Nassau County
Office of the Comptroller

Limited Review of the Nassau County Industrial Development Agency For the Period from January 1, 2009 to March 31, 2010

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Background

Industrial Development Agencies ("IDA") are independent public benefit corporations that were established pursuant to the New York State Industrial Development Agency Act (the "Act"), Article 18-A of the New York State General Municipal Law ("GML") in 1969 and amended in 1975.[1] According to the Act, the purpose of IDAs is to "promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial manufacturing, warehousing, commercial, and research and recreation facilities….including… continuing care retirement communities… [to] advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living."[2]

The New York State Legislature has granted IDAs specific powers, including the power to hold and dispose of personal property. They may execute contracts and leases, issue tax-exempt debt and grant exemptions from certain property, sales and/or mortgage recording taxes. They may accept gifts, loans, grants or contributions.[3] In 2008, there were 115 New York State IDAs that reported 4,471 projects with an estimated worth of $65.6 billion to the New York State Authorities Budget Office and the Office of the New York State Comptroller.[4]

The Nassau County Industrial Development Agency ("NCIDA") was formed on August 6, 1975, pursuant to Chapter 674 of the Laws of 1975.[5] Article 18-A of the GML, Title 2, Section 922 established the NCIDA and provided that its members were to be appointed by the Nassau County ("County") Executive subject to confirmation by the County Legislature. Where the County consents, the NCIDA may use County agents, employees and facilities so long as it pays the County an agreed upon portion of the compensation or cost incurred by the County.[6]

The NCIDA is governed by a Board of five members who serve on a non-paid, voluntary basis. In February 2010, three new NCIDA Board members were appointed by the County Executive and confirmed by the County Legislature and the newly-constituted Board met for the first time in March 2010. A new Executive Director was appointed on June 1, 2010 and a new Chief Financial Officer was appointed on June 14, 2010. The new Board Chairman requested that the Comptroller's Office review the NCIDA operations.

The NCIDA is authorized to provide financial assistance to businesses or projects that are expected to benefit the County, and its taxpayers, by creating or retaining jobs, providing economic development opportunities, attracting companies and industries to the County, or encouraging companies to expand their businesses here or remain in the County.

A significant incentive in IDA projects is their exemption from real property tax, mortgage recording tax and sales and use tax. By law, an IDA is not required to pay taxes on any property acquired by it or under its jurisdiction. A portion of the tax exemptions may be recaptured in the

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[1] New York State GML, Article 18-A, Industrial Development.
[2] New York State GML, Section 858 (6), Purposes and Powers of the Agency.
[3] Ibid.
[4] Office of the New York State Comptroller's *Annual Performance Report on New York State's Industrial Development Agencies, Fiscal Year Ending 2008*, May 2010, Page 7.
[5] 1975 N.Y. Laws 674 (adding Section 922 to the GML). Its operations and activities are governed by the provisions of Article 18-A, Title 2.
[6] New York State GML, Section 858 (6), Purposes and Powers of the Agency.

form of Payments in Lieu of Taxes ("PILOTs").[7] When the NCIDA enters into a PILOT agreement, the property is removed from the property tax roll by the Nassau County Department of Assessment ("Assessment"). The IDA in turn stimulates investment, creates jobs and helps improve neighborhoods.

In 2009 the NCIDA reported 119 active projects, dating from 1993 – 2009, to New York State, totaling approximately $2.3 billion in project costs.[8]

The NCIDA uses fees collected from project applicants to support its operations. It does not receive support from County, State or Federal funds. The NCIDA collects administration fees from the issuance of taxable bonds, tax-exempt bonds and from straight lease transactions. Other fees collected from the project applicants are an application fee of $1,000, a project closing compliance fee of $2,500, an annual fee of $1,000 per project during the term of the bonds or straight lease, and a recapture fee for projects that are terminated or failed to meet projected goals. Fee income collected in 2009 and 2008 was approximately $383,228 and $1,188,708, respectively.

Review Objective, Scope and Methodology

The objective of our review was to determine the effectiveness of the NCIDA in achieving its mission of attracting businesses or projects to the County that will benefit its residents. We evaluated whether the PILOT agreements granted to businesses complied with the expected job creation or retention goals outlined in the lease agreements to compensate for the property tax exemptions provided to the projects. We reviewed project performance to ensure compliance with the NCIDA's By-Laws, its UTEP and Section 874 of the New York State Industrial Development Agency Act. We examined the NCIDA projects to determine whether the job goals were met. Our financial review was limited to the period January 1, 2009 through March 31, 2010. The project review spanned the period 1997 through 2010.

In our review of the NCIDA's business practices for PILOTs, we interviewed the NCIDA's former Executive Director[9] to obtain an understanding of the NCIDA's PILOT process prior to March 2010, including the application process, how the merits of the project were evaluated and how a determination was made of the financial assistance to be granted. We also interviewed Assessment's accounting staff to determine how they invoiced the businesses for the PILOT payments and then distributed the revenues to taxing jurisdictions.

We selected a total of 21 projects for review; eight from 1997 to 2007 that received the largest property tax exemptions through PILOT agreements; and thirteen more recent projects from 2008 to 2010. We examined applications, lease/sales agreements, board minutes and resolutions.

[7] Office of the New York State Comptroller, Industrial Development Agencies Accounting and Reporting Manual, page 7.

[8] Per New York State Public Authority Reporting Information System (PARIS) Report Worksheet for 2009. The PARIS Report lists each project begun in 1990 and thereafter for which debt was issued, outstanding, or retired during the fiscal year or any straight-lease agreement which was entered into since 1990 and remains outstanding. These projects receive various types of financial assistance from the NCIDA, including PILOTs, bond issuances, and sales and mortgage tax exemptions. Some companies were listed more than once on the (PARIS) Report Worksheet because different sections, blocks and lots were covered by the projects, more than one project was active for the company, or multiple instance of financial assistance, i.e., several different bond issuances, were in effect.

[9] The Executive Director left the NCIDA in April 2010.

We also reviewed project documents to identify how the NCIDA determined which projects should receive financial assistance, the amount of the PILOT to grant and the property tax impact to other taxpayers. In addition, we examined project documents to determine Nassau County's involvement in the review and approval of the projects and PILOT agreements before being signed.

We obtained written policies and procedures and evaluated controls over the processing of cash receipts, disbursements and payroll and to ensure that the financial information was accurately recorded, authorized and supported. We reviewed financial information for accuracy, contracts for compliance with procurement policies, and procurement practices for compliance with State regulations and NCIDA policy to determine whether internal controls to safeguard assets and prevent errors from occurring were in place.

We reviewed internal controls over the processing of its financial information and daily workflow activities to determine if internal controls existed and were adequate.

We sampled cash receipts, disbursements and payroll on a test basis for 2009 and 2010, to verify for proper authorization and adequate support for a selection of contracts entered into during the review period, Board approval was verified and contract compliance was examined for expenditures made under the contract.

Summary of Significant Review Findings

1.0 The NCIDA Granted Financial Assistance to Most Projects without Formal Independent Cost Benefit Analysis or Statement of Benefits to the County

Prior to March 2010, the NCIDA did not generally contract with an independent third party consultant to perform an analysis of the cost benefits of each project prior to granting financial assistance to the project developer. A review of the results achieved by 21 projects entered into between 1997 and 2010 disclosed that for 62%, the NCIDA received the expected benefits, such as increased employment, while for 19% of the projects; the expected benefits were partially achieved. In 3 instances, or 14%, the project had begun too recently for the results to be evaluated, while in 1 instance, or 5%, the project had been terminated before completion.

No Independent Analysis Performed by NCIDA to Verify Applicants Projected Benefits

Our review of 21 projects entered into between 1997 and 2010, noted that three (3) projects had an outside consultant hired by the applicant perform an economic analysis. Four (4) projects had an outside consultant hired by the NCIDA perform a PILOT analysis that did not include a review of the economic benefit to the County, while one project had an outside consultant hired by the NCIDA to develop the methodology for the allocation of the PILOT to the taxing jurisdictions affected.

With the exception of the three projects evaluated by the outside consultants, no documentation was provided to support how NCIDA determined which projects would receive financial assistance, the amount of the assistance, and the positive impact on the County, other than the minutes of the presentations by the applicants at Board meetings. Without an independent review of the benefits anticipated for each project, the NCIDA could not verify that the proposed projects' benefits to the County were achievable.

The Amount of Financial Assistance (PILOT) Granted Was Not Based on Any Relationship to the Expected County Benefit

In our review of a 20-year PILOT agreement granted to Neptune Regional Transmission System, LLC, we noted that the project may have been granted a financial assistance package before the estimated assessed taxes on the property had been determined. The differential between the estimated property taxes of $8.9 million[10] had the property been on the tax roll for 2009, compared to the $200,000 PILOT received that year, was approximately $8.7 million. The project may have received a more beneficial financial assistance package than may have been granted if the estimated property tax information had been available for consideration.

2.0 NCIDA Did Not Monitor Applicants' Projected Employment and Other Benefits

Our review of the job certification process noted that the NCIDA took no steps to ensure that the projects met their employment goals listed on the project applications or lease agreements. Instead, the NCIDA relied on the applicant representations presented in their annual job certification reports.

Monitoring of Employment Projections

We reviewed the 2009 job certifications reports for 21 projects and found 5 projects that had not met or had only partially met the job goals listed on the applicant's application or lease agreements. There was no evidence that the NCIDA had performed any review of the annual job certification reports to supporting documentation, such as payroll reports, or had followed up on instances where the job goals were not met by the project. A review of employment projections is needed to ensure that the projects are meeting their employment goals, and that appropriate follow-up takes place in instances where the goals have not been met.

Monitoring of Other Benefits

We noted an additional instance where benefits anticipated in the project application or lease agreement were not monitored by the NCIDA. The Neptune project had a 20-year contract with the Long Island Power Authority to supply electric power. LIPA anticipated a benefit of $1.4 billon to Long Islanders, however there was no evidence to document these benefits. Monitoring of the projected benefits is critical to ensure that the projects granted financial assistance by the NCIDA are meeting the goals projected to benefit the County and its taxpayers.

3.0 NCIDA Lacks a Policy on Retention and Distribution of Recaptured Project Benefits

The NCIDA projects from 2002 through 2010 included recapture clauses in their legal agreements to ensure that if a project did not meet its expected goals or was terminated, the NCIDA could "recapture" some of the benefits that had been provided to the project. Recaptured funds may represent PILOTs granted, sales tax exemptions and mortgage tax exemptions. The NCIDA's practice with regard to the disposition of recaptured amounts was inconsistent.

[10] This estimate was provided by the Department of Assessment based upon the project's converter station's 2009 assessed value and the project cable's 2011 assessed value as provided by the New York State Office of Real Property Services and the 2009 property tax rates.

Our review of recaptures from January 2006 through March 2010 noted that some recoveries were remitted to the County for allocation to various municipalities and school districts, while other recoveries were retained by the NCIDA.

4.0 NCIDA Lacks Written Guidelines for Evaluating and Granting Project PILOTs and Standardized Agreements

The NCIDA did not have written policies, procedures and guidelines for granting, structuring and administering PILOTs. The PILOT terms were detailed only in project documents, such as the PILOT Agreement and the Notice of Proposed Deviation from UTEP. The NCIDA's UTEP adopted in 1994 and Section 874 of the New York State Industrial Development Agency Act (the "Act") contain written guidance on financial assistance. However, these documents did not include detailed PILOT guidelines governing the structure of PILOTs for various types of projects, such as commercial renovation or new construction projects, low income housing and assisted living development projects. Although the responsibility for the proper collection and distribution of PILOTs falls with the NCIDA, there were no written procedures in place to detail the NCIDA's role with the Assessment Department in ensuring that PILOTs are billed correctly and revenue is distributed properly.

5.0 NCIDA PILOT Agreements Lacked Restrictive Clauses on Tax Certiorari Filings

The majority of the NCIDA's PILOT agreements for the period 2002-2008 did not contain restrictive clause prohibiting tax certiorari filings during the term of the PILOT. During the term of the Cablevision Systems, Corp.'s PILOT, the company obtained a tax certiorari settlement of over $7.6 million, thereby reducing the PILOT amount distributed to the respective taxing jurisdictions.

6.0 Salary Increase Was Improperly Granted Without Board Approval

In 2008, the NCIDA Board approved salary increases for each of the NCIDA's employees. There was no evidence in the Board minutes to indicate if the Board was aware that the former Executive Director had declined his full raise in 2009 or of the increase in his base salary to $140,000 the following year, when the full amount of the raise was implemented.

7.0 Weaknesses Were Noted in the NCIDA's Accounting Practices and Internal Controls

There were several weaknesses noted in the internal controls over the accounting functions that may result in preventable errors not being detected in a timely manner. The following exceptions were noted:

- Segregation of duties for cash receipts and disbursements was inadequate, primarily due to a reduction in staffing;
- Bank statements were mailed directly to the NCIDA and opened by the same individual who prepared the reconciliation. The bank reconciliations were not dated or signed by the preparer or by management, to evidence review and approval and;

- Weaknesses in the cash disbursement process with regard to evidencing pre-authorization or the business rationale of expenditures were noted. There was no documentation maintained on the matters discussed at conferences or to evidence if the NCIDA's employees' attendance resulted in benefits, such as new business contacts.

