

A topographical map of New York State, showing county boundaries and major water bodies. The map is oriented with the state's outline, including Long Island, visible.

Authorities **B**udget **O**ffice

- *Accountability*
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- *Integrity*

Operational Review

Development Chenango Corporation

January 3, 2018

OR-2017-01

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Executive Summary

Purpose and Authority:

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes and to make recommendations concerning the reformation and structure of public authorities. This includes rendering conclusions and opinions regarding the performance of public authorities and to assist these authorities improve management practices and the procedures by which their activities and financial practices are disclosed to the public. Our operational review of the Development Chenango Corporation (Corporation) was performed between February and August of 2017 and was conducted in accordance with our statutory authority and compliance review protocols which are based on generally accepted professional standards. The purpose of our review was to provide an objective evaluation of the Corporation's operations and compliance with statutory requirements, and make necessary recommendations to improve its business practices.

Background Information:

The Development Chenango Corporation was established in 2008 as a Local Development Corporation pursuant to Section 1411 of Not-For-Profit Corporation Law. The Corporation's mission is to promote and coordinate economic development in Chenango County through education and technical assistance, business investment, downtown revitalization, and by attracting funding for Chenango's businesses and communities. The Corporation is responsible for administering three separate loan funds that have been established from various public sources.

The Corporation is governed by a 17-member board of directors per its Certificate of Incorporation. The Corporation has no employees but contracts with Commerce Chenango Inc. (Commerce) for administrative services. The Corporation's primary source of revenue consists of payments from Chenango County and the Chenango County Industrial Development Agency (IDA), while the Corporation's primary expenditures consist of payments to Commerce and loans and grants provided to businesses.

Results:

Our review found that the board needs to improve its overall governance of the Corporation's operations and structure. We found that the board does not comply with the guidance documents that have been established and has adopted policies that conflict with those guidance documents. For example, the Corporation's Certificate of Incorporation states that the board is comprised of 17 members, yet the by-laws adopted by the board state that the board is comprised of 17 to 21 members. Further, during the period of our review, there were between 20 and 22 individuals identified as being board members at any point in time. Further, individuals identified in the Certificate of Incorporation as ex-officio board members were not members of the board during our review. We also found that none of the board members had signed an acknowledgement of fiduciary duty and that seven board members have failed to attend training on board member governance, as required by Public Authorities Law. We believe that the lack of board member training and the failure to acknowledge its fiduciary duty is a primary factor to many of the issues we identify in our report.

We found an apparent conflict of interest regarding the administrative service agreement between the Corporation and Commerce. During the period of our review, there were five individuals who were board members for both the Corporation and Commerce, yet there was no disclosure of this apparent conflict and there were no actions taken by any board members to address the matter. The terms of the contract provide the Corporation with almost no ability to control costs or ensure that costs are appropriate, and we determined that the Corporation is paying for costs associated with services that do not apply to the Corporation. For example, one Commerce employee also processes payroll for Commerce. Since the Corporation does not have any employees, costs associated with payroll do not apply. Yet the Corporation pays for 100 percent of this person's salary and benefits. And although the Corporation pays for half of the rent and utilities in the building it shares with Commerce, we found that Commerce has another tenant that pays a portion of the rent and utilities. The Corporation's costs are not offset by the additional revenue provided to Commerce by this tenant.

We also determined that Commerce bills the Corporation for costs that exceed the amounts specified in the agreement. Since Commerce does not provide appropriate supporting records, such as invoices or contracts, it is not always possible to determine the basis for these charges. Additionally, we were not able to find records of Commerce

incurring the cost or paying the specified vendor. We determined that Commerce overcharged the Corporation \$20,063 in 2015 and \$15,251 in 2016.

We found that Commerce staff conduct transactions without appropriate authorization and the Corporation does not provide adequate oversight of Commerce. For example, Commerce's Executive Director entered into a \$35,400 contract on the Corporation's behalf, although the Corporation's by-laws stipulate that no one is authorized to enter into contracts without the expressed authorization of the board. In another instance, the Corporation's Finance Committee approved awarding a loan for \$3,200, but Commerce staff processed the loan for \$3,983, resulting in \$783 more than was approved.

We also determined that the Corporation needs to improve its procedures regarding loan approval and monitoring of results of loans. Four of the 18 loans outstanding from the Business Assistance Loan Fund had terms that exceeded the loan guidelines established by the Corporation, and there was no record to indicate why the exceptions were appropriate. In addition, we identified 50 instances where late fees should have been assessed on loan payments, but the Corporation only assessed and received late fees for seven of those instances.

In addition, we noted that the Corporation needs to improve its conduct of board meetings, improve public notice of board and committee meetings, and improve the accuracy of its reporting as required by Public Authorities Law.

Introduction and Background

The Development Chenango Corporation (Corporation) was established in 2008 as a Local Development Corporation pursuant to Section 1411 of Not-For-Profit Corporation Law. The Corporation's mission is to promote and coordinate economic development in Chenango County through education and technical assistance, business investment, downtown revitalization, and by attracting funding for Chenango's businesses and communities. The Corporation works to achieve its mission by administering three loan funds: The Business Assistance Loan Fund (Business Fund), the Dairy Revolving Loan Fund (Dairy Fund), and the Microenterprise Revolving Loan Fund (Microenterprise Fund). The Corporation's 2016 independent audit reports that \$1,216,034 is available in the Business Fund, \$363,093 is available in the Dairy Fund, and \$51,116 is available in the Microenterprise Fund. The Corporation also administers grants that have been awarded under the federal Community Development Block Grant (CDBG) program and New York's Main Street Grant and Rural Area Revitalization Grant programs.

The Corporation's Certificate of Incorporation states that the Corporation is comprised of 17 board members, seven of which are ex-officio (Norwich Town Supervisor, North Norwich Town Supervisor, City of Norwich Mayor, City of Norwich Director of Community Development, Chair of the County Board of Supervisors, Chair of the Bainbridge Development Corporation, and President and CEO of Commerce Chenango, Inc.). One board member is to be designated by the Norwich Town Board, and the remaining nine members are self-appointed: new board members are nominated and approved by the existing members. These nine members are to represent specific groups, such as local businesses, organized labor, financial institutions, etc.

