



- *Accountability*
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Operational Review

Troy Local Development Corporation

October 2, 2013

OR-2012-03

Table of Contents

Topics	Page Number
Executive Summary	ES
Introduction and Background	1
Compliance Review Objectives	2
Compliance Review Scope and Methodology	2
Review Results	4
Administration of Federal Funds	4
Recommendations for Economic Development Funds	6
Property Tax Exemptions	7
Loan Management Practices	8
Standards for Economic Development Funds	9
Property Management	11
Property Acquisitions	12
Recommendations	13
Troy Local Development Corporation Comments	14
Authorities Budget Office Comments	21

Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and assisting these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Troy Local Development Corporation was performed between December 2012 and June 2013 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to evaluate the effectiveness of the operations of the Troy Local Development Corporation, as well as evaluate the management and operating practices of the Corporation.

Background Information:

The Troy Local Development Corporation (LDC) was created in 1988 under Section 402 of Not-for-Profit Corporation Law, and recently reincorporated under Section 1411 of that same law. The LDC is governed by a five member board of directors, three of which are ex-officio and two members are appointed by the Mayor. City employees act as LDC staff. The daily operations of the LDC are managed by the City's Commissioner of Planning and Economic Development (Planning Department) who serves as Executive Director of the LDC in addition to being a board member. The City Comptroller serves as the LDC's Chief Financial Officer. The LDC is one of several economic development entities in the City of Troy, and this staffing arrangement is common to all of them. The LDC is used primarily to acquire property for future development, review applications and make recommendations for financial assistance under programs administered by the City, and provide loans and grants to businesses. The LDC owns eight properties, three of which are leased to private businesses or individuals. For fiscal year ending December 31, 2012, the LDC received \$304,000 in operating revenues from leases and federal funds and had \$134,400 in operating costs, primarily for property acquisition and legal fees. The LDC also had over

\$2.8 million available in cash, due to a one-time infusion of \$2.5 million received in 2012.

Results:

We found that although the LDC was created as a separate and distinct entity, it does not operate independently from the City. The LDC's operations and activities are controlled by the City, due in part to its board structure and its staffing relationship. It has not adopted its own operating policies and procedures, or worked with City administrators to differentiate LDC roles and responsibilities from those of the City's Planning Department. We found no documentation that City employees had received clear guidance on how to carry out the mission and purpose of the LDC. As a result, our review found questionable actions and decisions that appear to hinder the LDC's effectiveness in achieving its mission. We identified issues regarding administration of federal funds, approval of economic development projects, the granting of property tax exemptions, loan management practices, and property management and acquisition practices. These issues resulted in over \$67,000 of lost income from loans and leases and questionable actions and decisions regarding use of economic development funds.

For example, the City assigned administration of \$5 million in federal funds to the LDC primarily to remediate and develop the waterfront area in south Troy. The funds were intended to be used to acquire brownfield sites in that part of the city, remediate those properties and establish a loan fund to assist businesses relocate to the remediated area. The loan funds could also be used to assist businesses located in other brownfield sites to locate to clean or remediated areas of Troy. We found that although the LDC used most of the funds to purchase targeted properties in south Troy, it failed to use the remaining funds as primarily intended. The LDC did not formally establish and market a business loan fund, but instead used the federal funds to provide a \$250,000 loan to a business in another part of the city that was not an existing brownfield site. The LDC also used \$55,000 of federal funds to purchase property outside of the south Troy waterfront, but not to relocate an existing business from a brownfield site or any other established plan. The LDC has also failed to establish adequate accountability over these funds, as required by federal guidelines. As a result, over \$3.3 million in federal funds have been comingled with other LDC revenue and not specifically directed for its primary purpose of remediating and developing the south Troy waterfront. To date, little progress has been made on this project.

The LDC has been used by the City of Troy to review applications for financial assistance and to recommend projects for funding. However, no written guidelines or standards have been developed to evaluate projects. As a result we found the LDC made inappropriate recommendations for funding. For example, between 2006 and 2008 the LDC recommended grants of \$20,000 to \$50,000 be awarded to projects from the City's Economic Development Assistance Program (EDAP), although City guidelines limit grant awards to \$10,000. The LDC also recommended ineligible projects for funding. We found businesses that applied for City EDAP funds were instead awarded funding from another funding source without any justification.

Additionally, it appears that the LDC is receiving preferential treatment from the City regarding the taxable status of its properties. The LDC acquired properties in 2006 and 2007 that were leased to for-profit entities. As a result, the leased portion of the properties should be taxable. However, the LDC did not submit required property tax forms to the City Assessor, as required. Yet without those forms the City classified these properties as tax exempt. This error was corrected when the City sent the LDC tax bills in June 2011; yet the LDC didn't pay the tax bills until March 2013. Although payment was made over a year and a half after the due date, no interest or penalties were assessed by the City. These properties have since been transferred to the Troy Industrial Development Agency to re-establish their tax exempt status. However, we believe the justification for this transaction is highly questionable, since it does not meet the typical criteria required of IDA projects for such benefits.

We also found that the LDC did not have effective procedures in place to adequately manage its loans and leases. The LDC did not ensure that loan or lease payments are made on time nor did it consistently charge late fees or penalties when payments are delinquent. As a result, we determined that the LDC failed to collect over \$8,100 in late fees on lease and loan payments and over \$5,400 in lease payment increases. Further, the LDC granted one tenant a \$55,000 credit for repair work that was to be completed by the tenant, although the cost of repairs was the tenant's responsibility under the lease agreement. As a result of our review, the LDC has begun to improve its loan and lease management practices.

