seasonal employees and as a result between the application submission and project approval, the figures were converted to goals of retaining 148 FTE jobs and creating 12 new FTE jobs for a total of 160 FTE jobs. However, CAIDA officials could not explain or provide documentation showing the conversion or what information it was based on.

For 2015, the project reported 184 FTE jobs, but for 2016 the project reported 148 FTE jobs, which was 12 FTE jobs less than the goal identified in the project benefits agreement. CAIDA officials stated that the supporting documentation they had indicated there were more than 148 FTEs; however, the support only documented the total number of employees and did not include whether they were full-time, part-time, or seasonal employees or the number of hours they worked. As a result, we were unable to calculate FTE jobs. While the agreement includes recapture provisions, CAIDA has not sought recovery of financial assistance because the reported employment is more than 80 percent of the goal. However, it is unclear whether or not the project met 80 percent of its goal because the records are not in the form of FTE jobs.

- The second project was for a previously completed project²⁵ for a partially occupied multi-tenant medical research and administrative facility. This

²⁴ While CAIDA receives some investment information based on sales tax exemption reports submitted by the applicants, these forms do not identify total investments and there did not appear to be specific verification of the investments from these forms.

²⁵ The property was previously owned by a different not-for-profit company. Although it was tax-exempt on its own, it had also previously received CAIDA financial assistance in the form of IDA bonds. The former company defaulted on the bonds and the bank that held the bonds took title to the property and CAIDA terminated the project. A different company purchased the property and CAIDA approved a PILOT agreement for that company.

project reported 90 employees, which was 246 employees less than the goal identified in the application. The company reported it was having difficulties finding tenants due to the specialized nature of the office space. CAIDA officials stated that they met with the project owner to discuss a plan for finding tenants and invited Board members to walk through the building to best understand its specialized nature and be well informed for future decision making. The project agreement did not include recapture provisions so the CAIDA was unable to seek recovery for financial assistance.

While CAIDA officials noted that project update discussions took place at Board meetings and various Board actions were taken for projects that were not meeting goals, they did not maintain adequate documentation to support those discussions and actions.

PARIS Reports Were Not Accurate

The Public Authorities Reporting Information System (PARIS) is an online reporting system that allows IDAs and other public authorities to report required information to the Office of the State Comptroller (OSC) and Authorities Budget Office (ABO). IDAs are to report information for approved projects including the types of projects, applicant information, granted tax exemptions, PILOT payments and project employment.

Employment information and PILOT payment amounts reported by the CAIDA did not agree with applications, annual verification reports or PILOT payments. The total reported estimated jobs created and retained for the 15 projects reviewed was 192 less than estimates from applications and, although PARIS distinguishes between estimated jobs created and retained, CAIDA officials reported estimated jobs created with 433 more jobs than estimates and estimated jobs retained at 625 less than estimates.

Additionally, two projects were reported based on first year goals²⁶ in both 2015 and 2016, although it was not the first year of either project. The other projects were reported based on total goals, regardless of the status of the project.

The CFO stated that some of the inaccurate information was reported in prior years and the fields are locked within PARIS so that changes cannot be made in later years unless the CAIDA were to request that the ABO open the original form. Additionally, OSC reviews IDA data in PARIS and handles changes to historical data. Changes requested by the IDA are emailed, along with support²⁷

²⁶ Project employment goals are usually agreed upon using the current level, the first year goal and the second year goal. Generally first year goals are lower than second year goals to allow companies to complete construction and begin operating before being required to meet final goals.

²⁷ Required support includes a copy of the original project application and other appropriate documents to support the requested change.

that is reviewed by OSC and discussed with the IDA to ensure the changes are substantiated before processing. OSC also informs the ABO when they are processing changes. CAIDA officials indicated that they were not specifically aware of the inaccuracies we noted and, as such, did not contact the ABO, or request changes through OSC, to update inaccuracies and while they indicated that they may also add comments in a notes field to address the inaccuracies, there were no comments related to the inaccuracies we found. CAIDA officials also stated that staff acknowledges and explains discrepancies to the Board as part of the annual PARIS report review.²⁸ However, there was no evidence that officials were aware of discrepancies and shared those with the Board.

Inaccurate reporting reduces transparency by providing misleading information to the Board, taxpayers and other interested parties.

What Do We Recommend?