The Corporation does not have any employees. Instead, the Corporation contracts with Commerce Chenango, Inc. (Commerce) under an administrative service agreement. This agreement specifies the services that Commerce provides to the Corporation and states how the amount of payment for these services is determined. These services consist primarily of the overall management and administration of the Corporation, marketing and managing the various loan funds, and maintaining property owned by the Corporation. Commerce employees are to receive and evaluate applications for assistance, recommend board action on each application, monitor funded projects to ensure goals are met, and to bill and collect loan payments.

The Corporation operates on a calendar fiscal year. For 2015 the Corporation had \$826,044 in revenues and \$427,726 in expenses, and for 2016 the Corporation had \$515,207 in revenues and \$894,515 in expenses. Revenues consist primarily of economic development grants, support payments from Chenango County and the Chenango County Industrial Development Agency (IDA), and loan repayments. Expenses consist primarily of payments to Commerce and loans issued to businesses.

Between January 2015 and July 2017, the Corporation managed a total of 28 loans with an original value of \$2,804,560. Seven of these loans with a total outstanding balance of \$112,636 had not made any repayments in several years and were considered in default by the Corporation.

Compliance Review Objectives

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our operational review was conducted to determine whether the Corporation's board provides effective oversight of operations.

Compliance Review Scope and Methodology

Our compliance review was conducted between February and August of 2017. The review assessed the Corporation's operations for the period January 1, 2015 through July 31, 2017. To perform our review, we relied on the following documentation and data sources:

- Corporation financial records
- Loan applications, loan agreements and related documents
- Policies and procedures indicative of good governance practices
- Annual reports required by the Public Authorities Law
- Board meeting minutes and board meeting packets

In addition to reviewing documents and records, we attended a board meeting, interviewed Corporation management and staff and performed other testing we considered necessary to achieve our objectives. Our report contains recommendations to improve Corporation operations and strengthen board governance and oversight. The results and recommendations of our review were provided to and discussed with Corporation officials, and their responses are reflected in this report where appropriate.

Review Results

Governance and Oversight

Section 2824 of Public Authorities Law states that board members shall have direct oversight of the authority's chief executive and other management and understand, review and monitor the financial and management controls and operational decisions of the authority. Board members are also to establish appropriate policies and procedures and perform their duties in good faith and with the degree of diligence, care and skill that an ordinarily prudent person would use. We found that in many instances the board members of the Corporation have not appeared to perform their functions with the appropriate degree of care and diligence. The board has adopted guidance and policies that contradict other established guidance documents and does not always ensure that policies are appropriate or followed.

For example, the Corporation's Certificate of Incorporation states that the Corporation is comprised of 17 members, which serve as the directors. Yet the Corporation's adopted by-laws state that the board is to be comprised of 17 to 21 members, which contradicts the Certificate of Incorporation since it provides for more board members than allowed by the Certificate of Incorporation. Further, for the period of our review the Corporation identified between 20 and 22 individuals as board members at any point in time.

The Certificate of Incorporation also states that seven of the board positions are ex-officio: The Town of Norwich Supervisor, the Town of North Norwich Supervisor, the City of Norwich Mayor, the City of Norwich Director of Community Development, the Chairperson of the Chenango County Board of Supervisors, the Chairperson of the Bainbridge Development Corporation, and the President and CEO of Commerce Chenango, Inc. However, during the entire period of our review neither the Norwich Town Supervisor nor the North Norwich Town Supervisor were represented on the Corporation's board of directors.

The by-laws adopted by the board also contradict the Certificate of Incorporation regarding the composition of the board. The by-laws indicate that there are three classes of directors. One class is comprised of ex-officio positions, while the other two classes prescribe one-year and three-year term limits. However, the by-laws only identify three ex-officio positions, rather than the seven ex-officio positions identified in the Certificate of Incorporation. The four remaining ex-officio positions identified in the Certificate of Incorporation would not be able to be included in one of the other board member classes, since members in those classes have term limits. For example, the Mayor of the City of Norwich is not identified as an ex-officio board member in the by-laws, but is in the Certificate of Incorporation. The individual serving as Mayor continues to be a board member as long as he or she is the Mayor. This individual could not fill one of the other member classes

identified in the by-laws because it would restrict this individual to a maximum three-year term, regardless if he or she continues to be Mayor.

Corporation officials responded that the current board configuration was adopted in 2013 through a resolution amending its Certificate of Incorporation and a second resolution amending its by-laws. They stated that a Certificate of Amendment of the Certificate of Incorporation was sent to the New York Department of State to legalize those changes, but that the required filing fees were not submitted and that they were not aware that the Certificate of Incorporation had not been revised. Corporation officials stated that the Certificate of Amendment of the Certificate of Incorporation has been resubmitted to the Department of State with the required payment. The Department of State processed the Certificate of Amendment of the Certificate of Incorporation on November 30, 2017.

The Corporation's by-laws state that the election of directors must be done by resolution at an annual meeting of members in March. However, it does not appear that the board follows the by-laws to formally elect new board members. For example, the March 2015 annual meeting minutes indicate that a nomination report was provided to board members, but this report was not made part of the official record, there was no indication in the minutes who was elected and there were no resolutions passed regarding new board members. The minutes for the March 2016 annual meeting indicate that there was a request for volunteers to form a nomination committee, but there was no record of who was nominated, who was elected and no resolution passed regarding new board members. Instead, the June 2016 board meeting minutes simply stated that there was a review of nominations. Once we began our review in February 2017, the Corporation began to improve its operations: resolutions were prepared and voted on for the March 2017 annual board meeting and the meeting minutes identified board member and committee appointments as well as the election of officers.

Corporation officials responded that the Board of Directors is comprised of 20 members per its 2013 by-laws, 4 of whom were recommended by the Nominating Committee empaneled in December 2016, and that the directors were installed at the Annual Meeting held on February 23, 2017. As indicated, the Corporation began to improve its operations upon the commencement of our review. However, the resolution passed at the 2017 Annual Meeting held on March 23, 2017, identifies 21 directors, not 20 as stated in the Corporation's response.