Introduction and Background

The Troy Local Development Corporation (LDC) is a not for profit corporation initially created in 1988 under Section 402 of Not-for-Profit Corporation Law and re-incorporated in 2010 under Section 1411 of this Law. In general, local development corporations (LDCs) are used to undertake activities that municipalities are restricted from doing. LDCs have the power to construct and rehabilitate industrial or manufacturing facilities to be used by others; provide grants and loans; borrow money; issue debt; and acquire, sell or lease real property below market value.

Since 2006, the City has used the LDC primarily to acquire property for future development, to review applications and make recommendations for financial assistance through programs administered by the City, and to provide loans and grants to businesses. A major project undertaken by the LDC is the redevelopment of the south Troy waterfront, using \$5 million in federal funds applied for and awarded to the City. The LDC makes loans and grants through three different funding sources: a NYS Main Street Grant, a federal Brownfield Economic Development Initiative, and a pool of discretionary funds. Two other programs, an Economic Development Assistance Program and a 50/50 Commercial Building Exterior Rehabilitation program, are administered by the City but financial assistance is provided to projects based on the recommendations of the LDC. During 2011 and 2012, the LDC approved or recommended a total of \$471,000 in financial assistance to eight different projects from these various programs.

The Troy LDC is just one economic development entity available to the City. The Department of Planning and Economic Development (Planning Department) is the City's lead economic development agency and has primary responsibility for crafting and implementing Troy's economic development plan. The City has an industrial development agency (Troy IDA) to provide financial assistance in the form of tax abatements and other incentives to encourage new business growth. It also created a second local development corporation, the Troy Capital Resource Corporation, to provide low interest financing for nonprofit and for-profit projects that may not be eligible for IDA bond financing. None of these economic development entities have employees. All are staffed by City employees of the Planning and Finance departments.

The Troy LDC has a five member board of directors. Three members serve ex-officio: the Chair of the Troy IDA, the Chair of the City Council Planning Committee, and the Commissioner of the Planning Department. The other two members are appointed by the Mayor. The Commissioner of the Planning Department also serves as Executive Director of the LDC, the Troy IDA and the Troy Capital Resource Corporation, while the City Comptroller is the Chief

Financial Officer of the three entities. There is no written agreement between the LDC and the City regarding the services City employees provide to the LDC.

During 2012, the LDC had operating income of \$304,088, consisting of rental income and federal funds. Operating expenses totaled \$134,407. Property acquisition costs and legal fees accounted for \$83,000 of this amount. As of December 31, 2012, loan recipients owed the LDC more than \$400,000. The LDC has received \$5 million in federal funds, \$3 million of which is a loan. The City makes the payments on this loan in the first instance, and the LDC reimburses the City. As of December 2012, there was \$2.16 million outstanding on the loan.

The LDC owns eight properties, three of which are leased to private businesses or individuals. These leases generate approximately \$180,000 annually in rental income, of which approximately 80 percent is considered program income under federal guidelines. Five properties are vacant and are being held by the LDC for future development. The LDC also has over \$2.8 million in cash on hand, due to a one-time infusion of \$2.5 million received in 2012 from a private company for access to one of its contaminated waterfront properties for remediation purposes, as well as reimbursement to the LDC for demolition costs incurred in prior years.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to examine the relationships between the LDC and the City of Troy and evaluate the effectiveness of the LDC's operations.

Compliance Review Scope and Methodology

Our operational review was conducted between December 2012 and June 2013, and covered LDC operations from January 2011 to May 2013. To perform our review we relied on the following documentation and data sources:

- Financial records of revenues and expenditures
- Independent financial audits and other reports
- Payments made by the LDC
- Project files and documentation
- Contractual agreements
- Board meeting minutes
- Policies and procedures indicative of good governance practices

In addition, we interviewed various management and staff of the LDC and City departments, attended LDC board meetings and performed other testing we

considered necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of the LDC. The results and recommendations of our review were discussed with appropriate officials, and the results of these discussions are reflected in this report where appropriate. A draft version of this report was provided to LDC officials for their review and comment. The LDC did not submit a formal response until after the exit conference was held. Accordingly, their official comments are not reflected in the final report, but are attached.

Review Results

Although the LDC is established as a separate and distinct legal entity from the City of Troy, it is highly dependent on the City for its operations. The LDC's operations and activities are conducted by City employees, and four of the five board members are appointed by the Mayor, with the fifth being a member of the City Council. The LDC board has also elected to appoint two City department heads, both mayoral appointees, as the LDC's executive management. This lack of independence is not exclusive to the current LDC administration, but is established in the LDC's by-laws adopted by the board. During 2012 the chief executive officer of the LDC was also a board member, in violation of the LDC's bylaws. However, the bylaws were revised in February 2013 to remove this restriction.

Since 2006, the LDC has received over \$7.5 million in funds that has allowed it to engage in the redevelopment of the south Troy waterfront area. The funds were to be primarily used to acquire property, establish a business loan fund and support other activities relative to the development of the area. The funds could be used to assist projects throughout the City, but would focus on sites in south Troy. However, the LDC has not adopted effective operating policies and procedures or worked with City administrators to differentiate LDC roles and responsibilities from those of the City's Planning Department. We found no documentation to indicate that City employees had received clear guidance on how to carry out the mission and purpose of the LDC. As a result, our review found questionable actions and decisions that appear to hinder the effectiveness of the LDC in meeting its mission. We identified issues regarding administration of federal funds, approval of economic development projects, the granting of property tax exemptions, the collection of property tax payments, loan management practices, and property management and acquisition practices. The LDC has taken some steps to improve the problems we identified during the course of our review, and we encourage the LDC to continue with these improvements.