8.0 Weaknesses Were Noted in the NCIDA's Administrative and Personnel Practices

The internal controls over the monitoring of administrative and personnel practices at the NCIDA were insufficient to ensure that policies were being monitored and expenditures were adequately supported. The following internal control weaknesses were noted:

- The Long Island Regional Planning Council ("LIRPC") Cooperation Agreement lacked defined deliverables and monitoring requirements. The NCIDA's payment of $350,000 to the LIRPC lacked supporting documentation evidencing the work performed;
- Weaknesses in the time and leave recording procedures and policies were noted. In 2002, the NCIDA adopted most benefit and leave provisions the County provides to exempt (Ordinance) employees. However, the NCIDA did not revise its own policies to adopt subsequent amendments such as requiring employee contributions to health benefit costs;
- NCIDA employee duties and job descriptions were inconsistent with the NCIDA's By-Laws and the employees' actual responsibilities;
- The January 2010 accumulated leave payout to NCIDA employees for $68,330 lacked Board approval. There was no evidence to indicate that the Board was aware of the amount to be distributed or had approved the method for the calculation of the distribution, only that the Board minutes noted the amount paid was to be determined by the external audit firm;
- NCIDA was not in compliance with New York State record retention guidelines for Board Minutes and employee time records;
- Approximately ten NCIDA Board executive sessions or "off the record" discussions were undocumented in the NCIDA's Board Minutes, contrary to New York State Public Officers Law [11]; and
- Contracts were awarded without requests for proposals. The NCIDA procurement policy states that marketing service contracts for more than $2,500 should be made through a Request for Proposal ("RFP"). The marketing and advertising contract of $500,000 and the contract for the installation and administration of the NCIDA's website of $16,269 had not been obtained through an RFP.

[11] Public Officers Law, Article 7, Section 103. Open meetings and executive sessions.

9.0 NCIDA Had No Rental Agreement for its Occupancy in a Nassau County Owned Building

The NCIDA did not have a rental agreement with Nassau County for its temporary location at a County office building at 40 Main Street, Hempstead, NY and was not paying the County rent for the location. The NCIDA is an independent agency of the State of New York and it was not appropriate for it to accept rent-free accommodation.

10.0 The Public Authorities Reporting Information System (PARIS) Report to New York State is Missing Information on RPTL 485-b Exemptions

The amount of real property tax exemptions reported to New York State through the annual PARIS report was overstated. The New York State Comptroller's guidelines provide that the tax exemption amounts must be reported net of Real Property Tax Law ("RPTL") Section 485-b tax exemptions.[12] Assessment advised us that the 485-b exemptions were not deducted from the exemption amounts provided to the NCIDA and reported in PARIS.

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The matters covered in this report have been discussed with the officials of the NCIDA during this audit. An exit conference was held with the Chairman and Treasurer of the NCIDA Board, General Counsel, and senior staff. We received the NCIDA's final response on April 6, 2011.

[12] New York State Real Property Tax Law (RPTL) Section 485-b provides that to the extent allowed by local option, commercial and industrial facilities that are constructed or improved after July 1, 1976 at a cost exceeding $10,000 are partially exempt from taxation and special ad valorem levies, but are liable for special assessments. The exemption may be granted only after the construction or improvement project has been completed.

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Review Finding (1):

1.0 The NCIDA Granted Financial Assistance to Most Projects without Formal Independent Cost Benefit Analysis or Statement of Benefits to the County

Our review noted that the Nassau County Industrial Development Agency ("NCIDA") did not perform an independent review of the project benefits as presented by applicants requesting financial assistance, or obtain a full understanding of the property tax implications related to some of its projects. **Notwithstanding the forgoing, in 62% of the projects, the NCIDA received the benefits expected; and in 19% of the projects, the benefits were partially received.**

No Independent Analysis Performed by NCIDA to Verify Applicants Projected Benefits

Our review noted that the NCIDA did not perform an independent analysis of the benefits of each project prior to granting financial assistance. Without an independent review of the benefits anticipated for each project that requested financial assistance, the NCIDA could not verify that the project's benefits to the County, as indicated by the applicants, were achievable.

The retention or creation of jobs was one of the primary objectives of many of the projects, particularly those that established factories, office buildings and commercial establishments. Other projects had more intangible goals. For example, NCIDA officials noted that the development of assisted living projects would enhance the well-being of the residents of the local communities and their parents. The primary mission of the Neptune Regional Transmission System, LLC project was not to create jobs, but to bring lower-cost electricity to Long Island residents. The renovation of low-income housing in economically challenged communities provided benefits to both the residents and their neighborhoods.

The tables presented in Appendix A list the 21 projects that were selected for testing. Eight projects from 1997 to 2007 that received the largest property tax exemptions from Payment in Lieu of Taxes ("PILOT") agreements and thirteen recent projects from 2008 to 2010. The tables provide a summary of each project's purpose, estimated project cost and benefits granted, projected job creation/retention and 2009 actual job creation/retention as per the projects' job certification or 2009 New York State PARIS[13] report.

Section 874 (4) (a) of the New York State General Municipal Law ("GML") requires IDAs to establish Uniform Tax Exemption Policies ("UTEP") which provide the Board with procedural guidelines to make project approvals or denials and guide the NCIDA in providing financial assistance. However, the NCIDA's UTEP did not contain detailed procedural guidelines covering project approval or denial decisions. The NCIDA's Board was responsible for reviewing and approving project application requests for financial assistance with the construction or renovation of buildings. The granting of these tax exemptions was made based upon the benefits that the projects hold for the County and its taxpayers, including the creation and retention of jobs in Nassau County ("County").

For the 21 projects reviewed, we examined applications, lease/sales agreements, board minutes and resolutions in order to determine if the NCIDA performed an independent analysis to validate the benefits presented by the applicant during the approval process. We also reviewed project documents to identify how the NCIDA determined which projects should receive

[13] New York State Public Authority Reporting Information System.

financial assistance, the amount of the PILOT to grant and the property tax impact to other taxpayers. In addition, we examined project documents to determine the County's involvement in the review and approval of the projects and PILOT agreements before being signed.

Our testing disclosed that the NCIDA did not perform an independent analysis on **ANY** of the 21 projects in order to:

- verify the economic assumptions made by applicants;
- evaluate the benefits that the County would derive from each project;
- determine if the proposed property tax exemptions and financial assistance was justified; and
- determine which projects to approve and the level of financial assistance to provide.

Although applicants typically made presentations at the NCIDA Board meetings on their project's purpose, benefits, and the need for financial assistance, there were no written documents to suggest that NCIDA evaluated the benefits to the County for each project in relation to the financial assistance granted.

Of the 21 projects examined, only in 3 projects was there an independent analysis done on the benefits and in these cases, the applicant hired an outside consultant to perform the analysis. In 4 cases where the NCIDA hired an outside consultant, these studies did not address the economic benefit to the County in granting the PILOT.

- Three projects, Lunar Module Park, LLC, Lifetime Fitness, Inc. and the CSH North Hills Assisted Living, where the economic benefits were evaluated by an outside consultant hired by the applicant, raised a question as to the evaluations' objectivity.

- The four projects Lowe Properties, LLC, Adams Court Housing Development Fund Corporation, Bedell Terrace Apartments, LP and Spinney Hills Homes had brief reviews of the applicants' financial information from the consultants hired by the NCIDA, which included a PILOT analysis of the projects, but did not include a review of the economic development benefits to the County.

- The NCIDA commissioned a study from a consultant to develop the methodology for the equitable allocation of the Neptune project PILOT to the taxing jurisdictions affected.

Our review of project applications and Board minutes determined that project applicants agreed that in return for financial assistance from the NCIDA, they would create or retain jobs in the County, or provide other benefits, such as access to lower cost electricity, assisted living housing, or housing in economically challenged areas. Some of the applicants made statements to justify the granting of exemptions for real property, sales and mortgage tax or low interest financing, such as "without financial assistance from the Agency (NCIDA), the projects may not be able to move forward". With the exception of the three projects evaluated by the outside consultants, no documentation was provided to support how NCIDA determined which projects would receive financial assistance, the amount of the assistance, and the positive impact on the County. For the 3 projects, the consultant doing the analysis was hired by the applicant and cannot be considered independent.

Notwithstanding, from the 21 projects reviewed between 1997 and 2010 (See Appendix A), it appears that the benefits represented were delivered in 13 instances or 62% of the times, in 4 instances or 19% of the times they were partially delivered, in 1 instance or 5% of the times they were not delivered and in 3 instances or 14% of the times the benefits could not be determined since the projects were too recent.

Review Recommendations:

a) The NCIDA should conduct and document the results of an independent review and analysis of each project before it is approved by the Board to ascertain that the benefits to be granted to the applicant are justified by the project's economic impact and benefits to the County and its taxpayers. The analysis should take into consideration the savings granted the applicant in PILOTs and other financial assistance as compared to the benefits the County and its taxpayers receive from the project, such as the number of jobs created or retained, affordable housing or economic development of a community. The UTEP should include criteria for evaluating each potential project based on the community's needs; and

b) The Comptroller's Office should conduct a bi-annual review of the NCIDA project awards to ensure that the benefits to the County were achieved by the projects. For example, employment or intangible goals and improved living conditions in low income housing.

The Amount of Financial Assistance (PILOT) Granted Was Not Based on Any Relationship to the Expected County Benefit

Our review noted that a 20-year PILOT was granted to an applicant before the estimated assessed taxes on the property were determined. This may have resulted in the applicant receiving a more beneficial financial assistance package than may have been granted if the estimated property tax information had been available and taken into consideration.

The PILOT agreement for the Neptune project, signed in July 2005, was entered into prior to determining the assessed property taxes and without evidence of the performance of an independent benefit analysis. A consultant's study, which was prepared for PILOT allocation purposes only and listed estimated property taxes for the project, was issued after the PILOT agreement had already been signed. In addition, our review noted that the NCIDA did not monitor the expected employment projections of the project (see Review Finding (2), NCIDA Did Not Monitor Applicants' Projected Employment and Other Benefits).

The Neptune project, which consisted of the construction of a converter facility and the underground/underwater installation of a cable to New Jersey in order to provide lower cost out-of-state generated electricity to Long Island, was completed in 2007. The cable travels through the three Nassau County towns, and multiple villages and school districts. According to the Long Island Power Authority ("LIPA"), the cable allowed LIPA to both increase its power supply and to purchase power from diverse and competitively priced power markets.

In 2005, the NCIDA commissioned a study from a consultant to develop the methodology for the equitable allocation of the Neptune project PILOTs to the taxing jurisdictions affected. The study, issued on December 31, 2005 (approximately six months after the PILOT agreement was signed), included a review of property tax information, which estimated that the project's property taxes, using 2004 tax rates, could range from a minimum of $4.3 million to a maximum of $6.4 million. It also noted that there were other influences on taxes, and that legal and other issues, such as the tax exempt status of LIPA[14] or the property easement agreement between Neptune and New York State[15] could exempt a portion or all of the project property from property taxes.[16]

The first two PILOT payments of $100,000 and $200,000 were paid in December 2007 and December 2008, respectively.[17] According to the PILOT agreement, the annual PILOT amount is scheduled to increase, peaking at $3.4 million in the final year (2026/2027). Based on assessed values provided by Assessment and the New York State Office of Real Property Services ("ORPS"), and effective tax rates, Assessment estimated that the properties tax levy for the converter facility and the cable would have been approximately $8.9 million for 2009.[18] This indicated that the NCIDA agreed to the PILOT payments without the information on estimated taxes that the study subsequently provided. Therefore, the computation of the PILOTs appears to have been developed without sufficient data. The estimated differential in property tax revenue had the property been on the tax roll for 2009, versus the $200,000 PILOT received that year, would have been approximately $8.7 million.[19]

Review Recommendations:

The NCIDA should:

a) Obtain data related to estimated tax assessed values prior to establishing PILOT agreements to ensure that decisions made with regard to providing financial assistance to projects are made after evaluation of all costs and benefits; and

b) Notify Assessment prior to the finalization of a PILOT agreement to obtain relevant input and/or comments that may assist NCIDA in its development of the final agreement. This may also assist Assessment in the PILOT billing and allocation process.

Review Finding (2):

2.0 NCIDA Did Not Monitor Applicants' Projected Employment and Other Benefits

Our examination of the job certification review process noted that the NCIDA took no steps to ensure that the applicants met their employment goals or took other measures to ensure compliance with the creation or retention of jobs listed on the project applications or lease agreements. In every case, NCIDA relied on the applicant representations. In addition, we noted that other benefits anticipated by the project applications or lease agreements were not always monitored by the NCIDA. Monitoring of the projected benefits is critical to ensure that the projects granted financial assistance by the NCIDA are meeting the goals projected to benefit the County and its taxpayers.

[14] Neptune and LIPA contracted to allow LIPA to use 100% of the cable system's capacity for 20 years.
[15] Neptune entered into a property easement agreement with the New York State Office of Parks, Recreation and Historic Preservation in 2005 to obtain the use of the land portion of the cables.
[16] The DLP Group, Inc. *Project Allocation Study, "Gateway Project", Neptune Regional Transmission System, LLC, Prepared for the Nassau County Industrial Development Agency*, December 30, 2005, pages 13-14.
[17] $100,000 was paid for fiscal tax year 2008 and $200,000 for fiscal tax year 2009, respectively.
[18] This estimate was based on the converter station's 2009 assessed value, the cable's 2011 assessed value as provided by ORPS and the 2009 tax rates.
[19] Based on Assessment's 2009 tax levy estimate.

Monitoring of Employment Projections

The NCIDA requires the principals of each active project to annually submit a signed and notarized certification report of jobs created and retained, in order for it to report to the New York State's Public Authorities Reporting Information System ("PARIS"). The annual job certification reports serve as feedback to the NCIDA in determining whether the projects are meeting their job creation and retention goals.

We reviewed the job certification reports for the 21 projects we had selected for review, where available.[20] The number of full and part-time jobs created or retained on the annual certifications was compared to the project applications and/or project leases to determine whether the employment goals were met. We looked for evidence to determine whether the NCIDA performed any review of the reports submitted and followed-up in those instances where the goals were not met. Our review noted no evidence that the NCIDA had performed any review of the annual job certification reports to supporting documentation, such as payroll reports, or had followed up on instances where the job goals were not met by the project. A summary of the projected employment goals and the actual job certifications for the 21 projects are detailed in Appendix A.