Public Authorities Law Section 2824 requires all board members to sign a written acknowledgement of their fiduciary duty. Board members are to acknowledge that they understand their fiduciary obligation to perform their duties and responsibilities in good faith and with proper diligence and care consistent with the Certificate of Incorporation, mission and by-laws of the Corporation and the laws of New York State. However, Commerce's management was unable to provide us with signed fiduciary duty statements and told us that none of the board members had signed an acknowledgement of fiduciary duty. In its response to our report,

Corporation officials stated that board members will acknowledge their fiduciary duty at the Annual Meeting of the Corporation.

Public Authorities Law Section 2824 also requires board members to participate in State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of an authority. Board members are to participate in this training within one year of their appointment to a board. The law also requires board members to participate in additional training to stay informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance. As a best practice this refresher training should occur upon re-appointment to the board or at least every three years. However, not all Corporation board members have attended this mandatory training, or any refresher training. Of the 21 individuals the Corporation reported as board members for 2016, only 11 had attended the required board member training. Further, three of those 11 individuals last attended board member training over eight years ago, and should attend a refresher training session. We believe that the lack of board member training and the board's failure to acknowledge its fiduciary duty is a primary factor to the many issues identified in this report. Corporation officials responded that board members are regularly apprised of opportunities to attend scheduled training.

The ABO believes that this response is inadequate and fails to address the importance of board member training to the operations of the Corporation. As pointed out throughout this report, the board is not providing adequate oversight of Corporation operations, and the failure to attend required training is a primary factor. *This report serves as a formal warning to Corporation board members, and if those current members do not attend the required training by March 31, 2018, they will be censured by the ABO.*

Public Authorities Law Section 2824 requires public authorities to establish an Audit Committee and a Governance Committee and states that each committee be comprised of not less than three independent members. The Corporation has established an Audit Committee that is comprised of the members of the Finance Committee, and has established a Governance Committee that is comprised of the members of the Executive Committee. The Corporation's by-laws stipulate that both the Finance Committee and the Executive Committee are to be comprised of at least three members. However, during 2016 there were only two members of the Executive Committee. Since the Executive Committee was not fully appointed, it was unable to officially act during 2016. This is significant, since the by-laws also provide the Executive Committee with the authority to act as the full board of directors. This situation was resolved in March 2017 when additional members were appointed to the Executive Committee.

The by-laws also require the Audit and the Governance Committees to meet at least twice a year. We found that the Governance Committee only met once during 2015, and that neither committee met at all during 2016.

Corporation officials responded that committee meetings have been held in accordance with their by-laws and that the Corporation is making efforts to ensure accurate documentation of such meetings. However, this response appears to be inaccurate. As indicated, the Corporation's by-laws require the Audit Committee and Governance Committee to meet at least twice a year, but neither committee met at all during 2016. As such, the responsibilities of those Committees were not met. For example, Section 2824(7) of Public Authorities Law states that the Governance Committee is to examine ethical and conflict of interest issues, perform board self-evaluations and recommend by-laws that include rules and procedures for conduct of board business. The results of board self-evaluations are to be sent to the ABO. However, the Governance Committee did not meet and perform a board self-evaluation in 2016; the last board evaluation result submitted by the Corporation to the ABO was in 2010.

Article V of the Corporation's by-laws states that no loans shall be contracted on behalf of the Corporation unless they are specifically authorized by the board of directors. The Corporation has also established policies regarding loans that state that the Finance Committee shall also serve as the loan and grant review committee, and that the loan committee has the authority to approve loans up to \$50,000, but must report its decisions to the board of directors at the next board meeting. While this policy does not directly contradict the by-laws, it appears that board members are confused by its meaning and intent. Of the five loans approved by the Corporation during the period of our review, one loan was approved by the Finance Committee but there was no motion by the board to approve the loan or mention of this loan approval in the board meeting minutes.

Administrative Support and Service Agreement

The Corporation does not have any employees but contracts with Commerce to provide staffing and administrative services. The service agreement states that Commerce will provide the Corporation with personnel, office space, office equipment, and other administrative services, and that the Corporation will pay Commerce based on a percentage of Commerce's costs. Specifically, the agreement states that the Corporation will pay between 25 and 100 percent of the salaries and benefits for some of Commerce's employees, the percentage varying for each position. For example, the Corporation is to pay 100 percent of the salaries and benefits for the Economic Development Specialist and the Economic Development Coordinator, 60 percent of the salaries and benefits for the Executive Director and the Finance Director, 50 percent of the salaries and benefits for the Administrative Assistant, and 25 percent of salaries and benefits for the Tourism and Communications position. In addition, the Corporation is to pay half the rent and utilities, and the full cost of items that are directly attributed to the Corporation.

In addition, the Corporation is to pay an additional amount to reimburse Commerce for other shared services not otherwise directly billed, such as equipment leases.

The Corporation's Ethics Policy states that no member of the Corporation should have any direct or indirect interest which is in substantial conflict with their duties, and should not engage in any transaction with any entity in which there is a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of the board member's official duties. We noted that several Corporation board members are also on Commerce's board of directors. For example, during 2015 there were five individuals on the Corporation's board who were also on Commerce's board. At a minimum, this creates the appearance of a conflict of interest regarding the administrative service agreement since the individuals are approving a contract with another entity where they also represent a pecuniary interest. This could raise questions whether these individuals are representing the best interest of the Corporation with this transaction. There was no indication that the potential conflicts were acknowledged, waived or that efforts to address the conflict, such as the conflicted board members recusing themselves from discussions or voting on the contract, were taken.

One of the board members of the Corporation is also a member of both Commerce's board and the IDA's board. This individual's child is currently employed by Commerce. Since the Corporation contracts with Commerce for administrative services, this relationship also presents a perceived conflict of interest. Yet, there was no disclosure of this potential conflict by the board member in relation to the service agreement with Commerce.