The Board should:

5. Consistent with the 2015 IDA Legislation, establish an adequate process for monitoring goals, documenting project performance and documenting action taken by the CAIDA for projects not meeting goals.
6. Ensure that employment levels are verified and supported.
7. Ensure PARIS reports are accurate and supported. CAIDA officials should request necessary changes through OSC and add comments in notes fields to address inaccuracies.

CAIDA staff should:

8. Document any discrepancies between PARIS and actual information when providing evidence to the Board for monitoring.

²⁸ The CFO presents a draft of the PARIS report to the Board at the March meeting.

Appendix A: Additional Project Information

Figure 1: Additional Project Information

Project Name	Approval Date	Tax Exemptions Per Application				Expected Investment Per Application	Expectations Per Application			2016 Reported FTE
		Sales	Mortgage Recording	Property ^a	Total		Jobs Created	Jobs Retained	Total	
677 Broadway	Jan 1, 2004	\$528,000	\$250,000	\$0	\$778,000	\$28,000,000	90	490	580	678
109 State Street, LLC	Nov 16, 2006	\$12,000	\$8,125	\$217,930	\$238,055	\$740,000	7	1	8	11
22 New Scotland Avenue LLC	Aug 7, 2008	\$482,175	\$157,500	\$3,807,077	\$4,446,752	\$15,117,690	0	300	300	365
Morris Street Development, LLC	Oct 21, 2010	\$0	\$0	\$277,200	\$277,200	^b	0	0	0	0
39 Sheridan Realty, LLC	May 6, 2011	\$138,240	\$67,500	\$2,398,312	\$2,604,052	\$6,250,000	1	0	1	1
Albany Hotel, Inc	Aug 18, 2011	\$800,000	\$293,750	\$14,378,678	\$15,472,428	\$11,000,000	20	249	269	148
733 Broadway LLC	Apr 24, 2014	\$320,000	\$139,995	\$3,519,790	\$3,979,785	\$13,977,386	1.5	5	6.5	6
Aeon Nexus Corporation	Jan 23, 2014	\$122,000	\$20,106	\$415,063	\$557,169	\$1,833,500	12	0	12	13
Honest Weight Food Co-Op, Inc.	Jul 19, 2012	\$150,000	\$0	\$2,757,220	\$2,907,220	\$8,929,746	30	71	101	115
Sheridan Hollow Enterprises LLC	Dec 20, 2012	\$35,348	\$0	\$142,386	\$177,734	\$792,000	0	16	16	0 ^c
Sheridan Hollow Village LLC	Dec 20, 2012	\$379,963	\$76,368	\$4,638,666	\$5,094,997	\$13,112,169	2	0	2	1 ^c
Albany Medical Science Research, LLC	Jan 17, 2013	\$0	\$0	\$13,051,670	\$13,051,670	\$25,068,266	135	201	336	90
LV Apartments LP	Sep 19, 2013	\$524,302	\$300,000	\$22,688,243	\$23,512,545	\$29,340,222	3	0	3	3
Park South Partners LLC	Sep 18, 2014	\$1,899,400	\$500,000	\$21,970,485	\$24,369,885	\$50,721,000	11	0	11	0 ^c
Broadway Albany Realty LLC	Jun 3, 2015	\$112,000	\$0	\$0	\$112,000	\$4,430,000	400	30	430	683
		\$5,503,428	\$1,813,344	\$90,262,720	\$97,579,492	\$209,311,979	712.5	1,363	2,075.5	2,114

^a Amounts were obtained from applications and other exhibits where available

^b Project was completed and investments were made prior to project application and approval

^c While the FTE was less than total expected, the project was considered to have met its goal because projects within construction periods are not required to meet final goals until complete. In total, 255 construction jobs were reported. The 733 Broadway LLC project was also considered to have met its 2016 employment goal based on FTEs.

Appendix B: Response From IDA Officials²⁹

City of Albany
Industrial Development Agency
21 Lodge Street
Albany, New York 12207
(p): 518.434.2532 | (f): 518.434.9846 | Info@AlbanyIDA.com

Tracy Metzger, *Chair*
Susan Pado, *Vice Chair*
Darius Shahinfar, *Treasurer*
Lee Eck, *Secretary*
Dominick Calsolano
Jahkeen Hoke
Robert Schofield

Sarah Reginelli, *Chief Executive Officer*
Mark Opaika, *Chief Financial Officer*
William Kelly, *Agency Counsel*

Office of the State Comptroller – Division of Local Government and School Accountability
110 State Street, 12th Floor
Albany, NY 12236

Friday, August 31, 2018

Dear [REDACTED]

Please accept this letter and Corrective Action Plan (CAP) as the City of Albany Industrial Development Agency's (CAIDA/the "Agency") formal response to your draft audit report titled City of Albany Industrial Development Agency Project Approval and Monitoring Report of Examination (2018M-65). The Agency's management, Audit Committee and Board have reviewed the draft report (the "Report") and approved of the following response.