NCIDA's Administrative Director stated that she compared the number of jobs listed on the current certification to the prior year's job count to ensure they have not changed, but did not determine if the jobs created agreed to the applications or leases. Examples included:

- One of the job certifications lacked detail and was not specific as to the number and types of jobs. The 2009 Job Certification for the Granite Building 2, LLC project ("Granite") listed the number of full-time employees as "+/- 150 (including tenants)" and showed an annual payroll dollar amount of zero. We noted that the original lease agreement stated that 8 full-time jobs would be created; there was no mention of the number of tenants. We were unable to determine whether the employment goals were met because the job certification did not include supporting documentation and was not specific as to the number, types, or title of jobs. In addition, Granite reported its number of tenants combined with the number of employees, making it impossible to identify the number of employees hired. These deficiencies made it difficult to measure whether the project met its employment goals.
- We found that the 2009 employment certification for the Neptune Regional Transmission System, LLC ("Neptune") project listed zero full-time employees hired as of December 31, 2009. Neptune had agreed to hire three full-time employees after completion of the project and to create at least 40 full-time temporary construction jobs. The NCIDA contacted Neptune, which subsequently submitted an amended employment certification with support documentation, certifying that it had subcontracted for services of four full-time employees.

In these instances, a review of the 2009 job certification reports indicated that the job goals from the application or lease had not been met or were met only partially:

[20] For the 13 2008-2010 projects selected for review, in some instances, the projects were in an early phase and therefore job information may not have been available.

- The Cox & Company Inc.'s lease agreement stated that 160 full-time jobs were to be created. However, the 2008 and 2009 job certifications listed 134 and 137 full-time jobs, respectively.
- The Crest/Good Manufacturing Co.'s project lease stated that 18 full-time jobs would be retained, 20 full-time jobs would be in place one year after the completion of the project and 23 jobs would be in place after the 2nd year of the project. However, the job certification for 2008 listed 18 full-time jobs, and the 2009 job certification reported the number of full-time jobs had actually declined to 17.
- The Pall Corporation project lease agreement stated that 517 full-time jobs were to be retained. However, the 2009 job certification listed 491 full-time jobs.
- The Lunar Module Park, LLC project lease agreement stated that 10 full-time jobs would be created. In 2009, the job certification listed only 1 full-time job. We noted that the plan for the use of the facility had changed from a technology/homeland security use to a movie production facility. Although the PILOT agreement was amended and extended, we saw no evidence that the lease agreement was modified for any changes in the number of jobs to be created.
- The Q International Courier, Inc. project was terminated, with the benefits received by the company recaptured by the NCIDA, therefore the job goals were not met on this project.

Three of the 21 projects examined were too recent to determine if job goals had been met. For the remaining 13 projects reviewed, 2009 job certification reports indicated that the job goals stated in the lease or application had been met.

The *Annual Performance Report on New York State's Industrial Development Agencies for Fiscal Year Ending 2008* prepared by the New York State Comptroller's Office noted that IDAs often take only limited steps to ensure that projects reasonably meet employment projections as indicated on the application for IDA assistance.[21]

<u>Monitoring of Other Benefits</u>

Our review noted that for the Neptune project, which was completed in 2007, there was no information in project documents to evidence that the NCIDA had monitored the benefits provided to the County after the completion of this project. Project documents indicated that the Long Island Power Authority ("LIPA") entered into a 20-year contract with Neptune (see Review Finding (1) The Amount of Financial Assistance (PILOT) Granted Was Not Based on Any Relationship to the Expected County Benefit for details on this project). At that time, LIPA anticipated that the project's benefit to all Long Islanders was to be approximately $1.4 billon.[22] However, there was no evidence noted in the project documents to validate LIPA's initial claim, or evaluate the actual benefit to the County.

[21] Page 21 of the New York State Comptroller's Office's *Annual Performance Report on New York State's Industrial Development Agencies for Fiscal Year Ending 2008.*

[22] LIPA Press Release dated September 29, 2004, *LIPA Board Approves Transmission Agreement for Neptune Cable Project.*

Review Recommendations:

The NCIDA should:

a) Take steps to monitor whether projects are meeting employment projections as indicated on the application for IDA assistance or the lease agreement by creating a worksheet listing the project, date, amount, title and salary of jobs to be created or retained for each project;

b) Ensure that the job certifications list the specific number of full and part-time jobs by calendar year and provide supporting documentation for all positions created or retained;

c) Where appropriate, require job certifications to distinguish between the employees of the project and tenants of the project;

d) Implement monitoring processes to verify that the other projected benefits, as claimed by applicants on the application for IDA assistance or the lease agreement, have transpired; and

e) Follow-up with all applicants that are not meeting their employment or other goals and consider imposing sanctions or penalties, including recapture[23], when projects fail to fulfill their obligations and provide the County and its taxpayers with the expected benefits.

Review Finding (3):

3.0 NCIDA Lacks a Policy on Retention and Distribution of Recaptured Project Benefits

The NCIDA included recapture clauses in its legal agreements for projects from 2002 through 2010 to ensure that if a project did not meet its expected goals or was terminated, the NCIDA could "recapture" some of the benefits that had been provided to the project. The recapture clauses may be invoked if a project does not meet its expected goals or if the lessee or sublessee of the project opts to terminate the project, vacate the project premises or end its participation in the financial assistance program offered by the NCIDA. Recaptured funds may represent PILOTs granted, sales tax exemptions and mortgage tax exemptions.

We requested a list of all recaptured funds from the NCIDA for the period January 2006 through March 2010. The list included seven transactions. The NCIDA's practice with regard to the disposition of recaptured amounts was inconsistent. In some cases, the NCIDA distributed the recaptured funds to various municipalities and school districts. In other cases it retained all recaptured funds for its corporate purpose.

The NCIDA's General Counsel advised us that under Section 874 of the GML and the NCIDA's UTEP, the NCIDA is not required to distribute funds collected from a recapture to the County or other municipalities. The Statute and UTEP do not require recapture provisions, however the Statute states, the agency shall consider such issues as "…whether affected tax jurisdictions shall

[23] NCIDA leases provide that financial assistance may be recaptured if a project does not meet its expected goals, or if the lessee or sublessee of the project opts to terminate the project, vacate the project premises or end its participation in the financial assistance program offered by the NCIDA.

be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided…" [24]

The *Annual Performance Report on New York State's Industrial Development Agencies for Fiscal Year Ending 2008* prepared by the New York State Comptroller's Office noted that IDAs do not typically impose sanctions or penalties when projects fail to fulfill their obligations. While the NCIDA is taking measures to recapture financial assistance previously granted to projects, the NCIDA is not consistent with its methodology with respect to the amounts recaptured.

Review Recommendations:

The NCIDA should amend its UTEP to provide for a consistent policy.

Review Finding (4):

4.0 NCIDA Lacks Written Guidelines for Evaluating and Granting Project PILOTs and Standardized Agreements

Written policies and procedures are an effective internal control tool to provide guidance, accountability and reliability of financial reporting and are effective in ensuring continuity of business.

The Office of the New York State Comptroller's May 2006 report on *Industrial Development Agencies in New York State: Background, Issues and Recommendations*, states that "…each IDA is required to establish a uniform tax exemption policy with input from affected tax jurisdictions…and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. The guidelines must include: the period of exemptions; percentage of exemptions; types of projects for which exemptions can be claimed; procedures for payments-in-lieu-of-taxes and circumstances under which real property appraisals are required." [25] We were provided with copies of approved PILOT agreements but were not provided with any written guidelines for the PILOTs as the State requires.

In our review of the NCIDA's business practices for PILOTs, we noted the following weaknesses in internal controls over the process:

- The NCIDA did not have comprehensive and complete written policies, procedures and guidelines for granting, structuring and administering PILOTs. The former Executive Director advised us that the PILOT terms are detailed only in project documents, such as the PILOT Agreement and the Notice of Proposed Deviation from UTEP. The NCIDA's General Counsel noted that the NCIDA's UTEP and Section 874 of the New York State Industrial Development Agency Act (the "Act") contain written guidance on financial assistance. However, these documents do not included detailed PILOT guidelines governing the structure of PILOTs for various types of projects, such as commercial renovation projects, commercial new construction projects, nonprofit projects, low income housing and assisted living development projects.

[24] New York State GML, Section 874, Tax Exemptions.
[25] Office of the New York State Comptroller, *Industrial Development Agencies in New York State: Background, Issues and Recommendations*, May 2006, page 8.

- No current written procedures are in place to detail the NCIDA's interactions with Assessment to ensure that PILOTs are billed correctly and revenue is distributed properly. The responsibility for the proper collection and distribution of PILOTS falls with the NCIDA, although this process is currently performed by Assessment.

In addition, the Neptune project provided for the construction of a converter station located in the Town of North Hempstead ("TONH"). TONH participated in the initial presentation to the NCIDA and review process for the Neptune project, and requested that Neptune participate in its Community Economic Revitalization Program via a funding commitment. Neptune agreed to provide a $10 million grant to the TONH to partially fund a community center in New Cassel, an economically challenged area, where the project's converter station was to be constructed.

According to the NCIDA's Board minutes, the TONH indicated that the understanding was that this grant would be in lieu of the amount of taxes that would have been paid. The TONH has indicated that the community center was scheduled to break ground in the fall of 2010. This project was the only one of the 21 we examined to contain a provision to benefit the host community. In our review of the NCIDA's written project policies and procedures, we saw no evidence that the NCIDA had a policy in place to address such contributions.

Review Recommendations:

The NCIDA should:

a) Enhance the internal controls over the PILOT process by amending its UTEP to include guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. According to the State Comptroller's Office, the guidelines must include:
    i. the period of exemptions;
    ii. percentage of exemptions;
    iii. types of projects for which exemptions can be claimed;
    iv. procedures for PILOTs; and
    v. circumstances under which real property appraisals are required.

b) Develop and update written procedures that detail NCIDA's role in the PILOT billing and revenue collection processes, particularly with the collection of outstanding PILOTs; and

c) Develop a consistent policy regarding special payments or grants to localities, such as the grant to the TONH for a community center, to ensure fair treatment of the communities affected.

Review Finding (5):

5.0 NCIDA PILOT Agreements Lacked Restrictive Clauses on Tax Certiorari Filings

Most of the NCIDA PILOT agreements do not contain a restrictive clause prohibiting tax certiorari filings during the term of the PILOT. In one case, a tax certiorari settlement of over $7.6 million was obtained by a project with a PILOT agreement, thereby reducing the amount distributed to the respective taxing jurisdictions.

It is not in the County's best interest if applicants who receive financial assistance in the form of PILOTS are permitted to contest their property's assessed valuation and obtain a tax certiorari settlement. For example, Cablevision Systems, Corp. ("Cablevision") had been granted a PILOT where payments were based upon a full assessed value. It contested its property's assessed valuation and received a tax certiorari settlement from the Nassau County Assessment Review Commission of $7,683,210, which was to be subtracted from Cablevision's PILOT payments in the form of nine annual credits of $853,690 for the 2008/2009 through 2016/2017 tax years.

We were advised by Assessment that the majority of the NCIDA's PILOT agreements for the period 2002-2008 did not contain restrictive language regarding tax certiorari challenges; this was confirmed to Assessment by the NCIDA's General Counsel. Our review of the three 2009 and two 2010 NCIDA PILOT agreements, that were in effect as of March 31, 2010, indicated that restrictive language regarding tax certiorari challenges was also not included. Assessment advised us that they know of only four current NCIDA PILOT agreements that contain restrictive tax certiorari clauses, out of the approximately 47 NCIDA PILOTs currently being billed and allocated by Assessment.[26]

Review Recommendation:

The NCIDA should include a restrictive clause preventing tax certiorari filings during the term of the PILOT in all PILOT agreements.

Review Finding (6):

6.0 Salary Increase Was Improperly Granted Without Board Approval

A salary increase was implemented for the former Executive Director without Board approval or knowledge.

The NCIDA had established an Employee Compensation Program, which provided that the Board of Directors' Audit Committee prepare an annual proposal for employee compensation for review and approval of the full Board. In 2008, the NCIDA approved salary increases for each of its six full-time and one part-time employee beginning in 2009. These increases were detailed in the 2009 Final Budget, which was approved by a Board Resolution.

The NCIDA's Administrative Director advised us that due to the NCIDA's shrinking revenues, the former Executive Director declined his full raise of 6.4% (which would increase his base salary to $140,000) in 2009. However, he received a portion of this increase (3.9%) in 2009. Effective January 1, 2010, the Executive Director increased his base annual salary by 2.5%, to $140,000, the salary level approved by the Board in 2008. The other NCIDA employees did not receive salary increases for 2010.

There was no evidence in the Board minutes reviewed to indicate whether the Board was aware that the Executive Director had declined his full raise in 2009 or of the increase in his base salary to $140,000 the following year. The implementation of the salary increase without proper approvals is indicative of weaknesses in internal control.

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[26] According to information provided to the auditors by Assessment, 47 PILOTs are being billed currently by Assessment.

The Executive Director's service to the NCIDA was terminated April 2, 2010.

Review Recommendations:

a) Salary increases should be documented on an employee by employee basis in the Board Minutes and supported by a Board Resolution approving the increases; and

b) A Board member should independently review payroll records on a periodic basis.

Review Finding (7):

7.0 Weaknesses Were Noted in the NCIDA's Accounting Practices and Internal Controls

Several weaknesses were noted in the internal controls established for the accounting functions that may result in preventable errors not being detected in a timely manner.

Segregation of Duties for Cash Receipts and Disbursements was Inadequate

Our review identified a lack of segregation over the NCIDA's accounting functions, primarily as a result of the reduction in staffing.