Corporation officials responded that board members will disclose potential conflict of interest at the annual meeting. The ABO believes this step to be insufficient. Board members should disclose potential conflict of interests every time a potential conflict arises and appropriate action taken to address the specific conflict, and these details should be reflected in the meeting minutes. An annual disclosure is inadequate in that individual personal and professional conditions may change throughout the year, and it may not be possible to foresee potential conflicts that may arise throughout the year.

Payments to Commerce for the service agreement represents the Corporation's largest expense each year. However, the Corporation has virtually no ability to control its costs based on the terms of the agreement. These terms require the Corporation to pay a portion of the costs incurred by Commerce, but doesn't establish any caps or limits regarding how much Commerce can spend. For example, although the service agreement indicates that the administrative assistant is a part-time employee, we found that this individual is being paid full-time. The agreement calls for the Corporation to pay for half of the administrative assistant's salary and benefits. As a result, the Corporation's costs under the agreement have increased based on the increased costs associated with full-time pay. The agreement also includes services to be provided by Commerce that are

excessive and unnecessary. For example, although the Corporation has no employees, the service agreement states that Commerce will record and report payroll amounts, determine salaries, administer benefits, and supervise, hire and terminate employees.

The payment provisions specified in the agreement also result in the Corporation paying Commerce for costs that may not apply to the Corporation. The service agreement states that the Corporation is to pay 100 percent of the salaries and benefits for two Commerce employees, but we found that no Commerce employees perform work exclusively for the Corporation. For example, the Corporation pays for all the salary and benefits for the Economic Development Specialist. This individual is responsible for the implementation of economic development plans, programs and services for Chenango County including monitoring business activities, assisting in efforts to promote retention and growth of current businesses, and attracting new businesses to the County. However, during our review we found that this individual is also responsible for processing payroll for Commerce. Since the Corporation has no employees, all payroll-related activities are solely for Commerce's benefit and would not apply to the Corporation. As such, the Corporation should not be paying for the portion of this individual's work spent on these activities.

As another example, Commerce officials told us that, while not specified in the job description, the Economic Development Coordinator is also responsible for maintaining the website. This website is used by Commerce, the Corporation and the IDA. Although only a portion of the website maintenance applies to the Corporation, the Corporation is paying for the individual's full salary and benefits.

The service agreement also states that the Corporation will pay for half of the rent and utilities for the shared office space. However, there is an additional tenant in the building and Commerce officials told us that this tenant pays rent to Commerce for the space used by the tenant. However, Commerce continues to charge the Corporation for half of the total rent and utilities and does not offset these costs by the amount received by the other tenant. Commerce officials refused to provide us with the amount paid by this tenant and we were therefore unable to determine the impact on the Corporation's costs.

Corporation officials responded that the board is going to revise, replace, and/or supplement the administrative service agreement as soon as is practicable. The ABO expects that if changes are to be made in the terms of the administrative service agreement, that these changes are made for 2018 when the current service agreement expires.

The Corporation paid Commerce \$228,101 in 2015 and \$224,057 in 2016 for staffing and administrative services. To determine whether these amounts were appropriate, we obtained and reviewed Commerce's expenses for 2015 and 2016 to identify the actual costs incurred by Commerce. We found Commerce

overcharged the Corporation \$20,063 in 2015 and \$15,251 in 2016 for these services.

For example, in 2015 Commerce had total costs of \$10,885 that met the definition of direct administrative costs under the service agreement. Direct administrative costs are those costs incurred strictly for a specific entity (i.e., the Corporation, Commerce, or IDA.) We determined that \$2,529 of these costs were directly attributable to the Corporation. However, Commerce billed the Corporation a total of \$24,051 as direct administrative costs, which exceeded the actual costs incurred by Commerce. It is not clear how Commerce determined the basis for these charges to the Corporation. For example, in 2015 Commerce submitted four charges to the Corporation from August to November which totaled \$9,132. There was no support or explanation provided for these charges, other than “ABC contracted services”. However, we could not identify any Commerce expenses that equal the amounts charged or identify any vendors that would appear to provide ABC contracted services, and it does not appear that Commerce incurred these costs. These overcharges were offset to some extent by Commerce failing to charge the Corporation for all other administrative costs. The service agreement states that the Corporation is to pay Commerce an additional amount annually to reimburse Commerce for shared services not directly billed, and projects the amount to be \$8,400. Rather than charge the Corporation for the actual costs of these services, Commerce only charged the Corporation a total of \$8,400.

2015				
Cost Category	Commerce's Cost	Corporation's Share *	Corporation Paid	Difference
Salaries & Benefits	\$338,355	\$180,714	\$183,831	\$3,117
Rent & Utilities	\$22,745	\$11,372^	\$11,819	\$447
Direct Administrative	\$10,885	\$2,529	\$24,051	\$21,522
Other Administrative	\$39,729	\$13,423	\$8,400	(\$5,023)
Total	\$411,714	\$208,038	\$228,101	\$20,063
2016				
Cost Category	Commerce's Cost	Corporation's Share *	Corporation Paid	Difference
Salaries & Benefits	\$319,903	\$176,493	\$179,858	\$3,365
Rent & Utilities	\$22,440	\$11,220^	\$12,102	\$882
Direct Administrative	\$7,350	\$1,088	\$23,697	\$22,609
Other Administrative	\$43,537	\$20,005	\$8,400	(\$11,605)
Total	\$393,230	\$208,806	\$224,057	\$15,251

* Per service agreement

^ Corporation's share is calculated at half, without offsetting the amount by the payments made to Commerce by the other building tenant

As indicated, we determined the amount of these overcharges by reviewing expenditure data provided to us by Commerce. However, it is questionable whether Commerce staff provided us with all appropriate expenditures from their financial records. For example, in January 2016 Commerce charged the Corporation \$140 for the Corporation's share of software. The invoice indicates that the total cost of the software was \$400. However, the financial records

Commerce provided to us only reflects a payment of \$140 by Commerce for the software.

Corporation officials responded that since it does not possess the resources and personnel to conduct its own review, it is unable to conclude excessive payments were made. The response also indicates that the board relies on one CPA firm to perform bookkeeping services and another CPA firm to perform financial audits and neither of these firms have identified excessive payments. This response is both unfortunate and misleading and further points out the board's failure to understand the seriousness of this issue as well as to adequately oversee Corporation activities. We have attempted to provide sufficient details in this report to demonstrate that excessive payments are being made by the Corporation to Commerce, and are willing to provide additional details, if necessary for the board to understand the basis for the excessive payments.