Administration of Federal Funds

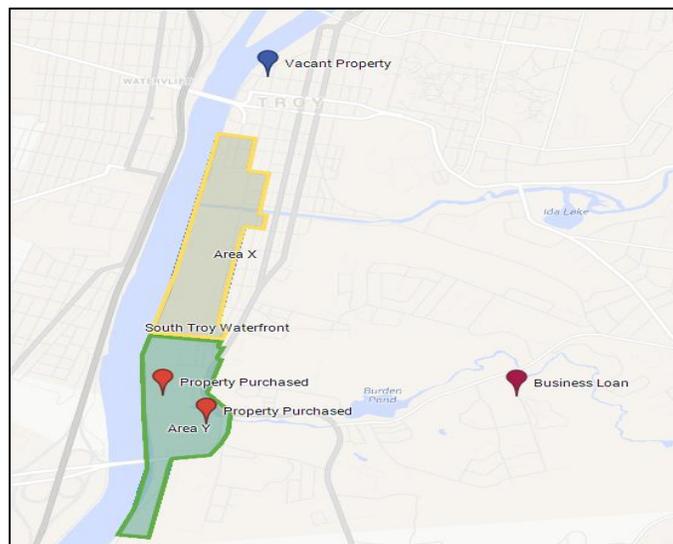
In 2000, the City was awarded a total of \$5 million in federal funds consisting of a \$3 million loan and a \$2 million grant. These funds, together with an additional \$5 million in County and City funds, were requested to capitalize a Brownfields Economic Development Loan Fund for the remediation and development of the south Troy waterfront. The expectations were that the LDC would acquire, clean up, and develop contaminated properties, and establish the revolving loan fund to provide assistance to businesses willing to relocate to the remediated properties from specific areas (see map below). The revolving loan fund would also provide financing to existing businesses located in other brownfield sites, enabling their relocation to clean or remediated sites within the City, with a focus on sites in south Troy. The City's funding application specified that the LDC

would acquire the properties and administer the revolving loan fund. The LDC received the \$3 million federal loan in 2006 and the \$2 million federal grant in 2009. LDC officials indicated it did not receive the additional \$5 million in County and City funding.

Consistent with this award, the LDC used \$3.2 million of the federal funds to purchase and remediate property in the City's southern waterfront area. It also used \$150,000 for administrative costs, in accordance with federal guidelines. However, we found that the LDC has not used the remaining funds as primarily intended in the application for the funds.

The LDC did not establish a revolving loan fund. Without this loan fund, the LDC had no dedicated source of revenue -- through the repayment of principal and interest -- that could have been used to repay the federal loan. The LDC never advertised the availability of funds to provide loans, nor did it establish criteria or standards for determining eligibility, awarding loans, or repayment of loans. Although no standards or criteria were established, we found that the LDC provided a \$250,000 loan from these federal funds in 2008 to a company to expand its operations and create additional jobs in another area in the City. This company was not located in an existing brownfield site, and the loan did not assist the company to relocate to a remediated brownfield site. Instead, the loan enabled the company to expand its operations at its existing location.

The LDC also used over \$55,000 in federal funds to purchase vacant property outside of the waterfront area and unrelated to the proposed waterfront plan. The property was vacant, was not within an existing brownfield site, and was not used to relocate a company from a brownfield site. It is unclear why the LDC purchased such property, since it had no plans for its potential use and the property remains undeveloped.



Note: Funds were to be used primarily to remediate Area Y and move businesses from Area X into the remediated area of the south Troy waterfront.

The LDC also has not properly segregated its federal funds. Federal guidelines define any revenues generated from the use of federal funding as program income. The funding agreement requires all program income to be accounted for and deposited in a separate account designated as a loan repayment account. Funds in the loan repayment account are to be used for costs associated with the designated project, for providing additional loans, or for repaying the federal loan. However, the LDC has not established a separate account for program income, but instead comingles all program income with other LDC funds used to support its general operations.

The LDC has used a portion of the federal grant to repay its federal loan, which is an allowable use of the grant funds. However, this results in fewer grant funds available for the originally intended purpose. We determined that the LDC has generated over \$3.3 million in program income from the use of these federal funds, which could be used to repay the loan or for implementing the planned remediation and development of the south Troy waterfront. This revenue consists of \$747,000 in rent and a \$2.5 million payment for access to the properties for remediation. In addition, \$83,640 in principal and interest payments have been received from the loan provided. However, the LDC has not identified and accounted for these revenues as program income to be used for designated project purposes. Accordingly, it has used over \$872,000 of the federal grant to make payments on the federal loan. LDC records show it has only \$437,000 of the original \$5 million remaining to further the redevelopment of the contaminated waterfront properties. We note that, since the purchase of the identified properties, there has been little to no progress made in remediating and developing this area, as planned in the 2000 application for funds.

LDC officials do not agree that the \$2.5 million payment for access to the properties constitutes program income. They state that this was a one-time payment in exchange for access to the property and as reimbursement to the LDC for some of the remediation costs incurred. However, according to federal regulations, program income is defined as gross income generated from the use of the federal funds. The LDC used the federal funds to purchase the property in the project area, and as the owner of the property, received the payment to access the property. As such, we believe that it fits the definition of program income. We will refer this matter to the Department of Housing and Urban Development for its review.

Recommendations for Economic Development Funds

In 2006 the City authorized the LDC to administer the City's Economic Development Assistance Program (EDAP), but limited the LDC's role to reviewing project applications and recommending projects for funding. The LDC performs a similar role for the 50/50 Commercial Building Exterior Rehabilitation Program (50/50). The LDC continued these activities through 2011, but did not

review any applications for funding from the City programs in 2012, since LDC officials indicated that economic development funds were no longer available. There is no formal agreement between the City and the LDC that specifies what criteria should be used to evaluate project applications. As a result, the LDC recommended projects that did not adhere to program eligibility guidelines and did not apply restrictions on the amount of assistance that can be provided.