An effective system of internal controls requires segregation of duties with accounting related functions separated so that controls cannot be circumvented. The operational tasks of handling money and keeping accounting records should be assigned to more than one employee. Inadequate segregation of duties may result in preventable errors or in the misappropriation of funds not being detected in a timely manner.

We reviewed the internal controls over the NCIDA's cash receipts and cash disbursements and identified weakness as a result of one staff member having overlapping duties. In 2009, the NCIDA had a staff of six. As of July 2010, only four of these six positions were filled: Executive Director, Chief Financial Officer ("CFO"), Chief Marketing Director and Administrative Director. The Administrative Director performed most of the accounting work at the NCIDA. The reduction of staff impaired the NCIDA's ability to segregate duties, however, a lack of segregation of duties existed previously with respect to bank reconciliations; this was noted by the NCIDA's external auditors.

We reviewed the NCIDA's business practices and noted the following weaknesses in the process:

- The Administrative Director was responsible for incompatible duties; posting to the general ledger, recording cash receipts and cash disbursements, purchasing office supplies and equipment, performing bank reconciliations, and maintaining the petty cash fund. This lack of segregation of duties was also noted by the NCIDA's external auditors in its internal control review of the NCIDA for the period January 1, 2009 through September 30, 2009.
- The NCIDA's procedures manual covering accounting functions was outdated. It detailed the steps to be followed for the various accounting duties, but assigned responsibilities to employees who were no longer with the agency.

<u>Review Recommendations</u>:

The NCIDA should:

a) Realign accounting responsibilities to adequately segregate incompatible functions, particularly with respect to the handling of monies, recording of transactions and approval of disbursements. Where segregation of duties is not feasible due to the size of the staff, increasing supervisory review of all phases of the accounting function should be implemented by having the Executive Director or the CFO review and approve all cash receipts, cash disbursements, general ledgers, bank reconciliations, and reconciliation of petty cash fund. All approvals should be documented by being signed and dated; and

b) Update the accounting procedures manual to reflect any changes in staff responsibilities.

<u>Weaknesses Existed in the Bank Reconciliation Process</u>

Our review noted internal control weaknesses in the NCIDA's bank reconciliation process.

Bank reconciliations, when properly completed and reviewed, and performed in a timely manner, help to safeguard cash by detecting errors. They also help create stronger internal controls by enhancing accountability over cash assets.

The NCIDA had two active bank accounts, an operating account and a money market account, held in two separate banks.

We reviewed the NCIDA bank reconciliations for the period December 31, 2009 and January 31, 2010 to determine whether internal controls were in place to safeguard and accurately report cash. Our review of bank reconciliations disclosed the following:

- Bank statements were mailed directly to the NCIDA. The Administrative Director, who was responsible for preparing the bank reconciliations, opened the NCIDA's mail. The Office of the New York State Comptroller's guidelines note that someone other than the person responsible for completing monthly bank reconciliations should monitor account balances and statements to ensure more accurate and effective internal control.[27] This supervisory employee should have oversight of the bank reconciliation process and document his or her review by signing and dating the bank reconciliations and bank statements.

- The bank statements had been signed, but not dated, by the former Executive Director, to evidence that he had seen them. There was no evidence that he had reviewed the bank statements for unusual activity. In addition, there were no signatures or date by management to evidence review and approval of the bank reconciliations. Consequently, there was an increased risk that errors or misused funds may not have been discovered in a timely manner.

- Bank reconciliations were not signed nor dated by the preparer; hence, we could not determine if they were prepared in a timely manner, or who had performed the reconciliation.

[27] Office of the State Comptroller, Division of Local Government Services and Economic Development *Technical Assistance Bulletin.*

- The December 31, 2009 operating account was reconciled to an inaccurate ending general ledger balance of $634,304 due to two year-end adjusting journal entries that had not yet been posted to the general ledger. We informed the Administrative Director who adjusted the reconciliation and the general ledger to reflect the correct adjusted general ledger balance of $708,269.

Review Recommendations:

The NCIDA should:

a) Advise its banks to mail the bank statements directly to the Treasurer of the Board or an employee who has managerial responsibilities;

b) Require the individual opening and reviewing the bank statements to sign and date the statements to evidence his or her receipt and review of the statements for unusual transactions;

c) Have the preparer sign and date the bank reconciliations and have management review, sign and date the reconciliations to evidence the review; and

d) Ensure the cash balance per the bank statement reconciles to the balance on the general ledger.

Weaknesses Existed in the Cash Disbursement Process

We noted weaknesses in the NCIDA's cash disbursement process with regard to evidencing pre-authorization or the business rationale of expenditures. These controls are key to ensuring that the NCIDA's funds are utilized for authorized business purposes.

The NCIDA adopted its Statement of Procurement Policy and Procedures pursuant to Section 104-b of the New York State GML and in addition has established its own policies on Travel and Meal Allowances, Ordering Supplies and Processing Vendor Invoices.

We reviewed 24 cash disbursements paid in 2009 and totaling $371,899 for compliance with NCIDA's procurement policy and procedures. We examined the cash disbursements to validate whether they were appropriate business expenses, properly authorized, and supported with the proper documentation. Our review disclosed the following:

- Payment vouchers and other supporting documentation were not stamped "PAID", a procedure which would prevent documents from being re-submitted and potentially paid more than once.

- The NCIDA purchased 2009 U.S. Golf Open tickets for $7,060. The disbursement lacked documentation to justify the expenditure such as a description of the business conducted to promote or develop new business in the County and the names of those attending the event. After requesting the missing documentation, we received a list of attendees and the number of tickets issued but no evidence of any business activities to justify the purpose of attending the event.

- The NCIDA formally adopted the GML as required for procurement of goods and services. NCIDA's policy requires professional services not subject to public bidding to be stated as such at a Board meeting and a resolution passed before such service can be engaged. Our review found no evidence of a Board resolution for the payments made to a transcript writer or for disability insurance premiums.

- Two NCIDA staff traveled to two different out of state seminars. Although the trips were approved by the Board, the NCIDA's Travel and Meal Allowance Reimbursement policy requires staff to complete pre-trip memorandums explaining the purpose of the trip and requesting approval for the trip. The memorandums must be approved by the Executive Director and attached to the payment voucher. Our review found that:
    - the pre-trip memorandums were not signed by the Executive Director and not attached to the payment documentation, but were subsequently provided to the auditors upon request; and
    - there was no evidence or documentation of what was discussed at the conferences to support the benefits to the NCIDA in promoting or developing business in the County. The Chief Marketing Director, who attended the U.S. Travel Association Marketing Outlook Forum, stated the trip was to promote doing business but was unsure whether any direct contacts resulted from the forum.

<u>Review Recommendations:</u>

The NCIDA should:

a) Stamp vouchers "PAID" to prevent duplicate payments;

b) Ensure that all professional service contracts are approved by Board Resolutions prior to incurring the expenses, in accordance with NCIDA policy;

c) Obtain the Board's approval for payments to the transcript writer and for the disability premiums; and

d) Require employees who attend seminars or other events to document what was discussed, any contacts made, and the benefits derived by the NCIDA in promoting or developing business in the County.

<u>Review Finding (8):</u>

<u>8.0 Weaknesses Were Noted in the NCIDA's Administrative and Personnel Practices</u>

Our review noted several areas where the internal controls over the monitoring of administrative or personnel practices at the NCIDA were insufficient to ensure that policies were being monitored and expenditures were adequately supported. We also noted that New York State record retention guidelines were not being followed.

<u>The Long Island Regional Planning Council Cooperation Agreement Lacked Defined Deliverables and Monitoring Requirements</u>

The Long Island Regional Planning Council ("LIRPC") was developing a Long Island 2035 Regional Comprehensive Sustainability Plan ("Plan") to serve as a blueprint for the implementation of the Long Island region's long-range economic development planning goals and strategies. LIRPC requested financial assistance from the NCIDA in the preparation of this Plan.

On December 4, 2008, the Board unanimously approved a Resolution authorizing the NCIDA to cooperate with the LIRPC by providing funding for those portions of the Plan that specifically related to economic development issues pertaining to Nassau County.[28] The NCIDA pledged to provide $700,000 for the study, payable in two installments of $350,000 each. On December 7, 2009, the first installment payment was made by the NCIDA.

We reviewed the Sustainability Plan Cooperation Agreement ("Agreement') between the NCIDA and the LIRPC to determine if there were clearly defined deliverables and we looked for evidence that the Plan's progress was monitored. We also reviewed the documentation that the LIRPC provided to the NCIDA to support the LIRPC's $350,000 invoice. Our review noted the following:

- The Agreement did not contain clearly defined deliverables that could be measured by the NCIDA in determining the progress of the project;
- There was no documentation of how the $350,000 was spent. The only documentation provided was a December 23, 2009 letter from the Executive Director of the LIRPC certifying that payments made by the NCIDA to the LIRPC would only be used by the LIRPC to pay for the direct and indirect costs and expenses of the preparation of the portions of the Plan that "specifically and directly relate to the economic development issues pertaining to Nassau County". Also attached to the $350,000 invoice were five requisitions from Ove Arup and Partners, PC ("Arup"), the consultant preparing the Plan, which contained dates and amounts for their services but no supporting documentation evidencing what work was performed or what expenses were incurred.
- The only work product provided to us was a copy of a slide presentation.
- Although Section 20 (a) of the agreement allowed the NCIDA or its designated representative to audit and inspect the LIRPC's records pertinent to performance under the agreement, such a review was not performed.
- The Consulting Services Agreement between the LIRPC and Arup stated that monthly progress reports should be submitted by the contractor to the LIRPC. None of the consultant's monthly progress reports were attached to the LIRPC's 1st installment invoice or were included with the supplemental information on the study subsequently provided to the audit team.
- The Agreement was open-ended and did not contain time frames for the various stages of the study or a completion date. A current progress report describing the status of the preparation of the Plan was not included with the supporting documentation for the $350,000 invoice, although Section 3 (c) of the Agreement stated that it should accompany the LIRPC claim voucher.

Subsequent to our review, the NCIDA's General Counsel advised us that the agency expects that no further payments will be made, as the development of the Plan has been discontinued.

[28] Section 4 of the Agreement states "Payments made by the NCIDA to the LIRPC …. shall only be used by the LIRPC to pay for the direct and indirect costs and expenses of the preparation of the portions of the Sustainability Plan that specifically and directly relate to the economic development issues pertaining to Nassau County, otherwise any monies paid shall be promptly refunded to the NCIDA."

<u>Review Recommendations</u>:

The NCIDA should:

a) Conduct a review or audit of the LIRPC's records pertinent to the study to verify that monies paid by the NCIDA were used for portions of the Plan that related to economic development issues pertaining to the County; and

b) Ensure that any future contracts or agreement contain clear and defined deliverables, including time frames, and monitor the work while the services are in progress.

If the support provided by the LIRPC is not sufficient to evidence that payments were used only for Nassau County portions of the study, the NCIDA and its General Counsel should consider their options to recoup the $350,000 paid.

<u>Weaknesses Existed in the Time and Leave Recording Procedures and Policies</u>

Deficiencies were noted in the NCIDA's administration of employee time and leave, including incomplete policies and procedures and recording processes. In 2009, the NCIDA reported annual gross wages of $554,275 for its six full-time and one part-time employee. The standard workday for NCIDA employees was eight hours per day (including 1 hour for lunch); however, this was not documented in the NCIDA's Employee Resolution Handbook. One employee worked a reduced, four-day workweek (80%).

On September 12, 2002, the Board of Directors of the NCIDA adopted the County's exempt employee benefits policy for its employees. The NCIDA provided its employees with the fringe benefits available to exempt ("Ordinance") employees of the County by adopting the provisions of Nassau County Ordinance No. 543-1995 ("Ordinance 543-1995") including any future amendments adopted by the County. Certain provisions of Ordinance 543-1995 were excluded from adoption, including those sections applicable to salaries and termination pay. Since 2000, the County Legislature has amended Ordinance 543-1995 multiple times, most recently in 2008 by Ordinance 96-2008. We found, however, that the NCIDA did not have copies of the ordinances on hand and it had not revised its own policies to adopt the amendments made to Ordinance 543-1995.

The Administrative Director acted as the NCIDA's timekeeper. Each NCIDA employee was required to complete an individual, bi-weekly timesheet by signing in and out each day. At the end of each pay-period, they signed and dated the timesheet certifying as to its accuracy. The timesheets were also signed by the Administrative Director or the Executive Director, evidencing their review of the timesheets. The Executive Director approved the Administrative Director's timesheets.

We examined time and leave records for the period January 1, 2009 through February 11, 2010 and noted the following:

- Our review of the 2009 payroll records did not disclose any evidence that employees contributed toward their health insurance premiums. Section 4.1 (a) (ii) of Ordinance 96-2008 provides that employees hired on or after January 1, 2002, earning an annual salary of more than $30,000, contribute 5% to the cost of the health insurance premium for single coverage and 10% of the cost of the health insurance premium for family coverage. If the NCIDA's employees had been required to contribute toward their health insurance premiums for calendar year 2009, these contributions would have totaled $4,616.

- Employees worked a flexible or flex-time schedule with varying arrival and departure times; occasionally employees "worked from home", and employees were granted snow days for inclement weather. The NCIDA's Employee Resolution Handbook does not include provisions for flex-time, working from home, snow days, or guidance as to minimum and maximum hours to be worked per pay period.
- The Chief Marketing Director was working at a different office where the County's Office of Communications was located. Rather than calling in and out to the NCIDA each day, she completed her own timesheet and sent it in to the NCIDA where it was approved and signed by a supervisor.
- The NCIDA did not have procedures in place for providing employees with a periodic report of their leave balances. This procedure can assist in identifying any errors or omissions in a timely manner.