However, these excessive payments have occurred due to some extent on Commerce staff failing to comply with the policies adopted by the Corporation's board. The Corporation's Procurement Policy adopted in 2010 states that no payment for goods or services shall be made unless an itemized bill or invoice is submitted. As indicated, in January 2016 Commerce submitted an invoice to the Corporation indicating that the Corporation owed \$140 as its share of software that cost a total of \$400. There was no supporting document such as an invoice from the supplier or copy of a check from Commerce to the supplier to show that the total cost was \$400. This demonstrates that the board is not providing adequate oversight to ensure that Commerce staff comply with the Corporation's policies.

Further, although Corporation officials responded that the Corporation relies on a CPA firm to provide bookkeeping services, this is inaccurate. The Corporation relies on Commerce for financial management services, including maintaining financial records, processing invoices and paying bills, under the administrative services agreement. In 2015 Commerce provided these services with its own staff, but in 2016 hired a CPA firm to meet its obligation under the agreement. Commerce is still responsible for the bookkeeping services. As part of our review, Commerce provided us with its financial data so that we could determine whether the Corporation was paying the appropriate amount based on the terms of the administrative services agreement. This financial data shows that Commerce reported a payment of only \$140 to the supplier for the software. Our work leads us to conclude that as a best-case scenario the bookkeeping services being provided to the Corporation are faulty; as a worst-case scenario there are fraudulent transactions being made. The board needs to take the appropriate action, such as recovering amounts overpaid or requiring Commerce to provide it with adequate supporting documents to support the amount Commerce charged and collected from the Corporation. If the board fails to take responsible actions to

correct this situation, it would be considered a breach of fiduciary duty and could result in the board members being sanctioned.

Commerce Use of Corporation Funds

The Corporation's by-laws state that no officers, agent or employee are authorized to enter contracts for the Corporation without the expressed authorization of the board. However, we identified two instances where contracts were signed by Commerce staff without the appropriate board authorization. On September 17, 2015, the Executive Director signed a contract for \$35,400 with a company to provide consulting services for an economic development competition. It appears that this contract was subsequently discussed during the September 24, 2015 board meeting, but there was no indication that the Executive Director had been authorized to sign the contract for the Corporation. Also, between May and December 2015 Commerce staff paid another vendor over \$17,000 with Corporation funds for additional services related to economic development activities. However, there were no written contracts to specify the services to be provided, and there was no indication that the board authorized these costs. Further, the Corporation's procurement policy states that payments for goods or services will not be made unless a written dated and itemized bill or invoice is submitted. Yet, Commerce staff processed this payment without any written supporting documents indicating the services that were provided.

We also found that Commerce staff appeared to process payments that exceeded its authorization. In March 2013, the Finance Committee approved a loan of \$3,200 for a local business. However, Commerce staff processed the loan for \$3,983, resulting in \$783 more than the amount approved by the Finance Committee. There is no indication that the board or Finance Committee was notified or approved this higher amount.

Further, per the Corporation's by-laws only the board of directors (or Executive Committee) has the authority to approve grants. However, in December 2015 Commerce staff provided \$112,500 to the IDA for use as part of the local share for a project that was receiving federal funding. The December 2015 Finance Committee meeting minutes indicate that this project and proposed grant was discussed and approved by the Finance Committee, but there is no indication that the grant was ever presented to or approved by the Corporation's board.

Corporation officials stated that policies and practices will be reviewed and, if needed, amended to achieve alignment.

Management Practices

The Corporation administers loans from three separate loan funds. At the time of our review there were a total of 28 loans outstanding with a combined outstanding balance of \$1,198,824. Seven of these loans with a combined outstanding balance of \$112,636 were considered in default by the Corporation.

The Corporation's loan policy states various criteria for the different loan funds. For Business Fund loans the maximum loan amount is \$100,000, the minimum interest rate charged is 4 percent, and the maximum time for repayment is 120 months. The Corporation's policy indicates that the loan committee can approve loans for up to \$50,000 but that any exceptions to the loan policies must be approved by the board.

We reviewed the outstanding loans to determine whether the loans were issued in compliance with the Corporation's loan policy and found that all Dairy Fund and Microenterprise Fund loans complied with the policy. However, of the 18 Business Fund loans we determined that four of the loans did not comply with the loan policy. Two loans (25 Genesee St. LLC and J&L Goods) exceeded the maximum repayment period; one loan (Golden Artist) exceeded the maximum amount and had an interest rate below the minimum; and one loan (Hercules Properties LLC) exceeded the maximum repayment period, exceeded the maximum amount, and had an interest rate below the minimum. There was no indication that the board formally approved these exceptions to the established policy.

Corporation officials stated that guidelines and practices will be reviewed and, if needed, amended to achieve alignment.

The Corporation's loan policy states that loan repayments should be monitored monthly and borrowers are notified when payment is 15 days past due and a late fee is assessed. The Corporation's system for monitoring loan payments determines whether a payment has been received 15 days after due and if not, assesses a late fee. Of the 28 outstanding loans, 11 of the businesses make loan payments via ACH payment, which is a direct transfer from the business' bank account to the Corporation's bank account. Since this is an automated process, the payment will be reflected in the Corporation's system and no late fee will be assessed. However, at times the ACH payments are returned due to insufficient funds in the business' bank account. Since the payment has been recorded in the Corporation's system, no late fees are assessed in these instances.

We reviewed all loan payments made during 2015 and 2016 to determine whether late fees were properly assessed. We determined that there were 50 instances where late fees should have been assessed because loan payments were not made within 15 days of the due date. However late fees were assessed for only 40 of those instances. There were 10 instances where late fees should have been assessed but were not. Five of those instances involved ACH payments that were returned for insufficient funds; three instances involved late payments being included in a subsequent payment; one instance was due to only a partial payment being made; and one instance was the business' first payment on the loan.