For example, City of Troy EDAP guidelines restrict grant awards to a maximum of \$10,000. We reviewed six EDAP grants and found that the LDC recommended four awards between 2006 and 2008 for amounts more than \$10,000 (the recommendations for the other two grants were within the limit.) These recommended funding levels ranged between \$20,000 and \$50,000. Further, City EDAP guidelines prohibit funding for costs incurred prior to the application. Yet, the LDC recommended funding for one project which submitted an application in November 2007 although the project had been completed by October 2007.

We also found that businesses applied for City EDAP funds but were awarded funding from another funding source, without any indication as to why. For example, one business applied for an EDAP loan in April 2008. Instead of recommending the loan to the City, the LDC provided a loan from its own accounts. Another business applied for an EDAP grant in February 2011 but instead was awarded a 50/50 grant. There was no explanation available for why these funding decisions were made.

We identified an instance where the LDC recommended an EDAP loan that was a questionable use of economic development funds. The objective of the EDAP is to stimulate economic activity, expand the tax base, and create, retain and expand employment. However, one project applied for an EDAP loan in May 2008 to facilitate a merger of two existing businesses. The application did not indicate that either of the businesses was experiencing financial difficulties or was at risk of closing. The application did not indicate that there would be any resulting changes to the tax base, nor result in any new jobs. However, the LDC recommended, and the City awarded, a \$140,000 loan to facilitate this deal.

Property Tax Exemptions

Unlike an industrial development agency, a local development corporation cannot automatically transfer a property tax exemption to for-profit entities conducting business on LDC owned property. New York State courts have ruled that property owned by an LDC and used for profit making purposes is taxable. Nevertheless, the LDC has received preferential property tax treatment from the City of Troy.

Real Property Tax Law Section 420(a) states that property owned by a nonprofit corporation and used for its own purposes is exempt from taxes. The law also

requires that the property owner submit an application to the local assessor that describes the use of the property and requests the property tax exemption. In the absence of an application, an owner may present proof to the assessor in a mutually acceptable form to support the exempt status. The local assessor must determine whether the property qualifies for an exemption based on the information provided. Once the tax exemption is granted, annual renewal forms must be filed.

In 2006 the LDC purchased property in south Troy for \$2 million as part of its waterfront revitalization, and purchased another parcel in the same area for \$500,000 the following year. The LDC leases a portion of these properties to for-profit entities. The LDC did not submit an application for a property tax exemption for any portion of these properties, and did not provide any information regarding the taxable status or use of the properties to the local assessor. Yet, both properties were classified as tax exempt on the City tax rolls.

Based on the court's ruling the leased portion of these properties should be taxable. In 2010 and 2011 public complaints were made regarding the tax exempt status of the properties. As a result, in June 2011 the leased portion of the properties was changed to fully taxable, with an effective date of January 2010. Tax bills totaling over \$87,000 were issued by the City to the LDC in June 2011 for the 2010 and 2011 tax years, payable by July 31, 2011. Late payment would be subject to penalties. Although the LDC did not pay the entire tax bill until March 2013, a year and a half past the due date, no late fees were assessed to the LDC by the City.

Additionally, rather than continue paying property taxes on the leased portion of its property, in August 2011, the LDC transferred title of these properties to the Troy IDA, maintaining the tax exempt status. Industrial development agencies generally obtain title or other interest in properties owned by taxable entities in order to exempt the property from taxes. As part of this transaction, the taxable enterprise agrees to locate to this property, expand or improve operations, create new jobs or retain existing positions on site. However, there is no evidence that such an agreement was in place for these properties. In fact, the LDC's tenants held long-term leases on the property and had no immediate plans to add jobs. As part of this transaction, the Troy IDA negotiated a payment in lieu of taxes (PILOT) agreement with the LDC. LDC officials told us that the only reason for the PILOT was to establish a fixed payment amount which provides financial stability for the tenant for the duration of the lease, rather than be subjected to variable tax rates.

Loan Management Practices

As previously indicated, we were provided with no documentation that the LDC board had provided guidance or direction to City employees regarding how to manage LDC functions. As a result, we found that loan repayment provisions

have not been consistently enforced. For example, in 2008 the LDC issued a \$250,000 loan to a business. The loan agreement requires the business to make loan payments of \$1,900 by the first of each month. Payments not made by the 15th are subject to a late fee. We reviewed loan payments for 2011 and 2012 and found that the business did not make its payments on time for 18 of the 24 months. According to the terms of the loan, the loan recipient was responsible for over \$1,700 in late fees. Yet, due to a lack of written guidance and procedures, no late fees were assessed. Further, the LDC did not consistently take steps to ensure that payments were made timely: although 18 payments were past due, only three late payment notices were sent. At one point, no payments were made for six months before the loan recipient received a notice for delinquent payment. As of December 31, 2012, the total loan outstanding was \$229,837 and the borrower owed over \$22,000 in past due payments.

Further, without formal written policies and procedures, City employees appear to be uncertain as to when they are performing City functions and when they are performing LDC functions. The three delinquency letters that were sent to the borrower appeared to come from three different entities. Although the loan was issued by the LDC, the July 2011 notice of delinquency was from the City Planning Department. This notice gave no indication that it was regarding the loan from the LDC. Another delinquency notice was sent in August 2011 from the City Comptroller's Office and did not reference the LDC, but referred to a business loan and other payments due to the Troy IDA. The third delinquency notice sent in March 2012 was from the LDC, but came from the City Comptroller, not in his capacity as the LDC Chief Financial Officer.