We examined all employees' timesheets for six bi-weekly pay-periods during the period January 1, 2009 through February 11, 2010 and found that:

- Employees did not always work the equivalent of a full pay period (80 hours, or 64 hours for the employee working a reduced schedule). Although in many instances employees worked more than 80 hours, we noted instances where employees worked less than 80 hours and then carried over the excess hours from prior pay-periods to cover the shortfall. In contrast, the County allows exempt employees to work flexible schedules with the approval of a Deputy County Executive, however, hours worked must be balanced within the same pay-period.
- The Executive Director's or Administrative Director's approval signature on the timesheets was not always dated to reflect when they performed their review. In some cases, the Executive Director's approval signature was dated a week to fifteen days after the end of the pay-period, indicating that a timely review had not been performed.
- The amount and type of leave time used was not always clearly identified on the timesheets. Although the top portion of the timesheet contained an Employee Request for Leave Time section where employees could record their leave time requests in advance, this section of the timesheet was not in use.
- Extra hours worked were indicated by notations such as "+2" on the timesheet. However, there was no supporting record maintained to track these hours, which were sometimes subsequently applied to days an employee worked fewer hours.
- The Administrative Director maintained a Microsoft Excel schedule tracking each employee's accrued, earned and taken sick leave, vacation leave and personal leave on an ongoing basis. In our review of the 2009 Excel schedule, we noted the following:
    - The schedule was not subject to supervisory review. Due to the small size of the staff, the Administrative Director tracked her own leave accruals and usages, along with those of all other employees, resulting in a lack of segregation of duties. Any exceptions or errors may not have been noted and corrected in a timely manner.

- The schedule included formulas for adding earned leave time (i.e., 4 hours of vacation leave granted for each pay-period) and for subtracting leave time taken. It did not identify the dates of leave taken, making it difficult to reconcile the schedule to the individual bi-weekly timesheets.
- In 2009, the Administrative Director over-accrued leave time for some employees and under-accrued for others. The NCIDA's external auditor adjusted the leave balances in its computations of the January 2010 leave payouts (see Review Finding (8), Accumulated Leave Payout to NCIDA Employees Lacked Board Approval).

We also noted that the ADP payroll records included balances of leave time earned and taken; however, the Administrative Director informed us that the ADP leave accruals were sometimes inaccurate, which she then corrected manually by using the data contained in her Excel schedule.

Review Recommendations:

The NCIDA should:

a) Update the Employee Resolution Handbook to reflect the changes the Board elects to adopt and to ensure consistency with County Ordinances;

b) Establish a policy regarding employee health care insurance premiums or enact Section 4.1 (a)(i) of the County Ordinance;

c) Develop policies and procedures covering employee termination pay, employee flex-time, snow days and working from home;

d) Establish a procedure for the periodic notification of employees of their leave balances;

e) Establish time and leave guidelines, including flex-time policies. The Office of Human Resources has tools such as a bi-weekly Microsoft Excel Timesheet Calculator that can assist with the timekeeping process for flex-time. We suggest that the NCIDA adopt the County's practice of requiring hours worked to be balanced each pay period rather than allowing excess hours worked to be used from previous pay periods;

f) Enhance employee supervision and the oversight of employees at remote locations by requiring the employee to call in and out to a supervisor each day;

g) Ensure that timesheets are reviewed and approved by a senior staff member in a timely manner and that the Request and Authorization for Leave portion of the timesheet is used as intended;

h) Employee records of leave earned and taken should be accurately maintained, including the specific dates and hours for each instance of leave taken. The Excel schedule should be subject to review by a supervisor and evidence of the review should be documented by the supervisor's signature and date; and

i) Ensure all ADP changes to employee time and leave records are updated correctly and on a timely basis. The ADP payroll reports should be reconciled to the Excel schedule for leave accruals, usage and balances. They should also be subject to review by a supervisor and evidence of the review should be documented by the supervisor's signature and date.

<u>NCIDA Employee Duties and Job Descriptions were Inconsistent with the NCIDA's By-Laws and the Employees' Actual Responsibilities</u>

We reviewed the responsibilities and duties of NCIDA staff from January 1, 2009 to March 31, 2010 to determine if they were in accordance with the employees' job specifications and job descriptions. The duties and responsibilities of the Executive Director, Administrative Director and CFO are identified in the NCIDA's Amended and Restated By-Laws adopted on June 14, 2010. The Chief Marketing Director's duties and responsibilities were added to the updated By-Laws. A review of the By-Laws and our observation of the employees' duties and responsibilities noted the following:

- The NCIDA's Chief Marketing Director was stationed at 1550 Franklin Avenue, Garden City rather than at NCIDA's offices (currently in Hempstead). We were advised by the NCIDA's former Executive Director that the Chief Marketing Director was assisting the County's Office of Communications. We were provided with her job description, which states that she will consult with the County and other governmental entities on travel packages and other promotional programs. However, the language found in the amended and restated By-Laws adopted on June 14, 2010 stated only that she is responsible for the "day-to-day marketing efforts of the agency (NCIDA)". The By-Laws make no mention of her work with County Departments. We also reviewed the Board minutes for the audit period and did not note any mention of her work with the County.
- Section 13 (c) of the By-Laws provides that the CFO will "keep regular books of accounts showing receipts and expenditures..." However, during the course of our review, we observed that this responsibility was actually fulfilled by the Administrative Director. Subsequent to our review, the services of the former CFO were terminated and a new CFO was hired in June 2010. We were advised that the new CFO is fulfilling the responsibilities listed in the By-Laws.

<u>Review Recommendation</u><u>s</u>:

The NCIDA should ensure that the Chief Marketing Director's job objectives and responsibilities are clearly defined and reviewed annually.

<u>Accumulated Leave Payout to NCIDA Employees Lacked Board Approval</u>

In December of 2009, the NCIDA Board of Directors authorized the payment of unused sick days, leave and vacation time to the employees of the agency in anticipation that the services of most or all of the employees would be terminated. Based on our review, there is no evidence to indicate that the Board was aware of the amount to be distributed or had approved the method for the calculation of the distribution. The gross leave payout amounts paid to employees on January 4, 2010 totaled $68,330.

According to the December 2009 Board minutes, the Board approved payment of the accumulated sick and vacation day leave balances and noted that the amount paid was to be determined by the NCIDA's external audit firm. The minutes of the subsequent Board meeting, held on January 7, 2010, also did not reflect the Board's approval of the methodology used or the amount of the payouts.

The Board Resolution, which established the NCIDA's leave policy, had specified that the section of the County Ordinance relating to termination pay was excluded from the NCIDA's leave policy. However, our review of the payout amounts disclosed that the NCIDA had used the County Ordinance's provisions for termination pay, which allowed paying 100% of vacation leave, but only 50% of sick leave to the employees who had been at the NCIDA for less than 10 years (or did not have prior service credit).

The NCIDA was unable to provide us with Excel schedules of employee leave time earned and taken prior to 2008; therefore we were able to perform only a limited review of the leave payout amounts.[29] We noted that the external auditor calculated termination pay for the Chief Marketing Director using the leave benefit accruals awarded to a part-time employee per the NCIDA's Employee Resolution Handbook. However, the Chief Marketing Director was a full-time employee working a reduced schedule (4 full days per week, or an 80% schedule) and was entitled to accumulate more leave time than a part-time employee.[30] Our review indicated that her vacation leave payout was understated by approximately 10 hours and her sick leave was understated by approximately 19 hours.

The Chief Marketing Director was retained and repaid the NCIDA the sick leave portion of her leave payout in January of 2010, although there was no provision in the Employee Resolution Handbook for such a repayment and no Board approval for the repayment was located in the Board Minutes. She did not repay the NCIDA for her vacation leave payout.

Review Recommendations:

The NCIDA should:

a) Develop written termination pay guidelines and consult with its General Counsel to determine if the Chief Marketing Director should repay the leave payout;

b) Ensure that significant financial events, such as payouts of leave time to employees, are fully reported to the Board and documented in Board Minutes; and

c) Recalculate the leave payout amount to the Chief Marketing Director and adjust the employee's leave balances accordingly to reflect her status as a full-time employee on a reduced schedule.

NCIDA Was Not In Compliance with New York State Record Retention Guidelines

The New York State Education Department has established guidelines on record retention for local governments. The guidelines state that official minutes of governing bodies or boards should be retained permanently.[31] In two instances, for the Cablevision and CSH Westbury projects, the NCIDA was unable to provide the Board Minutes detailing the initial presentation of the project to the NCIDA. We were, therefore, unable to determine if the NCIDA Board

[29] The NCIDA provided Microsoft Excel leave accrual records for 2008 and 2009 only. See Review Finding (8), Lack of Compliance with New York State Record Retention Guidelines, for comment on failure to maintain records in accordance with New York State guidelines.
[30] Section 3.28(a) (2) of the NCIDA's Employee Resolution Handbook indicates that employees working more than 50% of the normal work week of their agency shall receive all benefits, on a prorated basis, to which full-time employees are entitled.
[31] The State Education Department, *Records Retention and Disposition Schedule MI-1: For use by Miscellaneous Local Governments*, Revised 2006 Section 1. [1].

heard a comprehensive presentation of the economic benefits the projects would bring to the County.

Our review of the leave payout to NCIDA employees made in January 2010 was limited because time and leave accrual records prior to 2008 were not provided by the NCIDA. New York State record retention standards provide for employee time cards, timesheets or books to be retained for a period of six years.[32] The NCIDA was not in compliance with this standard.

Review Recommendation:

The NCIDA should comply with all New York State record retention guidelines including permanently maintaining copies of all official Board minutes and retaining payroll and time and leave records for six years.

NCIDA Board Executive Sessions Were Undocumented in Violation of Public Officers Law

Our review noted that the Board held sessions that were not documented in Board minutes.

We reviewed the NCIDA Board meeting minutes for the ten meetings held during the period January 1, 2009 through March 31, 2010 to determine if the Board reviewed and approved projects and discussed the NCIDA's financial status.

Municipal Boards are subject to New York State's procedural requirements under the Open Meeting Law, pursuant to Section 100 of the Public Officers Law, Article 7, Section 100.[33] Under this Law, guidelines are established limiting Executive Sessions by public bodies to matters such as litigation, personnel, and acquisition and sale of real property.

During the period of January 2009 through March 2010, Board Minutes make reference to the Board having approximately ten "off the record" discussions, the purpose of which are not summarized or detailed in the minutes. For example, during the August 4, 2009 meeting, the minutes stated that when the subject of "new business" was raised,"...a discussion was held off the record". In other cases, the Board minutes reflected the specific business discussed in the executive sessions. Due to these instances, we could not determine what matters were discussed and were unable to identify if there were pertinent issues discussed relating to our review.

Review Recommendation:

The NCIDA should limit "off the record" discussions to those permissible in Executive Session under New York State Public Meetings Law.

Contracts Were Awarded Without Requests for Proposals

The NCIDA has established a written Statement of Procurement Policy and Procedures, pursuant to Section 104-b of the GML. The policy provides that contracts for services of a professional nature, requiring special skill and judgment will be awarded only upon a resolution of the agency's Board confirming the professional nature or specialized skill or judgment involved in such services. Marketing services of up to $2,500 each may be awarded by the NCIDA's

[32] Page 91 of The State Education Department, New York State Archives, *Records Retention and Disposition Schedule MI-1, for use by Miscellaneous Local Governments*, Revised 2006.
[33] Public Officers Law, Article 7, Section 103. Open meetings and executive sessions.

Executive Director. Marketing services contracts for more than $2,500 should be made through a competitive process that calls for a Request for Proposal ("RFP").

The Board Minutes reflected approval of a number of contractual agreements entered into in 2009 that were not subject to an RFP:

- The selection of Albrecht, Viggiano, Zureck & Company, PC, the NCIDA's external audit firm for the 2008 audit at a cost of $10,000;
- The hiring of The Drink Agency, Inc. as the NCIDA's marketing and advertising consultant, for a contract to expend up to $500,000; and
- The hiring of LoopNet, Inc. as a consultant for the installation and administration of the NCIDA's website's commercial property listing service link, for a cost of $16,269.

While the NCIDA's procurement policy did not require RFPs for professional services, obtaining a RFP is indicative of good business practice. Since the NCIDA did not obtain a RFP for its external auditor, marketing and advertising firm, or Internet website consultant, we could not be certain if they obtained the best price and level of services.

In 2010, the members of the NCIDA Board, most of who were newly appointed, indicated in the March 11, 2010 Board Minutes that they planned to circulate an RFP for the agency's Bond Counsel.

Review Recommendations:

The NCIDA should:

a) Comply with its Statement of Procurement Policy and Procedures by obtaining RFPs for marketing services in excess of $2,500; and

b) Issue RFPs for all professional services to ensure that the best possible service at a competitive price is received. A recommended business practice is to issue a RFP for external audit services every 5 to 6 years and rotate auditors periodically.[34]

Disability Insurance Granted to Employees Without Board Approval

Our review noted that the NCIDA provided disability insurance to its employees which is not a benefit included in its Employee Resolution Handbook. We also note that the County does not provide this benefit to its employees.

The NCIDA contracted with Hartford Insurance to provide disability coverage to its four employees at a cost of $2,570. As previously mentioned, our review of the Board minutes did not disclose any approval for the payment of disability insurance premiums.

Review Recommendation:

The NCIDA should determine if it is appropriate to provide this coverage to its employees and, if so, it should be formally approved by its Board and included in its Employee Resolution Handbook.

[34] Office of the New York State Comptroller RFP Guidance for School Districts Seeking Audit Services, page 2.