Of the 40 instances where a late fee was assessed, the Corporation received the late fee in only seven instances. If late fees were assessed and collected in

accordance with the Corporation's policy, the Corporation would have received \$2,303 in late fees for the two years. Instead, only \$317 was received. We found that the majority of late fee charges are being waived by Commerce staff. While the Corporation's loan policy indicates that the Executive Director is responsible for administering loan collections, this policy does not define the specific authority of the Executive Director and does not address the possibility of waiving late fees.

Corporation officials stated that administration of terms and conditions of repayments, including waiving and collection of late fees, will be done in accordance with original or modified loan agreements approved by the Finance (Loan) Committee. However, we note that the Corporation's loan agreements do not address the waiving of late fees, and the Corporation should establish the necessary policies and controls regarding the waiving of late fees.

Job Creation/Reporting in Loans

The Corporation's loan policy states that loans may be made for any legitimate purpose that is consistent with the Corporation's economic development mission. Projects must reasonably be expected to retain or create jobs, or must have another significant impact on the County's economic environment.

The Corporation is required to report job creation information for each outstanding loan annually. To accomplish this, the Corporation needs to request updated job creation data each year from businesses with outstanding loans. There were 24 loans outstanding during 2015, which includes the seven loans the Corporation considered in default, but the Corporation only requested job data from 13 of the businesses. Further, only two businesses provided the requested information; the other 11 businesses did not respond to the Corporation's request. Yet, there were no additional actions taken by the Corporation to obtain this information. There were 24 loans outstanding during 2016, including the seven loans in default, but the Corporation only requested job data from 13 of the businesses. For 2016 only four of the businesses provided the requested information.

Corporation officials stated that procedures will be re-visited and altered as needed to assess project success.

For both 2015 and 2016, the Corporation inaccurately reported the job creation information it had received. For 2015, although only two businesses provided job creation data, the Corporation reported job creation for 14 businesses. And although those two businesses reported a total of 14 jobs created, the Corporation reported a total of 60 jobs created. For 2016, only 4 businesses provided job creation data but the Corporation reported job creation number for 14 businesses. Those four businesses reported a total of 36 full-time and 16 part-time jobs created, but the Corporation only reported a total of 30 jobs created.

Reporting Year	Outstanding Loans	Businesses Contacted	Businesses Responded	PT Jobs Reported by Business	FT Jobs Reported by Business	Jobs Reported by the Corporation
2015	24	13	2	0	14	60
2016	24	13	4	16	36	30

Corporation officials stated that this information is solicited early in the first quarter of each year in order to report the data by the March 31 deadline. However, officials indicate that many businesses return the questionnaire only after completing their taxes, which can be as late as mid-July. These officials indicated that they will report data by the March 31 deadline and then later request to revise the reported data. This response is inadequate, and again points to the officials' lack of understanding as to the reporting requirements. The Corporation is statutorily required to report the data within 90 days of the end of its fiscal year (March 31), and it is up to the Corporation to develop adequate procedures to ensure that it has the necessary data by this reporting deadline. We note that in submitting its data, the Corporation is confirming that the report is complete, that the information is accurate and correct and that the information has been discussed with and approved by the board.

Board Meetings

Section 104 of Public Officers Law requires public notice of the time and place of board and committee meetings. This notice is to be made to the news media and should be conspicuously posted in one or more designated public locations. However, the Corporation's by-laws specifically state that no notice is needed for the annual or regular meetings of the board of directors, nor for any committee meetings. For 2015 and 2016 the Corporation did not provide any public notice of its board or committee meetings to the news media and did not post notice of its meetings on its website. Subsequent to our review, the Corporation posted a schedule of its board meetings and the planned agenda for each meeting on its website, but still does not make proposed resolutions available for review by the public in advance of the board meetings.

Corporation officials responded that although the Corporation is not a "public body" and not subject to Open Meetings Law, the Board will continue to post meeting agendas on the Corporation's website prior to meetings and will make available to media outlets the times and dates of regularly scheduled board meetings. While the Corporation has been established as a not-for-profit corporation, it is defined as a local authority under Section 2(2)(b) of Public Authorities Law, in that it is a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government. As a local authority, the Corporation is subject to New York State's Open Meetings Law. Further, in addition to posting notices of board meetings, the Corporation should also advertise notices of committee meetings, as well as make board packets available to the public for review.

Open Meetings Law requires board members to be either physically present at meetings or attend the meeting through videoconference. Attendance at a meeting through teleconference is not permitted because voting members and their surroundings must be visible to those in attendance. For this reason, other means of conducting a meeting (such as e-mail or mail) are also impermissible as they are inconsistent with the law. This does not preclude board members from taking part in the meeting deliberations through teleconferencing, mail or e-mail. However, these members do not count toward a quorum and they cannot vote. We found that several meetings held by the Corporation did not comply with this requirement since board members who were not physically present took actions as though they were. For example, one of the members attending via teleconference moved to approve a loan to a business and this was then voted on by the Committee. Since this individual was not physically present, he should have been precluded from making the motion to approve the loan.

The Corporation acted inappropriately in approving a loan for a project. In May 2013, the Corporation provided a loan to Golden Artist to purchase a building, with the expectation that the loan would be repaid with grant funds. Since the expected purchase was planned to take place the next day, the Corporation believed that it needed to act quickly. Rather than hold a board meeting, board members discussed the loan via telephone and e-mail. Although the Corporation's board was comprised of 17 members at the time, only 15 members were polled regarding whether the loan should be approved. Twelve members voted to approve the loan (one in person, five by telephone, and six by e-mail) and three members did not respond. There were no board minutes prepared or approved that documented this action.

Corporation officials responded that the board conducts its meetings in accordance with its by-laws, which reflect Article 7 of the Not-for-Profit Corporations Law. However as indicated, the Corporation is defined as a local authority and as such must comply with the provisions of Open Meetings Law. Advisory Opinion OML-AO-4534 issued by the Committee on Open Government states there are only two ways in which a public body may validly conduct a meeting: by means of a physical gathering or a gathering by means of video-conference. Any other means of conducting a meeting, such as by telephone conference, mail, or e-mail, would be inconsistent with law.