The CAIDA Board of Directors strives to consistently improve by immediately implementing any and all new statewide requirements. In addition, CAIDA endeavors to not only implement any published best practices, but frequently implements innovative and intensive new approaches to transparency, project evaluation and impact monitoring. We appreciate the time and resources your team spent conducting the audit in an effort to identify opportunities for improving our operations, and are extremely pleased that nothing material was found in the audit. We also appreciate your acknowledgement that present practices, following changes made by the Agency between 2012 and 2015, have already addressed most of the best practice recommendations contained in the Report, as findings were based on an analysis of 15 projects approved between 2004 and 2015.

We look forward to augmenting these administrative improvements through the implementation of our CAP. These actions will enhance and strengthen the documentation of the Agency's project approval and monitoring practices, work with the OSC to correct any identified errors in PARIS, and continue to move forward with our recently-approved Project Evaluation and Assistance Framework (the "Framework") for deviations from our Uniform Tax-Exemption Policy (the "UTEP"), with the intention of updating the UTEP based on a responsible evaluation of the Framework's proven performance.

These improvements will continue strengthening the Agency - a critical tool for revitalization and economic development in the City of Albany. CAIDA has a strong track record of well-rounded achievement of all four of the goals for IDA's established by State statute – "advance the job opportunities, health, general prosperity and economic welfare" for its jurisdiction. We appreciate that the audit Report identified that the 15 projects reviewed have created more than 2,113 jobs and directly invested more than \$209 million into the local economy, and that CAIDA overall performed more efficiently than the average of its Statewide counterparts.

See
Note 1
Page 25

²⁹ The IDA's response letter refers to page numbers that appeared in the draft report. The page numbers have changed during the formatting of this final report.

The CAIDA Board of Directors consists of seven City of Albany residents with diverse backgrounds who are passionate about strengthening the Capital City. This Board is assisted by a management team of dedicated professionals who take pride in ensuring that the work of the Agency is done thoroughly, efficiently and in accordance with State requirements. Because of this, we would like to take the opportunity to clarify a number of items contained in the Report of Examination:

- 1) *On page three of the report, it states that, “projects receiving CAIDA financial assistance...agree to make annual PILOTs for affected tax jurisdictions to help offset the loss of revenues from the tax exemptions provided” and on page four of the report, it states that, “Tax exemptions provided through the IDA lease-leaseback agreements discussed earlier often result in a significant cost to the community.”*

CAIDA projects provide significant benefits to local taxing jurisdictions. **None of CAIDA’s contemporary PILOTs “result in a significant cost to the community” because they never dip below previous levels of tax payment.** Projects under contemporary PILOTs through CAIDA begin by paying at least the previous base levels and always result in a gain of revenue to taxing jurisdictions. In addition, CAIDA drives significant increases in local property values – reconveying more than \$54 million in assessed value to the tax rolls in the last three years alone – an exponential increase over the original property value of the projects.

See
Note 2
Page 25

- 2) *On page six of the Report, it states that the PILOT schedules of the 15 projects reviewed were “inconsistent and varied significantly.”*

Prior to adoption of an innovative, standardized evaluation mechanism called the Project Evaluation and Assistance Framework in 2016, CAIDA PILOT deviation schedules for individual projects were structured to the particular cash flows and pro forma tolerance for each project. In accordance with State regulations and best practice guidelines, the **Agency reviewed each project’s expected financing, revenues and expenses in order to approve only the level of abatement necessary to make the project financially feasible.** Accordingly, PILOT schedules varied project by project. Each of the PILOT schedules described represented a PILOT deviation which followed and complied with the requirements contained in the UTEP and the IDA Statute, including notice to the affected taxing jurisdictions.