LDC officials stated that beginning in February and March 2012 the board began a comprehensive review of all contracts and agreements managed by the LDC, and established enhanced accounting systems and financial tracking tools to assist the board and management to enforce contract provisions. However, it appears that these tools were not effectively utilized by the LDC until after our review of its operations. As indicated above, a delinquency notice was sent to the business in March 2012 indicating that the business was eight months delinquent in its loan payments, at which time the business paid the principal and interest due. The business then failed to make required payments for the next three months, and there was no action taken by the LDC. It wasn't until November 2012 that loan payment data was routinely provided to the board. In May 2013, the LDC restructured the loan repayment terms, reducing the interest rate on the loan and requiring quarterly payments on the principal, rather than monthly payments.

Standards for Economic Development Funds

As indicated, in 2012 the LDC received \$2.5 million in a one-time payment from a private company related to the waterfront properties. Rather than use these funds to redevelop the waterfront property, establish a loan fund to assist

businesses willing to relocate to the remediated areas, or to repay the federal loan, the LDC has used the funds to provide loans for economic development projects throughout the City. However, the LDC board has not established any guidelines or standards regarding the use of these funds, such as determining the types of projects eligible for funding, the criteria for evaluating potential projects, minimum or maximum funding amounts or recipient contribution requirements, or standard interest charges and repayment periods. In addition, the LDC has not publicly promoted or advertised the availability of these funds for loans, which reduces the likelihood that potential businesses are aware of the availability of the financial assistance for development. During 2012 the LDC awarded only one loan from these funds, but additional loans and grants have been made from these funds during 2013. However, the lack of guidelines and standards has resulted in questionable loan decisions.

In June 2012 the LDC provided one business with a \$200,000 loan. The loan agreement stipulated that the loan was to purchase equipment and fund certain soft costs, required the business to submit financial statements prior to the loan being provided, and required actual documentation of the costs incurred. The loan agreement stipulated that the equipment or machinery purchased would serve as collateral for the loan, which reinforces the need for a complete and accurate description of the items purchased from the loan proceeds. We found that neither financial statements nor invoices of equipment purchases were provided as required by the loan agreement.

LDC officials indicated that, although required by the loan agreement, there was no expectation that it would obtain financial statements, since the borrower was a start-up entity with no established financial history. They stated that they did obtain and review personal financial data of the applicant, but would not provide those records for our review.

This business also applied for and received financial assistance from the Troy IDA. Troy IDA procedures require the applicants for financial assistance to pay an administrative fee, as well as the legal fees incurred by the Troy IDA in reviewing the proposed project. These fees were not paid by the applicant, but instead were paid directly from the loan amount by the LDC, even though these costs were not identified as appropriate soft costs to be funded from the LDC's loan. These costs totaled almost ten percent of the loan amount. LDC officials indicated that these costs were previously reviewed and approved by the LDC for payment at closing with the Troy IDA, but were unable to provide documentation of the approval.

The LDC loan agreement provided that the full amount of the loan is to be repaid by December 31, 2013. The loan would be interest free, if paid by December 31, 2012. As of May 2013 the loan had not been repaid, yet the business had not made \$3,332 in interest payments. Despite failing to comply with the loan agreement, the business received another loan for \$50,000 from the LDC on May

17, 2013. The proceeds from this second loan were reduced by \$3,332 to capture the interest owed, as well as an additional \$2,000 for legal fees associated with the new loan issuance. We question why the LDC provided financing to the project in spite of the applicant failing to meet the terms and requirements established by the LDC.

Property Management

Three of the LDC's eight properties are leased to 11 private businesses and individuals. We found that due to the lack of written policies and procedures, the LDC has failed to enforce the provisions of its lease agreements. As a result of poor lease management practices, we identified over \$66,000 in lease income that the LDC should have received but did not.

For example, the LDC has a lease with one tenant that calls for rate adjustments, beginning in the fourth year of the lease, based on changes in the Consumer Price Index (CPI). This lease was entered into between the original owner of the property and the tenant in September 2006, assigned to the LDC when it purchased the property in 2007, and was amended in 2009. However, the LDC had never adjusted the lease payments. We determined that, based on changes in the CPI from 2010 to 2012, the LDC failed to collect \$5,438 in lease income. Subsequent to our review, the LDC began adjusting the lease amount based on CPI changes, but this adjustment was only applied beginning the sixth year of the lease, not the fourth year as stipulated in the 2009 lease amendment.

In addition, three of the lease agreements stipulate that if monthly lease payments are not paid within ten days of the due date, late fees will be applied. We identified many instances where lease payments were not made on time, but late fees were not assessed. As a result, over \$6,400 in late fees went uncollected for the three leases we reviewed.

For example, one tenant has continually failed to adhere to various provisions of its lease agreement, yet the LDC has failed to consistently take action to enforce these provisions. The LDC originally entered into a lease agreement with the tenant in 2007. The original lease required the company to pay \$7,300 a month. The agreement also required that the tenant assume full liability and responsibility for the repair and maintenance of the roof. The lease agreement provides that if the tenant fails to adhere to the terms of the lease agreement, the tenant is considered in default and can be evicted by the LDC.

Between November 2008 and February 2010 the tenant did not make any lease payments, withholding a total \$72,000. Yet, the LDC did not assess any late service fees during this period. And, rather than enforce the provisions of the lease agreement, the LDC instead negotiated an amended lease that required the tenant to pay only \$17,500 for the past due rent. The LDC also gave the tenant a credit for the remaining \$55,000 with the stipulation that the tenant

repair the roof on the building by June 2010. There is no documentation as to what, if any, repairs were made by the tenant. There is evidence to suggest at least one potential new tenant did not take occupancy due to concerns over the roof in 2011.