Inaccurate Reporting

Public authorities are required to submit reports on their finances and operations annually to the appropriate local government officials and to the ABO, in accordance with Section 2800 of Public Authorities Law. While the Corporation has submitted the appropriate reports for 2015 and 2016, the information submitted is not always accurate and correct. The Corporation reported that there were 21 directors for 2016, but this included 6 individuals who were not actually on the board during 2016, and excluded 5 individuals who are board members in

accordance with the Certificate of Incorporation. The Corporation reported there were only 20 loans in 2016 although there were 24 loans outstanding during 2016. And the Corporation reported that 30 jobs had been created as a result of these loans although its records indicated that 36 full-time and 16 part-time jobs had been created. The Corporation reported these inaccuracies even though the information was approved by the board and certified as complete and accurate by the Executive Director.

Corporation officials responded that the information reported in PARIS is the most accurate obtainable as of the reporting deadline, and indicated that they will report data by the March 31 deadline and then later request to revise the reported data, once it becomes available. However this approach is inappropriate since the Corporation is statutorily required to report the data within 90 days of the end of its fiscal year (March 31), and it is up to the Corporation to develop adequate procedures to ensure that it has the necessary data by this reporting deadline. Further, the Corporation's response that the information reported is the most accurate obtainable as of the reporting date is incorrect as the number and identities of board members and the number of outstanding loans are known at the end of the reporting year, and are not dependent on information reported by businesses.

Recommendations

1. The board should ensure that the Corporation's by-laws and policies comply with the Certificate of Incorporation, especially regarding the number of board members and the composition of the board.
2. The board should ensure that appropriate procedures are adopted and followed regarding the formal nomination and election of board members at the annual meeting.
3. The board should review the Corporation's policies, by-laws, and Certificate of Incorporation to identify and correct any contradictory or confusing guidance.
4. The board should ensure that all required committees are established appropriately.
5. The board and committee members should ensure that all committees meet as required by the adopted by-laws.
6. Board members should sign the acknowledgement of fiduciary duty form at the time of their appointment, as required by Public Authorities Law.
7. All board members should attend required board member training within one year of their appointment to the board, and should attend refresher board member training upon re-appointment to the board, or at least every three years.
8. Board members need to adhere to their fiduciary responsibility to the Corporation by providing direct oversight of management and establishing, reviewing and monitoring appropriate financial controls.
9. All board members should publicly disclose any appearance of a potential conflict of interest and take the appropriate steps to address the conflict, such as recusing themselves from any discussion regarding the conflicted activity.
10. The board should consider revising the terms of the administrative service agreement with Commerce to ensure that it represents the best interest of the Corporation. A revised agreement should provide the Corporation with an improved ability to control the costs to the Corporation, such as by establishing maximum payment caps or by limiting the total payment to a specified dollar amount. A revised agreement should also include only those

services that are necessary for the Corporation's operations. If necessary, a separate agreement should be negotiated and developed with the Chenango County Industrial Development Agency.

11. The board should establish procedures to adequately monitor the services provided under the agreement and ensure that the Corporation pays only for services that are applicable to the Corporation.
12. The board should establish adequate procedures to require review of requests for payment and ensure that all requests are supported by sufficient documents and records explaining the services provided and basis for the charges.
13. The Corporation should recover from Commerce the excessive charges and payments identified by our review.
14. The board should establish adequate procedures to review and verify that the amount of payments received from the Chenango County Industrial Development Agency are appropriate.
15. The board should adequately monitor Commerce staff to ensure that duties are performed in accordance with the policies adopted by the board regarding payments, grants, loans and the assessment of late fees.
16. The board should ensure that all loans are approved in accordance with established guidelines, and that all exceptions are documented and approved by the board.
17. The board should ensure that late fees are assessed in accordance with the adopted policy, including ACH payments that are late due to insufficient funds.
18. The board should establish appropriate procedures to ensure that adequate oversight of management exists regarding the waiving of late fees, including monitoring the assessment and collection of late fees.
19. The board should develop and implement procedures to monitor projects approved for financial assistance and to determine whether job creation goals and expectations are being met.
20. The board should establish and follow adequate procedures to verify that job data reported by businesses is accurate, and to ensure that the

information is reported accurately in the Public Authorities Reporting Information System (PARIS).

21. The board must improve transparency by providing public notification of all board and committee meetings, including agendas and material to be considered by the board. This should include posting this information on the Corporation's website prior to the meetings.
22. The board should ensure that all board meetings are conducted appropriately by requiring board members to attend meetings in person or via videoconference, in accordance with Open Meetings Law.
23. The board should establish and follow appropriate procedures to review and ensure all information is reported accurately in the Public Authorities Reporting Information System (PARIS).

Date: 11.16.2017

To: Authorities Budget Office

From: Development Chenango Corporation

Re: Response to ABO Review

Thank you for acknowledging the cooperation extended by employees of Commerce Chenango to the three ABO examiners who were courteous, professional, and helpful during the examination that extended from February through July of this year. We regarded them as consultants and in keeping with that spirit, we have already taken steps to address several issues raised in your draft review, and are making plans to address others. For your convenience, we have annotated your recommendations with our responses.

1. The board should ensure that the Corporation's by-laws and policies comply with the Certificate of Incorporation, especially regarding the number of board members and the composition of the board.

The current board configuration was adopted on December 20, 2013 through the adoption of two Resolutions: #3-2013 which amended the Certificate of Incorporation, and #4-2013 which amended the bylaws. Regarding the Certificate of Incorporation: the appropriate Certificate of Amendment was completed and sent to the New York State Department of State. However it appears that the required filing fee was not enclosed and the amendment was not filed. Because the Department of State does not acknowledge receipt of filings, management was not aware that this process had not been completed until the ABO review. The certificate was resubmitted 11.1.2017, accompanied by check # 11879.

2. The board should ensure that appropriate procedures are adopted and followed regarding the formal nomination and election of board members at the annual meeting.

Development Chenango's Board of Directors is comprised of twenty members as per the 12.20.2013 bylaws, four of whom were recommended by the Nominating Committee empaneled by on 12.15.2016. Directors were installed at the Annual Meeting on 02.23.2017.