- 3) *On page seven of the Report, it states that “When CAIDA officials approve projects with deviations for the standard exemptions without always clearly documenting how the deviations are in the best interest of the community, there is a risk that applicants are treated inconsistently and the UTEP is not effective.”*

CAIDA has clearly documented how the deviations are in the best interest of the community for every project approved since at least 2012 that includes a deviation from its UTEP by following a similar procedure that can be summarized as follows: (a) management reviews the deviation request and analyzes whether a deviation is warranted, (b) management review includes a review of other similar projects, (c) management prepares and distributes a cost benefit analysis and summary of expected benefits to the CAIDA Board for its review and evaluation, (d) the Agency delivers a notice of such deviation to the affected taxing jurisdictions, (e) included in the deviation notice is a letter outlining the reasons for the deviation, and (f) the CAIDA Board adopts a resolution approving the deviation, with the reasons for such deviation attached as a schedule to the resolution.

Beginning in 2017 with the implementation of the Project Evaluation and Assistance Framework, the deviation process now includes evaluation of a matrix of Community Benefit Metrics to further ensure that projects meet a minimum standard based on defined measures of revitalization, investment and employment in order to be considered for assistance. Applicants that are able to document satisfaction of these community-driven goals, following an analysis by management and the Board, can qualify to seek a standardized set of deviations from CAIDA's UTEP based on financial need.

- 4) *On page eight of the Report, it states "six projects had goals of less than 10 jobs to be created or retained, one of which had no job creation or retention goals."*

This statement, while accurate, does not acknowledge the community benefits provided by each of these projects (goals that are in alignment with IDA Statute), which formed the basis of the CAIDA Board's decision. The statement implies that a low job creation or retention number is a violation under the IDA Statute. The stated purpose of industrial development agencies is not limited to the creation and retention of jobs. The purpose of CAIDA is also to spur investment in the City of Albany and the surrounding community. **While many of the projects recently approved by CAIDA advance significant job opportunities and drive major financial investment, the Agency has also thoughtfully and responsibly upheld the additional statewide IDA statute goals of "advancing the health, general prosperity and economic welfare" of the City.** The bulk of the Agency's approved projects are accomplished on previously tax-exempt or blighted, abandoned property. Many of these projects preserve historic building stock in high-vacancy and distressed census tracts. Further, many of the projects result in new multifamily housing starts, including significant levels of affordable housing rehabilitation and new development. These new housing starts convert obsolete, abandoned commercial space, resulting in a reduced commercial vacancy rate citywide.

- 5) *On page nine of the Report, it states "CAIDA relied on representations by applicants without independently verifying the accuracy and reliability... there is a risk that project costs and benefits are not reliable or accurate and that applicants may receive exemptions they are not entitled to."*

This statement suggests that CAIDA is failing to satisfy a requirement under the IDA Statute, when in fact no third-party verification is required. The Agency includes many verification measures in order to ensure that exemptions are being provided appropriately. At submission, CAIDA applications must include a sworn statement by the project applicant to deter any intentional or unintentional inaccurate information. Agency management confirms current tax rates and assessed values via City of Albany data, and estimated improved assessed values are confirmed via letter by the Assessor of the City of Albany. Representations made in each application regarding **construction cost estimates, expected revenue projections and other market data are analyzed thoroughly by CAIDA experienced management on every project, along with a review of third-party research and a comparison of similar projects in the market to check the data.** Regarding monitoring of projects, applicants must annually certify project activity. The annual employment data submitted by the project applicant must be accompanied by the NYS-45 Form, which is a report that NYS Department of Labor accepts as evidence of employment levels. These forms are reviewed by management and are certified by the project beneficiary for each project. In all cases, CAIDA reserves the right, under the agreements entered into by the project applicant, to require additional information and third-party verification if, in the judgement of CAIDA management, the submitted information does not appear to be accurate, even though such measures are not currently required under IDA statute.

-
- 6) *On page nine of the Report, it states “Projects approved prior to these policies generally did not include project benefit agreements and, as such, did not include recapture provisions...CAIDA did not consistently include these provisions in projects previously.”*

Such agreements and claw-back provisions are a relatively new phenomenon. **CAIDA proactively adopted a policy in 2015 requiring recapture provisions on all projects and, subsequently, has consistently included recapture provisions in all approvals.** Beginning in 2016 the IDA Statute required that industrial development agencies enter into agreements with project applicants that included recapture agreements. All of the 15 projects selected by the OSC for review were approved prior to the Statewide policy being enacted and all but one were approved prior to the CAIDA policy requirement.