Website Activities Are Not Adequately Monitored

The NCIDA is not fully monitoring its website activity for costs, benefits and significant trends. The NCIDA has two websites, one for economic development and another for tourism. They are:

- **www.nassauida.org**: This website provides information on the NCIDA's background, available business opportunities and contact information. It also provides information regarding the NCIDA's By-Laws, policies and procedures, budget, annual reports to New York State and current projects. The website provides a link to a site where visitors can locate commercial properties for sale in the County.
- **www.visitnassaucounty.com**: This is a tourism website to encourage visitors to enjoy Nassau County's attractions. It includes an interactive visitors' guide, maps, photos, and guidance on shopping, beaches, museums and hotels.

We were unable to determine the cost of website support and maintenance since the advertising and marketing consultant that maintains the websites did not break out the cost of website services in its contract with the NCIDA.

The NCIDA received monthly and annual summary reports on website activity identifying total sessions and page views, the average length of sessions and total "hits". A review of this information for the period January 1, 2009 through March 31, 2010 disclosed that the NCIDA did not appear to be monitoring these reports for significant trends and changes or preparing a periodic analysis of the benefits and costs of the websites.

Review Recommendations:

The NCIDA should:

a) Establish procedures for the periodic monitoring of the NCIDA's tourism website in order to identify significant trends in the number of visits. Determine if a method to measure increased tourism generated by the website can be developed, i.e., ask hotels participating in tourism initiatives to identify new business or lengthier stays by tourists or have visitors link to a questionnaire;

b) Request that the advertising and marketing consultant break-out website maintenance costs in order for the NCIDA to determine the cost of maintaining each website; and

c) Measure the traffic and effectiveness of each web site annually.

Review Finding (9):

9.0 NCIDA Has No Rental Agreement for its Occupancy in a Nassau County Owned Building

The NCIDA does not have a rental agreement with Nassau County for its current temporary location at a County office building at 40 Main Street, Hempstead, NY and it is not paying the County rent for the location. When the NCIDA's lease for its former office space expired in early 2010, the NCIDA's employees moved temporarily into the County office space located in Hempstead. It expects to be there until its new quarters in the County's Administration Building at 1 West Street, Mineola, NY are completed. The NCIDA is presently relocated to 1550 Franklin Avenue, the County's Theodore Roosevelt Executive and Legislative building.

The NCIDA is an independent agency of the State of New York and it is not appropriate for it to accept rent-free accommodation from the County of Nassau. Where the County consents, the NCIDA may use County agents, employees, and facilities so long as it pays the County and agreed upon portion of the compensation or cost incurred by the County.[35]

Review Recommendation:

The NCIDA should pay the County the fair market value of the space occupied and its Board should negotiate a rental agreement for the present location.

Review Finding (10):

10.0 The Public Authorities Reporting Information System (PARIS) Report to New York State is Missing Information on RPTL 485-b Exemptions

The amount of real property tax exemptions reported to New York State was overstated.

New York State requires that IDAs file an annual schedule of supplemental information on active projects by entering the data into PARIS. The schedule provides key information on each project, including the project name, purpose, amount, owner, bond or note amounts, PILOTs collected and tax exemptions.

The tax exemption amounts must be reported net of Real Property Tax Law ("RPTL") Section 485-b tax exemptions. The net amount represents the amount of real property tax exemptions the project received as a result of its IDA status. In order for a property to receive a tax exemption, the property must be owned by the IDA during the term of the agreement.

The State Comptroller's *Accounting and Reporting Manual*: *Industrial Development Agencies* provides that total property exemptions be reported by "deducting from the IDA exemption the amount of any real property tax exemptions the project would have received under 485-b."[36] However, Assessment advised us that the 485-b exemption was not deducted from the exemption amount reported in PARIS. Therefore, the amount of real property taxes listed on the Excel schedules provided to the NCIDA for the PARIS report were not in compliance with the provisions of the Office of the New York State Comptroller's *Accounting and Reporting Manual: Industrial Development Agencies*.

Review Recommendation:

The NCIDA should ensure that the amount of real property tax exemptions reported on the annual PARIS report is in compliance with the Office of the New York State Comptroller's *Accounting and Reporting Manual: Industrial Development Agencies* provisions by deducting from the IDA exemption the amount of any real property tax exemption the project would have received under RPTL Section 485-b.

[35] New York State GML Section 858 (6), Purposes and Powers of the Agency.
[36] Office of the New York State Comptroller *Accounting and Reporting Manual: Industrial Development Agencies*, page 19.

NCIDA - Selected Projects 1997 - 2007 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Bryant Landing (FCD Roslyn LLC)	- Senior Assisted Living facility,158 units for elderly residents located in Roslyn.	$65,000,000	- Taxable Bonds Issued $65 million@6.75% [1] - Sales Tax Exemption $85,000 [1], Term 2003-2006 - Mortgage Tax Exemption $60,000 [1] - Total Projected Property Tax Benefit $2.3 million [2] during PILOT Term 2004-2016	- Create 20 full time jobs in the 1st year, 30 full time jobs in the 2nd year, 40 full time jobs in the 3rd year	**- Sterling Glen of Roslyn opened in early 2007 - 50 full time employees were employed**
Cablevision (E)	- Commercial Office renovation of former Northrop Grumman Building located at Bethpage for new headquarters of Cablevision.	$58,870,000	- Taxable Bonds Issued $47.5 million@ 8.83% [1] - Total Projected Property Tax Benefit $9.1 million [2] during PILOT Term 1999-2017	- Retain approximately 1,500 jobs	**- Cablevision anticipated occupancy by September 1998 - 1,458 full time employees were employed**
CSH North Hills LP (aka EBS North Hills)	- Senior Assisted Living facility for the elderly with 140 units located at New Hyde Park Road, North Hills.	$33,660,000	- Taxable Bonds Issued $32 million @7.0% to 7.81% [1] - Total Projected Property Tax Benefit $6.3 million [2] during PILOT Term 2005-2015	- Approximately 51 full time and 25 part time jobs and 200 temporary construction jobs	**- provides assisted living facilities to the elderly - 94 full time employees were employed**
CSH Westbury	- Senior Assisted Living facility for the elderly with a total of 140 units in a 5 story building on 2.3 acre parcel located at 117 Post Avenue, Village of Westbury.	$25,000,000	- Taxable Bonds Issued $25 million @7.90% [1] - Total Projected Property Tax Benefit $8.8 million [2] during PILOT Term 2000-2016	- Approximately 81 full time jobs	**- provides assisted living facilities to the elderly - 82.5 full time employees were employed**

NCIDA - Selected Projects 1997 - 2007 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Deutsche Lufthansa AG	- Renovation of Lufthansa Americas' headquarters located at 1640 Hempstead Turnpike, East Meadow.	$5,808,750	- Maximum Sales Tax Exemption of $86,250 [1] for Term 2007-2009 - Total Projected Property Tax Benefit $173,357 [2] during PILOT Term 2009-2018	- Approximately 202 full time and 41 part time jobs	**- The building was renovated** **- 229 full time employees were employed**
Granite Building 2, LLC	- Commercial Office building to be constructed and located at 1999 Marcus Avenue, Lake Success.	$22,595,000	- Sales Tax Exemption of $50,000 [1] Per 2009 NYS Paris Report - Maximum Sales Tax Exemption of $900,000 [1] for Term 2005-2007 - Mortgage Tax Exemption of $400,000 [1] - Total Projected Property Tax Benefits $2.9 million [2] during PILOT Term 2006-2011	- Create 8 full time jobs within 1 year after completion and 100 temporary construction jobs	**- The building was constructed** **- 150 + /- full time employees were employed (total includes tenants in the building)**
Lunar Module Park, LLC	- Construction of a Movie Studio located at 50 Grumman Road West, Bethpage.	$53,500,000	- Sales Tax Exemption $86,200 [1] Per 2009 NYS Paris Report, Maximum Sales Tax Exemption of $2,250,000[1], Term 2007- 2011 - Total Projected Property Tax Benefits $6.7 million [2] during PILOT Term 2009-2017	- Approximately 10 full time jobs and 25 to 30 temporary construction jobs	**- The building was constructed** **- 1 full time employee was employed**

NCIDA - Selected Projects 1997 - 2007 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Neptune Regional Transmission System, LLC	- Construction of a converter facility located at 508 Duffy Avenue, Hicksville, Town of North Hempstead and the installation of electrical cables under sea to supply high voltage DE power from New Jersey.	$601,000,000	- Maximum Sales Tax Exemption of $10,710,000 [1] Term 2005-2008 - Mortgage Tax Exemption $7,025,000 [1] - Property Tax Abatement $30,000,000[1] over 20 years Per Project Application - Total Projected Property Tax Benefits $164.6 million [2] during PILOT Term 2008-2027	- Provide approximately $1.4 billion dollars in rate-payer savings over the next 20 years to Long Island - 3 full time jobs and approximately 40 temporary construction jobs	**- The Project site was completed in 2007 using undeveloped state owned land that had no assessed value** **- Employed 4 full time positions** **- provides up to 660 MV of power to Long Island electricity consumers, enough for 600,000 homes and supplies more than 20% of Long Island's typical electricity demand [3]** **- Neptune was to give the Town of North Hempstead a grant of $10 million to assist in building a community center, in the community where the converter station is located**
Total, Selected Projects 1997-2007		**$865,433,750**			

NCIDA - Selected Projects 1997 - 2007 (A)

Notes:

(A) This represents eight projects from 1997 through 2007 that were selected for review of the number of jobs created or retained. See Review Finding (2).

(B) Estimated Project Cost from the 2009 New York State Paris Report and Project Application. We were unable to determine actual project costs.

(C) Data sources: NYS Paris Report, Project Applications, Leases, PILOTs, Estimated Property Taxes from the Nassau County Assessment Department and calculated estimated property taxes per (D) below.

(D) Computation of the projected property tax benefit equals the Estimated Property Taxes from Nassau County Assessment Department (unverified) and the calculated estimated future property taxes annually increased by 2% less the PILOT. This excludes the 485-b exemption for each project, if applicable. Property Taxes for Bryant Landing, Cablevision, CSH North Hills and CSH Westbury **include** the 485-b Business Exemptions from Assessment Dept.

(E) Cablevision 2008 PILOT amount is adjusted for tax certiorari settlement. Lease agreement does not have an employment requirement.

[1] Data obtained from Applicant's project application, lease and supporting documentation, sales tax exemptions and mortgage tax exemptions represent estimates.

[2] This amount was computed as estimated property taxes that would have been paid less actual PILOT payments through 2009 plus estimates for all future years through the end of the PILOT term. Estimated future property taxes were computed using a 2% annual increase. For years prior to 2009 where estimated property taxes that would have been paid were unknown, a 2% trend was used.

[3] Source: Neptune's website.

Sources of information for the schedule include PILOT agreements, Lease agreements, Assessment Department annual schedules of property taxes and PILOT amounts for each project, Job Certifications, 2009 and 2008 New York State Paris Report from the NCIDA, Project Application and Project Summaries.

N/A =Not Available.

Project Completed Actual Benefits Legend:

Benefit Delivered
Benefit Partially Delivered
Benefit Not Delivered

NCIDA - Selected Projects 2008 - 2010 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Adams Court Housing Development Fund Corp	-84 units of affordable housing in the Village of Hempstead.	$18,024,846	- Sales Tax Exemption $217,276[1] (Per 2009 NYS Paris Report), Maximum Sales Tax Exemption of $465,750[1] , Term 2009-2010 - Total Projected Property Tax Benefits Not Available; PILOT Term 2010-2038	- Stabilize the affordable housing base in Nassau County	**- 3 full-time jobs created and 92 construction jobs**
Bedell Terrace Apartments, L.P.	- Acquire and rehabilitate 26 multi-family housing structures comprised of approximately 245 units of affordable housing in Hempstead Village.	$43,583,840	- Maximum Sales Tax Exemption of $1,498,100[1] , Term 2009-2011 - Total Projected Property Tax Benefits $22.8 million [2]; PILOT Term 2011-2040	- Affordable rents for lower income working families - proper management of the site may address ongoing law enforcement issues	**- 6 full-time jobs retained, and 40 construction jobs**
Cox & Co. Inc./Steel O. LLC	- One story, 85,393 sq. ft. aerospace manufacturing building with warehouse and office functions, and a 4,325 sq. ft. manufacturing mezzanine in Bethpage, NY.	$8,120,000	- Maximum Sales Tax Exemption of $350,000[1] , Term 2008-2010 - Total Projected Property Tax Benefits $2.2 million [2] during PILOT Term 2010-2019	- Retain 160 full-time jobs; 10 full-time and 5 part-time jobs in the 1st year; 15 full-time jobs in the 2nd year and 20 temporary construction jobs	**- 137 full-time jobs, 16 of them were created in 2009 - 23 jobs less than the 160 full-time jobs minimum requirement provided per Lease agreement**
Crest/Good Manufacturing Co.	- Construction of an approximately 36,000 sq. ft. plumbing parts manufacturing building, office and warehouse in Syosset, NY.	$3,375,000	- Maximum Sales Tax Exemption of $100,000 [1], Term 2008-2009; No PILOT	- Retain 18 full-time jobs, 2 full-time jobs in the 1st year, 3 full-time jobs in the 2nd year and 60 temporary construction jobs	**- 17 full-time jobs retained, which is 3 jobs less than the 20 minimum full-time jobs provided per Lease agreement**