3. The board should review the Corporation's policies, by-laws, and Certificate of Incorporation to identify and correct any contradictory or confusing guidance.

See Item 1.

4. The board should ensure that all required committees are established appropriately.

The board will follow corporation bylaws, as amended to align with provisions of the Non-profit Revitalization Act of 2013.

5. The board and committee members should ensure that all committees meet as required by the adopted by-laws.

Meetings are and have been held in accordance with bylaws. Efforts will be made to ensure that documentation reflects this compliance.

6. Board members should sign the acknowledgement of fiduciary duty form at the time of their appointment, as required by Public Authorities Law.

Board members will acknowledge fiduciary duty at the Annual Meetings of the Corporation.

7. All board members should attend required board member training within one year of their appointment to the board, and should attend refresher board member training upon re-appointment to the board, or at least every three years.

Board members are regularly apprised of opportunities to attend scheduled training

8. Board members need to adhere to their fiduciary responsibility to the Corporation by providing direct oversight of management and establishing, reviewing and monitoring appropriate financial controls.

Policies and practices are under review

9. All board members should publicly disclose any appearance of a potential conflict of interest and take the appropriate steps to address the conflict, such as recusing themselves from any discussion regarding the conflicted activity.

Board members will make such disclosure at the Annual Meetings of the Corporation.

10. The board should consider revising the terms of the administrative service agreement with Commerce to ensure that it represents the best interest of the Corporation. A revised agreement should provide the Corporation with an improved ability to control the costs to the Corporation, such as by establishing maximum payment caps or by limiting the total payment to a specified dollar amount. A revised agreement should also include only those services that are necessary for the Corporation's operations. If necessary, a separate agreement should be negotiated and developed with the Chenango County Industrial Development Agency.

As soon as is practicable, the board will address revising, replacing, and/or supplementing the administrative service agreement so as to make best use of resources in advancing the Corporation's Mission.

11. The board should establish procedures to adequately monitor the services provided under the agreement and ensure that the Corporation pays only for services that are applicable to the Corporation.

This will be addressed in conjunction with Item 11.

12. The board should establish adequate procedures to require review of requests for payment and ensure that all requests are supported by sufficient documents and records explaining the services provided and basis for the charges.

This will be addressed in conjunction with Item 11.

13. The Corporation should recover from Commerce the excessive charges and payments identified by our review.

Not possessing the resources and personnel to conduct its own review of equivalent scope, the Board is unable to conclude that excessive payments were made. The Board relies on one CPA firm to perform bookkeeping services, and another CPA firm to perform financial audits, neither of which has identified excessive payments.

14. The board should establish adequate procedures to review and verify that the amount of payments received from the Chenango County Industrial Development Agency are appropriate.

This will be addressed in conjunction with Item 11.

15. The board should adequately monitor Commerce staff to ensure that duties are performed in accordance with the policies adopted by the board regarding payments, grants, loans and the assessment of late fees.

Policies and practices will be reviewed and, if needed, amended to achieve alignment.

16. The board should ensure that all loans are approved in accordance with established guidelines, and that all exceptions are documented and approved by the board.

Guidelines and practices will be reviewed and, if needed, amended to achieve alignment.

17. The board should ensure that late fees are assessed in accordance with the adopted policy, including ACH payments that are late due to insufficient funds.

Administration of terms and conditions of loan repayments, including assessment of late fees, will be done in accordance with original loan agreements, or in accordance with loan agreement modifications approved by the Finance (Loan) Committee.

18. The board should establish appropriate procedures to ensure that adequate oversight of management exists regarding the waiving of late fees, including monitoring the assessment and collection of late fees.

Administration of terms and conditions of loan repayments, including waiving and collection of late fees, will be done in accordance with original loan agreements, or in accordance with loan agreement modifications approved by the Finance (Loan) Committee.

19. The board should develop and implement procedures to monitor projects approved for financial assistance and to determine whether job creation goals and expectations are being met.

Procedures will be re-visited and altered as needed to assess project success

20. The board should establish and follow adequate procedures to verify that job data reported by businesses is accurate, and to ensure that the information is reported accurately in the Public Authorities Reporting Information System (PARIS).

The Corporation solicits this information annually, early in Q1, in an effort to post accurate job figures in PARIS on or before the 03.31 deadline. However, many businesses return the questionnaire only after filing their tax returns, which can be as late as mid July. A procedure will be established to request that at such time, ABO change the status of the annual report to "Resubmit" so that updated numbers can be entered and re-certified.

21. The board must improve transparency by providing legal public notification of all board and committee meetings, including agendas and material to be considered by the board. This should include posting this information on the Corporation's website prior to the meetings.

Development Chenango Corporation was organized under the Membership Corporations Law in 1966, and reorganized under the Not-for-Profit Corporation Law in 2008. It is neither a "district corporation," a "municipal corporation," nor a "public benefit corporation"; nor does it "perform a governmental function for the state or an agency or department thereof" and therefore is not a "public body" subject to the Open Meetings Law. The above notwithstanding, Section 104.3 of the NYS Public Officers Law (Open Meetings Law – Public Notice) states that "The public notice provided for by this section shall not be construed to require publication as a legal notice." The Board will continue to post meeting agendas on the Corporation's website prior to meetings and will make available to media outlets the times and dates of regularly scheduled board meetings.

22. The board should ensure that all board meetings are conducted appropriately by requiring board members to attend meetings in person or via videoconference, in accordance with Open Meetings Law.

The Board conducts its meetings in accordance with Corporation bylaws which reflect Article 7 of the Not for Profit Corporations Law, as amended by the Non-profit Revitalization Act of 2013:

(c) Unless otherwise restricted by the certificate of incorporation or the by-laws, any one or more members of the board or of any committee thereof who is not physically present at a meeting of the board or a committee may participate by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the board, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the board or committee.

23. The board should establish and follow appropriate procedures to review and ensure all information is reported accurately in the Public Authorities Reporting Information System (PARIS).

Information reported to PARIS is the most accurate obtainable as of the reporting deadline. Efforts will be made to make corrections as described in Item 20.