Further, even though the tenant had failed to adhere to the terms of the lease agreement, the LDC has amended the terms of the lease to benefit the tenant. As indicated above, the tenant did not make any lease payments from November 2008 to March 2010. However the LDC amended the lease to reduce the monthly payments from \$7,300 to \$5,000 for the period April 2009 to March 2010, and further reduced the monthly payments to \$4,000 for the period after March 2010. There was no indication as to why the LDC reduced the tenant's monthly payments. However, this results in less rental income received by the LDC, which reduces the funds available for the redevelopment of the waterfront area or to pay down the federal loan.

This tenant failed to make its monthly payment on time for 17 of the 24 months in 2011 and 2012. Although the lease agreement states that payments made later than the tenth day of the month shall be subject to a \$250 processing and service fee, the LDC did not routinely apply these fees until September 2012. Since then, the LDC has been more consistently applying late fees, and the tenant appears to be better at making lease payments on time, in accordance with the lease agreement. The LDC has also begun assessing legal fees to this tenant, when appropriate. As a result of our review, the LDC has improved its overall management of leases, enforcing the lease terms on a more consistent basis.

Property Acquisitions

The lack of operating and administrative policies has lead to questionable costs incurred by LDC staff. During 2012 the City advertised and requested proposals for its surplus property. The LDC's Chief Financial Officer, who is also the City Comptroller, paid all the closing costs required on properties in November 2012, as required by the City's purchase terms. However the City did not transfer ownership for two of the properties until April 2013. As of the end of our review, the City still had not transferred title to the LDC for the third property.

Recommendations

1. The board should define its mission in relation to the overall economic development plans of the City, and govern the LDC in accordance with such mission.
2. The board, in coordination with the City, should adopt policies and procedures for City employees to follow when carrying out the LDC's mission and operations, consistent with program and funding requirements.
3. The board should adopt financial management practices that properly segregate federal funds, including program income, and restrict the use of these funds only for designated purposes.
4. The LDC should establish a separate loan repayment account, as required by federal standards, to account for all program income generated from the use of federal funds. The program income generated should only be used for purposes allowable under the HUD agreement.
5. The LDC should ensure staff are trained and aware of the federal grant and loan requirements to assure that program requirements are clearly understood, and that funds are awarded and accounted for appropriately.
6. The board should ensure that recommendations for funding through the City's financial assistance programs are made in accordance with the established criteria and guidelines for those programs.
7. The LDC should file the appropriate property tax exemption applications and annual renewal forms, as required.
8. The board should actively identify and market the availability of funding for economic development, establish guidelines and criteria for objectively evaluating requests for financial assistance, and ensure that funding awards are made in accordance with established criteria.
9. The board should adopt policies and procedures to continue improving the monitoring and billing of lease and loan payments to assure timely collection of funds due to the LDC, and ensure that all provisions of lease and loan agreements are consistently followed and enforced.
10. The board should adopt property acquisition policies and procedures to ensure that title to properties are obtained when payment is made.



September 30, 2013

Mr. David Kidera, Director
New York State Authorities Budget Office
Agency Building #1, 9th Floor
Albany, New York 12220-0076

Re: Troy Local Development Corporation
ABO Operational Review: OR-2012-03
Written Response to Report

Dear Mr. Kidera:

Please accept this letter as the Troy Local Development Corporation's ("TLDC") written response to the NYS Authorities Budget Office ("ABO") Operational Review OR-2012-03 (the "Report"). We have worked closely with your office to develop the accuracy and usefulness of the Report to properly distinguish timeframes of historical TLDC oversight and management and have taken significant steps toward improving our corporate operations. As you are aware, the TLDC underwent a complete board and staff restructuring, including 4 of 5 Directors, all appointed Officers and support staff starting in January 2012 as a result of a change in administration with the City of Troy.

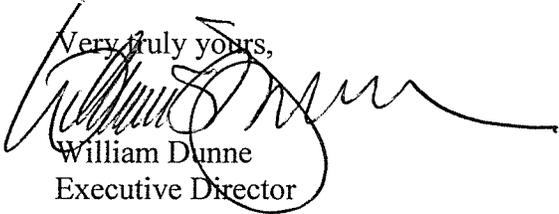
Within the Report, the ABO makes numerous observations relative to TLDC administration of federal funds dating back to 2006. However, TLDC has conducted an independent review by a certified public accountant, which found no substantive issues with the TLDC's administration of such funds. TLDC has dedicated significant resources and worked closely with ABO during the course of its review process, all the while focused on its critical mission of bringing jobs and capital investment into the City of Troy. During this process, we have taken affirmative steps to outline the value of local development corporations as effective economic development tools for municipalities in New York State. We feel that that this time and effort working with ABO has resulted in a Report that will assist TLDC enhance future operations.

Overall, and as Executive Director of the TLDC, I am proud of the hard work and commitment demonstrated by TLDC's volunteer Board of Directors and its hardworking staff. We took control of a poorly run and maintained organization in January 2012. Since that time, we have instituted stringent policies, institutional controls and undertaken various corrective adjustments to better the TLDC mission and programs. In addition, TLDC has aggressively undertaken economic development activities and programs for the betterment of the City of Troy – the results of which are clearly evident in a City that is buzzing with new economic activity and prosperity. The proof is in the

results and TLDC is proud to have not only demonstrated actual results in a very short period of time, but also undertaken significant corporate housekeeping.

We have taken the time to respond in specific detail to ABO's Report in the pages that follow, which are a component of this written response. TLDC has been at all times, is and shall remain in full compliance with all applicable laws and regulations, including PAAA. While this fact isn't reflected in the Report, we thank the ABO for its time and attention.

We look forward to continued opportunities to enhance the City of Troy.