- 7) *On page 11 of the Report, it states “Reported employment levels were not supported and there was no evidence that CAIDA staff verified the levels for all except two projects.... Furthermore, the CAIDA did not monitor performance for investment or revitalization goals, which as noted above, were not included in project agreements despite the CAIDA approving projects based on such goals.”*

CAIDA requires all project applicants to deliver annual employment reports that attest to the employment levels on-site and provide an explanation for any discrepancy between on-site levels and those projected in the closing documents. These reports must be certified by the project applicant. CAIDA management prepares and reviews the annual employment reports, and contacts any project applicant that reported employment levels below those described in the approval, or any applicants whose reports contain information that warrants further scrutiny by the Agency at the request of management or the Board. With respect to investment goals, since 2016 CAIDA has required project applicants to deliver certificates at the time of project completion certifying as to the amount of project investment. Management performs a site visit and verifies the certification based on regional market data. We appreciate that the OSC acknowledges in its recommendations that revitalization goals may be difficult to measure. Where projects have revitalization or community benefit goals, these are clearly documented during the project evaluation phase – consistent with the OSC Report’s recommendation.

CAIDA’s monitoring practices were strengthened in 2015 by a Board-driven Strategic Transition Plan that tackled more than a dozen policy and administrative enhancements related to approval and monitoring based on a self-audit of Agency practices and procedures. This activity was completed by 2016 ensuring that **current application, analysis and monitoring procedures are standardized, well-documented, robust and transparent.**

- 8) *On page 12 of the Report, it states “CAIDA officials could not explain or provide documentation showing the conversion or what information is was based on... However, it is unclear whether or not the project met 80 percent of its goal because the records are not in the form of FTE jobs.”*

Management explained the following regarding approval and analysis of this full-service hotel project: (a) the transaction was closed by CAIDA in 2011, (b) CAIDA required the project applicant to enter into a project benefit agreement with a claw-back provision in 2011, four years before CAIDA adopted a policy generally requiring such agreements and five years before the IDA Statute was amended to require such agreements, (c) the job level requirement was 160 FTE employees based on the Agency’s findings during the application evaluation period prior to approval that the applicant included seasonal and part-time jobs in its original estimate, (d) the project applicant has not failed during the term of the project benefit agreement to satisfy the job level requirement, and (e) **management requested and maintained additional documentation of employment levels from the project in the form of NYS-45 payroll documentation indicating individual employees and salary levels in order to further verify full-time-equivalent counts.** The discussion excerpted above relates only to the supporting documentation supplied by the project applicant upon the request by CAIDA in connection with its follow-up monitoring

See Note 3 Page 25

of the hotel project. For these reasons, commencing a recovery action under the recapture provisions were not warranted. In addition, and not mentioned in the OSC Report, the project has satisfied other provisions imposed by CAIDA in the project benefit agreement, including the requirement to maintain a full-service franchise flag at the hotel.

- 9) *On page 13 of the Report, it states "Inaccurate reporting reduces transparency by providing misleading information to the Board, taxpayers and other interested parties."*

CAIDA wholeheartedly agrees that accuracy and transparency are of the utmost importance. The Agency prioritizes its diligence in monitoring and reporting on its nearly 100 active projects citywide and its level of transparency for taxpayers and other interested parties. Any of the potential corrections identified in the Report reflected older projects and files that predate current administrative practices. We appreciate that the Report acknowledges that once any inaccuracies were discovered, CAIDA was eager to make any required changes in the PARIS report.

See Note 4 Page 25

The City of Albany Industrial Development Agency's Corrective Action Plan was prepared in response to recommendations of the OSC's City of Albany Industrial Development Agency Project Approval and Monitoring Report of Examination is as follows:

- 1) ***Audit Recommendation: Monitor the use of the new framework and update CAIDA's UTEP to provide a standard exemption policy. The reasons for deviations from the UTEP should be clearly documented.***

Implementation Plan of Action(s):

- o Monitoring use of the Project Evaluation and Assistance Framework ("the new framework") is current CAIDA practice. CAIDA built in monitoring of this tool as of the implementation of the Project Evaluation and Assistance Framework as of January 1, 2017.
 - *Implementation Date:* Completed January 1, 2017
 - *Person Responsible for Implementation:* Complete
- o The Project Evaluation and Assistance Framework was approved by the CAIDA Board on November 17, 2016 with the intention of incorporating it into the UTEP after a period of performance monitoring. While CAIDA currently has a standard exemption policy, the existing UTEP has proven to be unable to meet the current market needs. The Board will continue to monitor the performance of the Project Evaluation and Assistance Framework for a period of an additional sixteen months, adjust it as necessary and, pending approval of the taxing jurisdictions affected, be established as CAIDA's new UTEP.
 - *Implementation Date:* November 17, 2016 and January 1, 2020
 - *Person Responsible for Implementation:* CAIDA Management, CAIDA Board, Taxing Jurisdictions
- o Clearly documenting reasons for deviations from the UTEP is a current CAIDA practice along with numerous corrective actions implemented with the 2012 Policy Manual amendments and 2015 internal audit and Strategic Transition Plan. CAIDA management will continue to incorporate commitments made in the Project Benefit Agreements into the PILOT Deviation letter for all taxing jurisdictions. As a result of the Report of Examination, CAIDA will immediately enhance the level of depth with which its minutes reflect the Finance