NCIDA - Selected Projects 2008 - 2010 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
The Green Vale School	- Renovation of a not-for-profit, private elementary school in Old Brookville, NY.	$5,000,000	- Tax Exempt Bonds of $5,000,000[1] ; No PILOT	- Retain or create 101 full time jobs in the 1st year and 104 full time jobs in the 2nd year	**- 110 full-time jobs**
Harpark Associates and Harbor Footwear Group	- 12,000 square foot addition to shoe design studio, warehouse and office, located in Port Washington, New York.	$1,200,000	- Maximum Sales Tax Exemption $103,500[1] , Term 2009-2010 - Total Projected Property Tax Benefits $2.3 million [2] during PILOT Term 2011-2020	- Retain 90 full-time jobs, create 5 full-time jobs in the1st year, 3 full time jobs in the 2nd year, 2 full time jobs in the 3rd year after the scheduled completion date.	**- Project is not completed Per the 2009 NYS Paris report; 93 full-time jobs retained**
Kozy Shack Enterprises, Inc. (E)	- Dairy product manufacturing building renovation and construction of a 30,000 square foot building expanding its operations located in Hicksville.	$12,855,000	- * Sales Tax Exemption $295,000 [1], Term 2008-2009 - Total Projected Property Tax Benefits $290,023 [2] during PILOT Term 2010-2019	- Retain 323 full-time jobs, 35 jobs in the 3rd year and 20 temporary construction jobs	**- 329 full-time jobs retained**
Lifetime Fitness, Inc. *	- Construct a 112,000 square foot fitness center located in Syosset, New York.	$22,000,000	- Maximum Sales Tax Exemption $517,500[1] , Term 2010-2012 - Total Projected Property Tax Benefit $359,859 [2] during PILOT Term 2012-2016	- 40 temporary construction jobs, 66 full time and 174 part time jobs	**- Not available, project is too recent, started in 2010**

NCIDA - Selected Projects 2008 - 2010 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Lowe Properties, LLC	- Theater Renovation located in the Village of Westbury, Town of North Hempstead	$9,079,068	- Maximum Sales Tax Exemption $264,270[1] , Term 2010-2012 - Total Projected Property Tax Benefit $1.3 million [2] during PILOT Term 2011-2025	- 15 temporary construction jobs, 7 full time positions in the 1st and 2nd years and 6 full time positions in the 3rd year	**- Not Available, Project is too recent.**
Nestle Waters North America Inc.	- Bottled Water Corporation to relocate to larger facility in the Town of Oyster Bay/Locust Grove CSD #2-14.	$2,000,000	- Maximum Sales Tax Exemption $200,000[1] , Term 2008-Completion Date - Total Projected Property Tax Benefit $768,680 [2] during PILOT Term 2010-2019	- Retain 101 jobs	**- 101 full time employees were employed**
Pall Corporation	- Manufactures and markets filtration and purification systems to renovate manufacturing building in Port Washington.	$40,000,000	- Sales Tax Exemption $985,996[1] Per 2009 NYS Paris Report, Maximum Sales Tax Exemption of $2,000,000[1] , Term 2008-2009 - Total Projected Property Tax Benefit Not Available; PILOT Term 2010-2019	- Retain 517 jobs	**- 491 full-time jobs, 23 of them were created in 2009, and 233 construction jobs**

NCIDA - Selected Projects 2008 - 2010 (A)

Project (Applicant) Name	Description of Project	Applicant's Estimated Project Cost (B)	Estimated Benefits Granted (C) and (D)	Projected Expected Benefits Per Project Application and Lease Agreements	Project Completed/ Actual Benefits Per 2009 Job Certification
Q International Courier, Inc. d/b/a Quick International Courier	- Domestic and international courier specializing in handling time-critical deliveries, i.e., organs for transplant.	$2,000,000	- Sales Tax Exemption of $539[1] Per 2008 NYS Paris Report, Term 2008-2009 No PILOT	- Relocate approximately 100 jobs and create approximately 12 new jobs	**- Project recapture in 2010 due to the termination of the sublease - Company repaid the financial assistance of $15,619, to Nassau County**
Spinney Hills Homes / North Hempstead Housing Authority ("NHHA") (F)	- Rehabilitate 102 units in 10 buildings of affordable Housing located in Great Neck.	$13,614,902	- Tax Exempt Bonds Issued $6,700,000 [1] w/ Variable Interest Rate - Total Property Is Tax Exempt Previously Government Owned; Tax Exemption Agreement 2009-2038	- Rehabilitate the property which is currently in an advanced state of deterioration.	**- Not Available, Project is too recent; construction scheduled to start in May 2010.**
Total, Selected Projects 2008 - 2010		**$180,852,656**			
Total, All 21 Projects Reviewed		**$1,046,286,406**			

NCIDA - Selected Projects 2008 - 2010 (A)

Notes:

(A) This represents a selection of thirteen recent projects from 2008 through 2010 that were selected for testing for the number of jobs created or retained. See Review Finding (2).

(B) Estimated Project Cost from the 2009 New York State Paris Report and Project Application. We were unable to determine actual project costs.

(C) Data sources: NYS Paris Report, Project Applications, Leases, PILOTs, Estimated Property Taxes from the Nassau County Assessment Department and calculated estimated property taxes per (D) below.

(D) Computation of the projected property tax benefit equals the Estimated Property Taxes from Nassau County Assessment Department (unverified) and the calculated estimated future property taxes annually increased by 2% less the PILOT. This excludes the 485-b exemption for each project, if applicable.

(E) PILOT was split into two parts – Ludy Street Realty Corp. (SBL: 46 634 2) and VG Realty of New York, Inc. (SBL: 46 633 54).

(F) Spinney Hill does not have property taxes listed because it was previously exempt as government owned property.

[1] Data obtained from Applicant's project application, lease and supporting documentation, sales tax exemptions and mortgage tax exemptions represent estimates.

[2] This amount was computed as estimated property taxes that would have been paid less actual PILOT payments through 2009 plus estimates for all future years through the end of the PILOT term. Estimated future property taxes were computed using a 2% annual increase. For years prior to 2009 where estimated property taxes that would have been paid were unknown, a 2% trend was used.

Sources of information for the schedule include PILOT agreements, Lease agreements, Assessment Department annual schedules of property taxes and PILOT amounts for each project, Job Certifications, 2009 and 2008 New York State Paris Report from the NCIDA, Project Application and Project Summaries.

N/A =Not Available.

* Estimated project cost per Board Minutes - Project Application does not indicate the cost of the project instead states "Confidential". Project is recent and there is no other available information.

Project Completed Actual Benefits Legend:

Benefit Delivered
Benefit Partially Delivered
Benefit Not Delivered

EDWARD P. MANGANO
COUNTY EXECUTIVE

JOSEPH J. KEARNEY
EXECUTIVE DIRECTOR

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
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April 28, 2011

BY HAND
Hon. George Maragos
Nassau County Comptroller
240 Old Country Road
Mineola, NY 11501

Re: Nassau County Industrial Development Agency ("NCIDA")

Dear ~~Mr. Maragos:~~ George,

NCIDA has received and reviewed the draft Limited Review of the Nassau County Industrial Development Agency for the Period from January 1, 2009 to March 31, 2010 dated April 6, 2011 prepared by your office (the "Draft Report"). On behalf of the members of NCIDA, I would like to thank you and your colleagues for the thoroughness of your review and for the opportunity to provide NCIDA's input with respect to your draft findings.

The Draft Report has been reviewed by management and general counsel of NCIDA and by the members of the Audit Committee of NCIDA (the "Response Team").

As noted in the Executive Summary of the Draft Report, new members of the NCIDA were appointed by County Executive Edward Mangano in February 2010 and met for the first time in March 2010. The new members appointed a new Executive Director and a new Chief Financial Officer in June 2010. Accordingly, the responses to the Draft Report herein are limited to the knowledge of the Response Team and a review of the records of NCIDA. The Response Team has not contacted prior members or management of NCIDA in preparing this letter.

The following represent the collective comments of the Response Team:

Review Finding (1):

1.0 The NCIDA Granted Financial Assistance to Most Projects without Formal Independent Cost Benefit Analysis or Statement of Benefits to the County

The Draft Report notes that "NCIDA did not perform an independent review of the project benefits as presented by applicants requesting financial assistance, or obtain a full understanding of the property tax implications related to some of its projects" (Draft Report, Findings & Recommendations, p. 1).

Upon their appointment in 2010, the new members of the Agency initiated a restructuring of the entire application process. As a result, NCIDA adopted new forms of application for financial assistance and guidelines governing the application process (collectively, the "Application Guidelines"). Copies of the Application Guidelines are attached to this letter as Exhibit A.

The Application Guidelines require the Agency to obtain, with respect to each proposed project, a property tax valuation report and an economic impact report (including a cost/benefit analysis) from an independent, qualified firm of experts. The Application Guidelines provide exceptions if the Agency determines that such report or reports do not apply with respect to the type of financial assistance contemplated for a potential project (e.g., certain projects do not include an exemption from property taxes) or if such report or reports would not be cost effective.

Pursuant to the Application Guidelines, the Agency has obtained an independent property tax valuation report and/or economic impact report for each proposed project that it has approved since March 2010.

The Draft Report also notes that Section 874(4) of the General Municipal Law (the "GML") requires NCIDA to adopt a uniform tax exemption policy that provides members with "guidelines to make project approvals or denials and guide the NCIDA in providing financial assistance" (Draft Report, Findings & Recommendations, p. 1). The Agency adopted such a uniform tax exemption policy on December 14, 1994. Due to numerous changes in IDA practices with respect to payments in lieu of real property taxes ("PILOT's") since 1994, as well as to address the very issues identified in the Draft Report, the new members of NCIDA adopted an amended and restated uniform tax exemption policy on December 3, 2010 (the "Restated UTEP") after a public notice and comment period. Although a number of affected tax jurisdictions asked questions regarding the Restated UTEP, NCIDA received no written objections nor any negative comments at the public hearing with respect to the Restated UTEP. A copy of the Restated UTEP is attached hereto as Exhibit B.

The current members and management of NCIDA are not in a position to comment on the specific decisions made by the prior members of NCIDA to approve or disapprove particular projects or the procedures followed by NCIDA with respect to financial assistance determinations made prior to March 2010.

With respect to Review Recommendation (b), please note that the Agency's bond or transaction counsel provides drafts of the proposed PILOT documents to the County Attorney's office prior to final approval by the members of the NCIDA. On a going forward basis, NCIDA will also instruct its counsel to copy Assessment on such letters.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

Review Finding (2):

2.0 NCIDA Did Not Monitor Applicants' Projected Employment and Other Benefits

The Draft Report states that NCIDA "took no steps to ensure that the applicants met their employment goals or took other measures to ensure compliance with the creation or retention of jobs listed on the project applications or lease agreements" (Draft Report, Findings & Recommendations, p. 4).

Upon their appointment in February 2010, the new members of the Agency noted that NCIDA's investigation of jobs compliance appeared to be limited to collecting a self-certification from the owner/operator of each project. In fact, this was one of the reasons that the Chairman of NCIDA requested that your office audit NCIDA's operations.

In April 2010, the members of the Agency ordered management to completely restructure the post-closing monitoring process. As a result, NCIDA created a Closing Report form (the "Report Form") to be completed for each project (both existing and new projects). A copy of the Report Form is attached hereto as Exhibit C. The Report Form summarizes critical information with respect to each project and will allow NCIDA to efficiently review a project for covenant compliance and to timely notify the owner/operator of a project if a default appears to have occurred. NCIDA staff prepares a Closing Report for each new project when the transaction closes and is now completing Closing Report forms for each existing project in the Agency's inventory.

NCIDA is in the process of reviewing the employment reporting forms submitted by all project owner/operators for the 2010 calendar year. Upon completion of that review, NCIDA staff will begin conducting site visits and interviews. Staffing and budget constraints will prevent NCIDA from auditing every project and, therefore, highest priority will be placed on projects that report non-compliance with covenants (including job covenants). In addition, NCIDA staff has been directed to conduct site visits and interviews annually for all projects that are in the construction phase and not less than one-third of all other NCIDA projects each year commencing in 2011. As a result, NCIDA's goal is to review and personally visit each project in its inventory at least every three years.

Also, NCIDA staff is currently in the process of verifying jobs compliance for 2010 with respect to the four (4) projects identified in the Draft Report that may not have been in compliance with their respective job covenants for 2008 or 2009. NCIDA staff will be conducting site visits shortly for these projects and, if warranted, will initiate recapture procedures and/or negotiate document amendments to address non-compliance.

The current members and management of NCIDA are not in a position to comment on decisions made by NCIDA prior to March 2010 with respect to post-closing monitoring.

NCIDA agrees with the Review Recommendations set forth in the Draft Report for this Reviewing Finding and is in the process of implementing such Review Recommendations as more particularly described above.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA. We note that NCIDA's new Closing Agreement provides for project applicants to complete a job covenant, specifying if jobs to be created are direct or through subtenants.

Review Finding (3):

3.0 NCIDA Lacks a Policy on Retention and Distribution of Recaptured Project Benefits.

As discussed above, NCIDA adopted a Restated UTEP on December 3, 2010. The Restated UTEP makes clear that NCIDA retains all Recapture of Benefits unless the members of the Agency decide otherwise. NCIDA believes that it is in compliance with the Review Recommendation with respect to this Review Finding.

Auditors' Follow-up Response:

We agree with the corrective actions taken by the NCIDA.

Review Finding (4):

4.0 NCIDA Lacks Written Guidelines for Evaluating and Granting Project PILOTs and Standardized Agreements

The Draft Report identifies the following weaknesses: (1) a lack of "comprehensive and complete written policies, procedures and guidelines for granting, structuring and administering PILOTs," and (2) a lack of written procedures setting forth "NCIDA's interactions with Assessment to ensure that PILOTs are billed correctly and revenue is distributed properly" (Draft Report, Findings & Recommendations, pp. 8-9).

NCIDA believes that the Restated UTEP addresses the concerns raised in this Review Finding because the form of PILOT Agreement attached thereto contains provisions relating to billing and administration of PILOTs (e.g., due dates, payee information, late charges and default interest, annual statements, etc.) that project owners/operators require to comply with their obligations.