Very truly yours,

William Dunne
Executive Director

Our specific comments to the content of the Report are as follows:

Executive Summary (ES-1 to ES-3)

- The Report does not make a clear delineation of TLDC corporate activities before January 1, 2012. Such a delineation would underscore the efforts of the new City administration, which at its own behest undertook numerous corrective actions since the reorganization of TLDC after January of 2012.
- The ABO states that TLDC has not adopted its own operating policies and that City employees have received no clear guidance on how to carry out the mission and purpose of TLDC. The TLDC is compliant in all respects with PAAA, with all necessary policies adopted, adhered to and reports filed with the Public Authorities Reporting Information System ("PARIS"). TLDC staff is aware of their roles and operate under Policies and Procedures, which are available to the public on the TLDC website:

(<http://troyny.gov/Departments/EconomicDevelopment/TroyTLDC.aspx>.)

- ABO's statement that TLDC did not effectively manage \$5 million of federal funds is incorrect and appears to be based primarily upon the ABO's understanding of Federal laws, regulations and agreements relating to the administration of Community Development Block Grant ("CDBG") Funding and the United States Department of Housing and Urban Development ("HUD"). As demonstrated to the ABO, the HUD funding agreements clearly provide that TLDC is empowered to deploy assistance throughout the City of

Troy and not exclusively within delineated “brownfield” sites. Furthermore, the examples of a \$250,000 loan and a \$55,000 property acquisition, which were undertaken in 2008 and 2009, respectively, were fully compliant with applicable HUD rules and regulations. These transactions occurred prior to the current administration’s control of the TLDC.

- Prior to 2012, the TLDC was relied upon by the City to vet applications for certain economic development funds. This practice ended prior to 2012, as these funds were exhausted. The TLDC no longer provides this review and currently holds no City funds in any of its accounts. Thus, the examples cited by ABO for inappropriate recommendations for funding occurred in 2006 through 2011. Again, these activities occurred entirely prior to the current administration’s control of the TLDC.
- The granting of tax exemptions are not a function of the TLDC and should not be included in this review. Commentary regarding the TLDC receiving preferential tax treatment relate to discretion and responsibility vested in the office of the City Assessor. The assessment error noted by ABO was discovered in 2011 and corrected. The activities leading up to this municipal oversight occurred prior to the current administration’s control of the TLDC.
- With respect to TLDC management of the loans and leases, the TLDC conducted its own comprehensive review of corporate contracts and obligations at the start of 2012. This basic and fundamental exercise was self-initiated and occurs any time appointed Directors assume fiduciary duty and control of an existing organization. The TLDC board of directors, with the support of appointed staff, compiled comprehensive financial reports and determined that certain tenants and borrowers were behind in payments to the corporation. The parties in question were immediately noticed and back payments were collected. Ultimately, tenants who did not pay rent were evicted. There is now a monthly process in place to invoice tenants and borrowers. This process did not exist prior to 2012. The ABO’s cited examples of mismanagement (i.e. credit for roof repair work) are more examples of activities that occurred prior to the new administration’s control of the TLDC.

Review Results – Ineffective Administration of Federal Funds (Pg 3-4)

- The vast majority of comments from the ABO concerning the operations of the TLDC cover the period from late 2000 to late 2006, when the City of Troy applied for and was granted a HUD Section 108 loan and Brownfield Economic Development Initiative (“BEDI”) Grant, which was initially conceived for and intended to create a \$10,000,000 business loan fund to be co-administered with Rensselaer County and other entities. Per the original

application narrative from 2000, the “fund will assist projects throughout the City of Troy, but will focus on the (industrial) sites in South Troy. The fund ended up only being capitalized with \$5,000,000 – sourced from a \$3M HUD loan and \$2M BEDI grant to the City – with no county participation. From the time of the award in 2001 until sometime in 2005/2006, the money sat unused in HUD accounts until it was claimed by the administration of former Mayor Harry Tutunjian. The City loaned the \$3 million 108 funds to the TLDC for the purpose of purchasing two industrial parcels in South Troy – the former King Fuels and Portec properties, for approximately \$2.6 million. The City also appointed the TLDC as a sub-recipient of the \$2 million BEDI grant proceeds to allow TLDC to act as the lead in redeveloping these properties. The TLDC used the remainder of the 108 and BEDI proceeds to conduct demolition of unsafe and derelict buildings on the former King Fuels site, pay administrative fees, purchased vacant building and made a loan to a company. The Federal funds in question were not ineffectively administered. All uses of the funds were clearly allowed, per the language of the original application, the HUD agreements and the HUD laws. The ABO focus on not having a formal revolving loan fund established is misplaced since the funding provided by HUD was half of what was requested in the City’s original application. Indeed, a loan was made by TLDC to a qualifying borrower and repayment proceeds have been administered properly. TLDC has demonstrated that HUD funds are not limited to the City’s waterfront area or to just “brownfield” sites. Furthermore, the activities for which ABO expresses concern all took place between 2006 and 2010, which is prior to the new administration’s control of the TLDC.

Review Results – Recommendations for Economic Development Funds (Pg 5-6)

- All comments by the ABO date to a period prior to 2012. There is no record of the information used as a basis for any decision made prior to the current board and staff being involved. Any money referenced as part of the city’s Economic Development Assistance Program (EDAP) were long ago expended, with the exception of a loan made to a company prior to 2012, which is current with regard to repayment.

Review Results – Property Tax Exemption (Pg 6-7)

- Purchase in 2006, the former King Fuels and Portec sites in South Troy were automatically granted a complete exemption from taxes by the city comptroller/assessor, despite the fact that the site had tax paying tenants and were subject to taxation. A public inquiry in 2010 and again in 2011 caused the situation to be rectified and a PILOT agreement was put in place by the Troy Industrial Development Authority (TIDA) on the TLDC parcels. In March 2013, the TLDC paid the overdue bills. The City did not charge late

fees or interest. With the exception of the late payment, the issues referenced here by the ABO are municipal responsibilities and occurred prior to the new administration's control of the ABO.