Committee and Board discussions that lead to the findings in UTEP Deviation Letters beginning at the September 20, 2018 Board meeting.

- *Implementation Date:* Completed December 20, 2012 and December 31, 2015, Enhancement September 20, 2018
- *Person Responsible for Implementation:* CAIDA Management, CAIDA Board

- 2) **Audit Recommendation: Ensure projects are approved with measurable goals that are carried forward to agreements and include the benefits expected based on the other reasons for approval where agreed upon goals are not measurable.**

Implementation Plan of Action(s):

- This is current practice at CAIDA. Following the numerous corrective actions previously implemented as a result of policy changes in 2012 and our 2015 internal audit CAIDA management will continue to provide summary memos for all projects, which identify anticipated investment, revitalization, and employment goals. CAIDA management will continue to incorporate commitments made in the application into the Public Benefit Agreements for all projects (a document incorporated into each project Approving Resolution since March 19, 2015.).
 - *Implementation Date:* Completed December 20, 2012; March 19, 2015; and December 31, 2015
 - *Person Responsible for Implementation:* Complete
- As an immediate enhancement in this area, CAIDA will revise its application to more specifically incorporate the metrics found in the recently implemented Project Evaluation and Assistance Framework. The Community Benefit Metrics identified in the updated application will be more specifically referenced in the Public Benefits Agreements.
 - *Implementation Date:* September 20, 2018
 - *Person Responsible for Implementation:* CAIDA Management, CAIDA Board

- 3) **Audit Recommendation: Require CAIDA staff to verify material applicant information/representations, including tax assumptions made as well as cost and benefit calculations and estimates, and document those verifications.**

Implementation Plan of Action(s):

- This is current CAIDA practice. Since 2012, CAIDA Management has provided an analysis of applicant requests including verification of applicant information for every project presented to the Finance Committee and the Board. CAIDA management will continue to consistently provide Project Summaries and detailed PILOT Analyses, which evaluate numerous criteria including, but not limited to, cost-benefit analysis and tax assumptions (to the extent that is possible regarding “future tax assumptions”). In addition to the procedures formalized in 2012, Project Benefit Agreements have been required for every project for which an application was submitted after March 19, 2015. CAIDA management will continue to verify material applicant information/representations, including tax

assumptions made as well as cost and benefit calculations and estimates, and document those verifications.

- *Implementation Date:* Completed December 20, 2012; March 19, 2015; and December 31, 2015
- *Person Responsible for Implementation:* Complete

4) ***Audit Recommendation: Continue to include recapture provisions in future agreements as provided for by CAIDA's policy and consistent with the 2015 Legislation.***

Implementation Plan of Action(s):

- This is current CAIDA practice. CAIDA management will continue to include recapture provisions in project. Project Benefit Agreements have been required for every project for which an application was submitted after March 19, 2015.
 - *Implementation Date:* Completed March 19, 2015
 - *Person Responsible for Implementation:* Complete

5) ***Audit Recommendation: Consistent with the 2015 IDA Legislation, establish an adequate process for monitoring goals, documenting project performance and documenting action taken by the CAIDA for projects not meeting goals***

Implementation Plan of Action(s):