With respect to the billing of PILOTs, the Response Team understands that NCIDA has delegated this function to the Assessment Department some time prior to 2002. The Response Team understands that this arrangement was addressed in a written agreement from the 1990's but has been unable to locate an agreement in the Agency's files or obtain a copy from the Assessment Department. NCIDA entered into a License and Cooperation Agreement dated January 1, 2011 (the "Cooperation Agreement") with the County of Nassau pursuant to the authorization set forth in Section 858(6) of the GML. A copy of the Cooperation Agreement is attached as Exhibit D. The Cooperation Agreement allows NCIDA to use agents and employees of the County and provides for NCIDA to pay the County its agreed proportion of the expenses associated with such agents and employees. NCIDA expects to receive an invoice from the Assessment Department with respect to such costs pursuant to the Cooperation Agreement in April 2011 with respect to the 2nd Half 2010/11 School PILOT bills.

NCIDA believes that the Restated UTEP and the Cooperation Agreement address Review Recommendations (a) and (b) under this Review Finding.

With respect to Review Recommendation (c) relating to special payments or grants to localities made by a project owner/operator, NCIDA does not have a policy in this regard. Section 858(15) of the GML provides that unless all the affected tax jurisdictions agree otherwise, PILOTs must be allocated among the affected tax jurisdictions in proportion to the amount of taxes that would have been received if the project property had not been tax exempt. NCIDA believes that it will not enter into or require project owner/operators to enter into "host community benefit agreements" on a regular basis and certainly not without the consent of all affected tax jurisdictions. Accordingly, NCIDA does not need a policy with respect to such arrangements as they tend to suggest favoritism of one affected tax jurisdiction over another.

The current members and management of NCIDA are not in a position to comment on decisions made by NCIDA prior to March 2010 with respect to any such agreements.

Auditors' Follow-up Response:

We concur that the Restated UTEP addresses Review Recommendation (a).

We have located a series of memoranda from 1996 and 1997 which cover the PILOT billing function which we will provide to you under separate cover.

While the Cooperation Agreement allows the NCIDA to avail itself of the assistance and services of County employees, it does not specifically address the PILOT billing and allocation procedures performed by Assessment employees, for which the NCIDA will shortly be billed. We suggest that the NCIDA develop a written policy covering compensation to Assessment for its employees' services.

<u>Review Finding (5)</u>:

<u>5.0 NCIDA PILOT Agreements Lacked Restrictive Clauses on Tax Certiorari Filings</u>

The Draft Report states that "most of the NCIDA PILOT Agreements do not contain a restrictive clause prohibiting tax certiorari filings during the term of the PILOT" (Draft Report, Findings & Recommendations, p. 10).

Pursuant to the Restated UTEP, most if not all PILOT arrangements awarded by NCIDA going forward will provide for annual PILOTs in fixed amounts. As a result, a tax certiorari filing will have no impact because such filing cannot change the fixed PILOT amounts payable under the applicable PILOT agreement and, therefore, there will be no refund payable by the County and no revenue will be lost by any affected tax jurisdiction.

Although NCIDA's standard form of PILOT Agreement generally prohibits a project owner/operator from filing a challenge of its assessed value during the term of the PILOT arrangement, NCIDA often waives this requirement on request because it has no impact on the fixed PILOT payments made by the project owner/operator under the PILOT Agreement. Also, the project owner/operator may have a legitimate interest in challenging the assessed value used by the Assessment Department during the term of the PILOT Agreement because such assessed value will control the amount of taxes assessed on the project property when the PILOT Agreement expires or is terminated. Therefore, NCIDA respectfully disagrees with the Review Recommendation with respect to this Review Finding.

<u>Auditors' Follow-up Response:</u>

The auditors acknowledge that with fixed PILOT amounts, this recommendation may no longer be pertinent.

<u>Review Finding (6)</u>:

<u>6.0 Salary Increase Was Improperly Granted Without Board Approval</u>

The referenced salary increase for the former Executive Director was implemented prior to March 2010. The current members and management of NCIDA are not in a position to comment on decisions made by NCIDA prior to March 2010.

NCIDA concurs with the Review Recommendations for this Review Finding. The members adopted an Employee Compensation Policy on June 14, 2010, which Policy sets forth the policies and procedures to be followed in setting the compensation of NCIDA's employees. The Policy also explains the roles of the Audit and Governance Committees in reviewing and setting such compensation levels. Pursuant to the Policy and consistent with the Review Recommendation, salary adjustments require a vote of the members of the Agency. A copy of the Employee Compensation Policy is attached as <u>Exhibit E</u>.

In addition, a board member (i.e., the Treasurer) has been designated to periodically review payroll records for NCIDA.

Auditors' Follow-up Response:

We concur with the corrective actions taken by NCIDA.

Review Finding (7):

7.0 Weaknesses Were Noted in NCIDA's Accounting Practices and Internal Controls.

NCIDA generally agrees with the Review Recommendations with respect to this Review Finding and is in the process of implementing them in its revised accounting procedures. Copies of those procedures will be provided to your office as soon as they are adopted by the members of the Agency.

With respect to Review Recommendation (a) on page 13 of the Draft Report, please note that, pursuant to the recommendation provided by your staff auditors to NCIDA's Administrative Director during their site visit, NCIDA changed its internal policies to provide that the Administrative Director opens, signs and dates the bank statements and to require that the Chief Financial Officer make the general entries and perform the bank account/general ledger account reconciliation on a monthly basis. In addition, the Executive Director reviews the reconciliations on a quarterly basis. NCIDA believes that this addresses the Review Recommendation's concern related to segregation of responsibilities.

The current members and management of NCIDA are not in a position to comment on accounting practices and internal controls followed by NCIDA prior to March 2010.

Auditors' Follow-up Response

We concur with the corrective actions taken by NCIDA addressing the segregation of duties and the implementation of revised accounting procedures for its bank accounts, journal entries and general ledger accounts. We encourage the NCIDA to implement the recommended changes to the cash disbursement policy in its revised accounting procedures and to finalize those procedures as quickly as possible.

Review Finding (8):

8.0 Weaknesses Were Noted in NCIDA's Administrative and Personnel Practices.

The Draft Report states that NCIDA practices "were insufficient to ensure that policies were being monitored and expenditures were adequately supported. We also noted that New York

State record retention guidelines were not being followed" (Draft Report, Findings & Recommendations, p. 15).

LIRPC Agreement Lacked Defined Deliverables and Monitoring Requirements

As a general matter, the current members and management of NCIDA are not in a position to comment on the administrative practices of NCIDA prior to March 2010. For this reason and because NCIDA does not have sufficient information to question the terms of the Agreement (as defined in the Report) with LIRPC (as defined in the Report) and because NCIDA does not intend to make further payments under the Agreement to LIRPC, NCIDA is treating this contract as terminated for convenience.

NCIDA has received a copy of the study entitled Sustainable Strategies for 2035 from LIRPC and is satisfied that the funds advanced were properly spent. Therefore, NCIDA respectfully disagrees with Review Recommendation (a). NCIDA agrees with Review Recommendation (b) and will ensure that future contracts and agreements contain clear and defined deliverables, including time frames, and monitor the work while the services are in progress, if applicable.

Auditors' Follow-up Response

Our review noted that there was insufficient supporting documentation provided to the NCIDA for the $350,000 paid to LIRPC. We stand by our recommendation that the NCIDA conduct a review of the LIRPC's records to verify that monies paid by the NCIDA were used for the economic development issues pertaining to the County.

We note and acknowledge the NCIDA's plan for corrective action to ensure future contracts or agreements contain clear and defined deliverables, including time frames and monitoring of the work while the services are in progress.

Weaknesses in the Time and Leaving Recording Procedures and Policies

As a general matter, the current members and management of NCIDA are not in a position to comment on the personnel practices of NCIDA prior to March 2010.

The current members of NCIDA have made and are in the process of enacting a number of changes to personnel practices related to the Review Recommendations as follows:

(a) NCIDA is in the process of updating its Employee Handbook (the "Updated Handbook"). NCIDA expects that the members of NCIDA will approve such Updated Handbook at a meeting held in April 2011. NCIDA will provide your office with a copy of the Updated Handbook upon its adoption. It is the intention of the members that NCIDA will adopt its own updates to the Handbook from time to time as warranted rather than following ordinances adopted by the County from time to time.

(b) Section 3.1(a) of NCIDA's current Employee Handbook (a copy of which is attached as Exhibit F) (the "Employee Handbook") provides that NCIDA shall pay the full cost of the health insurance premium under the Government Employees' Health Insurance Program provided pursuant to Article XI of the Civil Service Law.

(c) Section 2.5 of the Employee Handbook covers termination pay, allows Department Heads to establish flex-time schedules consistent with the operational needs of NCIDA and addresses adverse weather days. The members of NCIDA have not indicated that they are willing to consider "work at home" arrangements at this time.

(d) NCIDA previously advised its employees of their leave balance on paystubs prepared by ADP, its payroll service provider. Going forward, the CFO will notify each employee of such balances on a periodic basis by e-mail. This change will be reflected in the Updated Handbook.

(e) The Employee Handbook includes time and leave guidelines, including provisions for flex-time schedules.

(f) No employees currently work off-site (other than attendance at meetings, site visits, etc.). If this situation changes, NCIDA will require any such employees to call in and out on a daily basis.

(g) NCIDA concurs with this recommendation.

(h) NCIDA concurs with this recommendation.

(i) NCIDA concurs with this recommendation.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

NCIDA Employee Duties and Job Descriptions were Inconsistent

NCIDA agrees with the Draft Report's Review Recommendation with respect to this Review Finding. NCIDA will ensure that the Chief Marketing Director's job objectives and responsibilities are clearly defined and reviewed annually. In accordance with their respective Charters, the Governance Committee and Audit Committee of NCIDA are responsible to review and define the duties and responsibilities of each senior officer on an annual basis in connection with setting annual compensation.

Auditors' Follow-up Response:

We concur with the corrective actions planned by the NCIDA.

Accumulated Leave Payout Lacked Board Approval

The current members and management of NCIDA are not in a position to comment on the personnel practices of NCIDA prior to March 2010.

With respect to the Review Recommendations in the Draft Report, NCIDA offers the following responses:

(a) Section 2.5 of the Employee Handbook sets forth NCIDA's policy with respect to termination pay. The Chief Marketing Director has repaid her leave payout to NCIDA.

(b) NCIDA concurs with this Review Recommendation.

(c) NCIDA has recalculated the leave payout amount due to the Chief Marketing Director and adjusted her leave balances to reflect her status as a full-time employee on a reduced schedule.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

NCIDA Was Not in Compliance with New York State Record Retention Guidelines

NCIDA concurs with this Review Recommendation and will ensure compliance with New York State record retention guidelines, including, without limitation, permanently retaining all board minutes and retaining payroll records for not less than six years. In addition, NCIDA is actively pursuing a records retention grant from the State of New York to assist it in reviewing and categorizing its records for document retention purposes.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

NCIDA Board Executive Sessions Were Undocumented

The current members and management of NCIDA are not in a position to comment on NCIDA meetings held prior to March 2010.

General Counsel to NCIDA has made the members of NCIDA aware of their obligations with respect to the New York State Open Meetings Law, including, without limitation, the circumstances and manner under which "executive sessions" may be conducted under the Open Meetings Law.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

Contracts Were Awarded Without Requests for Proposals

The current members and management of NCIDA are not in a position to comment on the procurement practices employed by NCIDA prior to March 2010.

Since March 2010, all procurements have been made by Request for Proposals or Request for Qualifications following publication of notice of the Request in *Newsday* or pursuant to an express exemption from such requirements set forth in NCIDA's Statement of Procurement Policy and Procedures. Therefore, NCIDA believes that the Review Recommendation has been complied with since March 2010.

NCIDA concurs with the Review Recommendation that RFP's be issued for all professional services and that NCIDA issue an RFP for external audit services every five or six years.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

Disability Insurance

NCIDA has determined that disability insurance is appropriate for its employees. Such coverage will be formally approved and included in the Updated Handbook. Therefore, NCIDA generally concurs with this Review Recommendation.

Auditors' Follow-up Response:

We concur with the corrective action taken by the NCIDA.

Website Activities are Not Adequately Monitored

NCIDA issued an RFP for general economic development services, which RFP includes a requirement that the contractor redevelop NCIDA's website(s). Such contractor will be required to break-out maintenance costs (if NCIDA maintains more than one website) and to annually measure traffic on the website.

NCIDA generally concurs with the Review Recommendations for this Review Finding.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

Review Finding (9):

9.0 NCIDA Has No Rental Agreement for its Occupancy

NCIDA concurs with this Review Recommendation. The Cooperation Agreement includes a license arrangement pursuant to which NCIDA began paying a license fee to the County for the NCIDA's space located at 1550 Franklin Avenue, Suite 235, Mineola, NY effective as of November 1, 2010. The amount of the license payment was negotiated by NCIDA and the County of Nassau and represents the parties' estimation of the fair market rent for the space.

Auditors' Follow-up Response:

The NCIDA provided the auditors with the newly enacted License and Cooperation Agreement with the County.

Review Finding (10):

10.0 PARIS Report to New York State is Missing Information on RPTL 485-b Exemption.

The current members and management of NCIDA are not in a position to comment on decisions made by NCIDA prior to March 2010.

NCIDA concurs with this Review Recommendation. Since the information required to accurately complete this portion of the PARIS Report is maintained by the Assessment Department, NCIDA has requested that the Assessment Department include such information in its report of PILOT payments to NCIDA for the 2010 PARIS Report (as well as all reports in the future). The cost of obtaining this information from the Assessment Department will be covered by and billed to NCIDA under the Cooperation Agreement.

Auditors' Follow-up Response:

We concur with the corrective actions taken by the NCIDA.

Very truly yours,

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:____________________
Joseph J. Kearney
Executive Director

Exhibits A through F not attached by mutual agreement.