Review Results – Loan Management Practices (Page 7)

- Since early 2012, the TLDC board and staff have worked closely to address many of the issues outlined in the Report. The new TLDC board of Directors, upon being seated in the spring of 2012, have worked tirelessly with staff to not only improve TLDC financial reporting, but also establish process by which new businesses and businesses looking to expand could contact the TLDC. Procedures were put in place to address delinquent rent and loan payments, all of which have been made current. We disagree with the ABO statement that City employees are uncertain as to when they are performing a City function versus conducting TLDC business.
- We have worked closely with ABO to outline the workings of the economic development industry for which it is charged with overseeing. To be certain, economic development incentives and inducements need to be carefully balanced where the business and/or the economy are under distress. The \$250,000 loan referenced by the ABO was made to borrower during the height of the recent credit crunch. The borrower experienced difficulty in meeting its payment obligations due in part to the timing of business cash flows, but nonetheless kept its investments and jobs in the City of Troy. TLDC and the Borrower were in constant contact with during this time discussing restructuring options with respect to the loan. Therefore, rather than foreclose on the loan and place the business in jeopardy of closing and/or elimination of local jobs, the TLDC worked with the borrower in order for the company to remain a viable business within the City. Toward that end, TLDC and the borrower negotiated a work-out based upon matching debt service to the timing of the borrower's cash flows, which closed on May 1, 2013.

ABO Note 1

Review Results – Standards for Economic Development Funds (Page 7-8)

- In 2012, the TLDC received a \$2.5 million payment from a private utility company as a license fee to allow the company to undertake a NYSDEC-ordered remediation of the former King Fuels Site. TLDC and the Company entered into a revocable license agreement for limited access to the site and the payment received by TLDC was intended, in part, to reimburse TLDC for over \$750,000 in expenses incurred by TLDC to demolish buildings and stabilize the site. The agreement contained no required use for the funds, nor are the funds "Program Income" under HUD rules. Comments by the ABO

that the money had to be used to repay the HUD Section 108 Loan or redevelop the King Fuels site are inaccurate.

- Over the course of 2012 and 2013, TLDC has developed standards for a multi-faceted economic assistance program, which allows TLDC to employ great flexibility to fulfill the needs of businesses seeking to invest and create jobs in the City of Troy. During the same time period, varying forms of economic development activities assistance were provided through TLDC, including loans, grants and property acquisition. While not formally advertised in print media, these program activities were readily disclosed through City Offices and websites. The program activities were deployed to a variety of businesses located city-wide, three women-owned business and two minority-owned businesses. With regard to a \$200,000 loan made to a business locating to a critical location in the City, the ABO states that no financial statements were provided as required by the loan agreement. The borrower was a start-up entity that was established to develop and operate the project. Therefore, no financial statements would have existed at the time of closing. This was understood by all parties and hence the “N/A” designation in Schedule C of the loan agreement where such statements would have been located. Nevertheless, and as required by the TLDC, the borrower did provide a detail of the current financial position of the entity at the time of the loan as well as projections for the next year and a half. Furthermore, the borrower in accordance with the loan terms provided profit and loss projections for a two year period. Lastly, the borrower provided detailed cash flow, revenue and expense detail projections as well as a statement of start-up sources and uses of funds. The ABO further states that they did not find invoices of expenses as required by the loan agreement. Invoices were presented at closing and included in the closing documents. Such invoices represented items that were purchased in accordance with the loan terms and that were in existence at the time of the loan closing. Purchases made by the borrower with loan proceeds after closing would not be reflected in the loan agreement as cancelled checks or receipts. However, the financial documents provided by the borrower itemized the project costs that were anticipated. Pursuant to the terms of the loan, any equipment or machinery purchased is collateral for the loan even if purchased subsequent to loan closing. This information was fully supplied to the ABO with accompany documents, yet the statements remain in the Report in need of clarification.

ABO Note 2

Review Results – Property Management (Page 7-8)

- Commencing in April and May of 2012, the newly appointed Board of Directors and management of TLDC began a comprehensive review of all existing contracts and agreements to be administered and managed by TLDC.

As part of this due diligence, TLDC Board and management also established enhanced accounting systems and financial tracking tools to assist the Board and management to enforce contract provisions. This enhanced system is used to track expenses and receivables, and from time to time has been used to assist the Board with discretionary collection efforts for rental payment arrears, late fees and attorney fees, which were all collected within the tenants' cure periods. The ABO was provided extensive documentation demonstrating the steps that the TLDC took commencing in early 2012 to enforce its lease provisions including default notices, eviction procedures, and the charging of late and attorney fees. Furthermore, the ABO's cited examples of lease mismanagement all occurred prior to the ABO's own stated scope of review and the new administration's control of the TLDC.

- All corrective remedies recommended by ABO were and continue to be undertaken by TLDC Board and Staff through self-initiative and desire to run an effective and transparent economic development program for the betterment of the City of Troy.

Authorities Budget Office Comments

1. As indicated in our report, the LDC did not notify the borrower of late payments nor did it apply late fees. We found that this issue was not addressed by the board until November 2012, after the ABO had initiated its review. During 2012, only one delinquent notice was sent although the borrower was past due on 8 payments. No documentation was provided that other past due notices were sent to the borrower, even though on average the borrower's payments were 24 days late during this year.
2. As indicated, our report questions why the LDC included a requirement in the loan agreement that financial statements be provided, which would serve as the basis for approving the loan, when the LDC had agreed that financial statements would not be necessary. In addition, equipment to be purchased was to serve as collateral for the loan. However no invoices were provided to document whether equipment was actually purchased to secure the loan.