- This is current CAIDA practice. Following the numerous corrective actions previously implemented as a result of the 2012 Policy Manual amendments and our 2015 internal audit CAIDA management will continue to monitor goals established as a result of multiple Finance Committee and Board meeting discussions and formalized in the Project Benefits Agreements for all projects through the following:
 - CAIDA management reviews annual "Form of Annual Employment Verification/Compliance Report" certified by the project beneficiary for each project.
 - CAIDA management performs on-site visits of projects identified by the Agency in the calendar year.
 - CAIDA management reviews submitted sales tax forms for compliance with maximum assistance levels and to verify level of project investment.
 - Board and management prepare and present an annual activity update to the City of Albany Common Council to review goal, Agency and project performance.
 - CAIDA management confirms with the City Treasurer's Office and the City Assessor the status of any unpaid payment in lieu of tax ("PILOT") payments
 - Within seventy-five (75) days after the end of each calendar year, CAIDA management provides the CAIDA Audit Committee and Board with the annual PARIS report describing the compliance by applicants and the results of the project monitoring, including the filing of annual reports, the amount of sales tax exemption received for a project, and the number of jobs created and retained by the applicant.
 - CAIDA Board reviews the PARIS report prepared by the CAIDA management at an Audit Committee meeting and regular meeting of the Agency. After the review of the report prepared by the CAIDA management, the CAIDA Board takes such action as it deems

necessary, including but not limited to: (1) approval of filing of the complete report, (2) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (3) considering enforcement action against applicants that fail to comply with the requirements, (4) considering enforcement action against applicants based on the results of the project monitoring, and (5) preparation of letters of acknowledgement to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant's original application to the Agency.

- Prior to distribution of the PILOT payment bills, the CAIDA management confirms with the City Treasurer's Office and the City Assessor the payment amounts for such PILOT bills for the current fiscal year.
- The CAIDA management also confirms with the City Treasurer's Office and the City Assessor the status of new projects closed in the prior calendar year and the termination of projects whose PILOT term expired or project facility was reconveyed to the applicant.
 - *Implementation Date:* Completed December 20, 2012 and December 31, 2015
 - *Person Responsible for Implementation:* Complete
- o As a result of the Report of Examination, CAIDA will make an immediate enhancement in this area by strengthening the documentation of these efforts. This documentation will be maintained in project files and detailed, where applicable, in meeting minutes. As a further enhancement, CAIDA will select 10 projects (currently roughly 10 percent of active projects) at random annually that will be visited on-site by management for the purposes of verifying employment and other stated goals. Findings from these site visits will be documented and reported to the Board annually.
 - *Implementation Date:* September 20, 2018
 - *Person Responsible for Implementation:* CAIDA Management

6) **Audit Recommendation: Ensure employment levels are verified and supported.**

Implementation Plan of Action(s):

- o This is current CAIDA practice. Following the numerous corrective actions previously implemented as a result of the 2012 policy changes and our 2015 internal audit CAIDA Management will continue to ensure employment levels are verified and supported for all projects through the following:
 - CAIDA Management reviews annual "Form of Annual Employment Verification/Compliance Report" certified by the project beneficiary for each project.
 - All projects applying after March 19, 2015 are subject to a Project Benefit Agreement and required to provide a copy of a filed "Report Year NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return" for the last payroll date in the month of December of Report Year. CAIDA Management reviews these reports annually. Receipt of NYS-45 is the current best practice on employment verification suggested by the NYS Authorities Budget Office.
 - Within seventy-five (75) days after the end of each calendar year, CAIDA management provides the CAIDA Board with an annual report describing the compliance by applicants

and the results of the project monitoring, including the filing of annual reports and the number of jobs created and retained by the applicant.

- CAIDA provides for on-site visits and follow-ups at any project identified by the Agency as deemed necessary or appropriate.
- CAIDA reserves the right to request additional documentation of achievement of project requirements at the Agency's discretion.
- CAIDA Board reviews the annual PARIS report prepared by the CAIDA management at an Audit Committee and Board meeting of the Agency. After the review of the PARIS report prepared by the CAIDA management, the CAIDA Board takes such action as it deems necessary, including but not limited to: (1) approval of filing of the complete report with any change as necessary, (2) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (3) considering enforcement action against applicants that fail to comply with the requirements, (4) considering enforcement action against applicants based on the results of the project monitoring, and (5) preparation of letters of acknowledgement to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant's original application.
 - *Implementation Date:* Completed December 20, 2012; March 19, 2015; and December 31, 2015
 - *Person Responsible for Implementation:* Complete
- o As a result of the Report of Examination, CAIDA will make an immediate enhancement in this area by selecting 10 projects at random annually (currently 10 percent of active projects) that will be visited on-site by management for the purposes of verifying employment and other stated goals. Findings from these site visits will be documented and reported to the Board annually.
 - *Implementation Date:* September 20, 2018
 - *Person Responsible for Implementation:* CAIDA Management

7) Audit Recommendation: Ensure PARIS reports are accurate and supported. CAIDA officials should request necessary changes through OSC and add comments in notes fields to address inaccuracies.

Implementation Plan of Action(s):

- o CAIDA management will immediately contact OSC to change the projects fields in PARIS that were identified during the audit as being inaccurate. Additionally CAIDA management will review all other projects that were not selected during the audit to make sure that the information contained in PARIS agrees with the projects' closing documents. Changes will be presented to the CAIDA Board.
 - *Implementation Date:* September 20, 2018
 - *Person Responsible for Implementation:* CAIDA Management

-
- 8) ***Audit Recommendation: Document any discrepancies between PARIS and actual information when providing evidence to the Board for monitoring.***

Implementation Plan of Action(s):

- This is current CAIDA practice. Since at least 2011, CAIDA management has annually distributed PARIS reports to the Board for review and approval in advance of their submission to New York State. Beginning in 2014, management has reviewed the PARIS reports in-depth with the CAIDA Board’s Audit Committee and actively discussed with the Committee any identified discrepancies between PARIS and the information provided in closing documents or monitoring reports prior to presenting the final PARIS report to the full Board for review and approval.
 - *Implementation Date:* March 20, 2014
 - *Person Responsible for Implementation:* complete

- As a result of the Report of Examination, CAIDA will make an immediate enhancement in this area by updating administrative practices to document Board and Committee discussions more thoroughly in the meeting minutes to accurately reflect the level of project monitoring review by the Board.
 - *Implementation Date:* September 20, 2018
 - *Person Responsible for Implementation:* CAIDA Management

Again, thank you for the time and effort spent by your team with the goal of providing recommendations on how to strengthen CAIDA’s operations. **The CAIDA Board and management strive to conduct the Agency’s operations in a manner that allows for investment in the City of Albany’s future while protecting the immediate needs of existing local taxpayers.** We are taking the recommendations presented in the Report of Examination as an opportunity to enhance our practices and conduct the critical work of advancing job creation and investment while implementing community revitalization and economic development strategies in an even stronger, more efficient and impactful way.

Sincerely,

Tracy L. Metzger
City of Albany Industrial Development Agency Board Chair

Appendix C: OSC Comments on the IDA's Response

Note 1

Appendix A provided additional project information obtained from applications and other exhibits. The 15 projects had expected investments totaling \$209 million. Direct investments were not specifically confirmed because, while CAIDA receives some investment information based on sales tax exemption reports submitted by the applicants, these reports do not identify total investments and there does not appear to be specific verification of the investments from these reports. In addition, the 2,114 FTE jobs and CAIDA's net exemption per job gained of \$1,216, which was less than the reported \$3,424 net exemption per job gained across the State for 2016, was based on reported information. We included observations of inaccuracies in our report that may impact the calculation of those numbers and it was not our intent to project onto the entire population.

Note 2

Because our audit did not focus on CAIDA contemporary PILOTs or reconveying property, no opinion is rendered on the previous levels of tax payment and reconveying more than \$54 million in assessed value.

Note 3

Although management may have requested and maintained additional documentation of employment levels, the NYS-45 payroll documentation did not include sufficient information to determine FTEs. Although CAIDA officials used salary levels to verify FTEs, the project benefits agreement defined FTEs based on the number of hours worked and the receipt of the usual and customary fringe benefits extended, which are not provided within a NYS-45.

Note 4

CAIDA officials indicated that staff acknowledges and explains discrepancies to the Board as part of the annual PARIS report review.

Appendix D: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed CAIDA officials and reviewed the CAIDA's UTEP and framework to gain an understanding of the project approval and monitoring process.
- We judgmentally selected a sample of 15 projects from the 47 projects with exemptions that were ongoing and reported by CAIDA in both 2015 and 2016, based on performance goals, actual performance and approval dates. We reviewed projects to assess whether they were approved and structured in accordance with the UTEP, project deviations followed the UTEP, approved projects had appropriate and measureable goals, cost-benefit analyses were prepared, application information was verified, projects were monitored, adequate supporting documentation was maintained, employment levels were verified and PILOT payments were made in accordance with agreements.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

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.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided 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 the CAP available for public review in the Secretary's office.

Appendix E: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/localgov/costsavings/index.htm

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/localgov/planbudget/index.htm

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/localgov/finreporting/index.htm

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

www.osc.state.ny.us/localgov/index.htm

Local Government and School Accountability Help Line: (866) 321-8503

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