

# Tompkins County Industrial Development Agency

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**TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
SPECIAL MEETING**

**• Wednesday, October 12, 2022 • 1:30 – 2:30 PM**

**Legislative Chamber  
Governor Daniel D. Tompkins Building  
121 E. Court Street, Ithaca NY**

THIS MEETING WILL BE LIVESTREAMED  
Link to live stream channel: <https://tinyurl.com/weo3tkk>

## **AGENDA**

- 1. CALL TO ORDER**
- 2. PRIVILEGE OF THE FLOOR**
- 3. ADDITIONS TO AGENDA**
- 4. BUSINESS**

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- 5. ADJOURNMENT**

# MEMORANDUM

October 12, 2022

TO: Tompkins County Industrial Development Agency Board of Directors  
FROM: Russell E. Gaenzle, Esq.  
RE: IDA/LDC Fund Balances

Please accept this memo in response to your recent inquiry regarding the expenditure of the Tompkins County Industrial Development Agency and Tompkins County Development Corporation funds.

## IDA's

The general purposes and powers of Industrial Development Agencies ("IDAs") are contained within the IDA enabling act, Article 18-A of the General Municipal Law ("GML"). Specifically, GML Section 858 provides that IDA purposes include the promotion, development, encouragement and assistance in connection with acquiring, constructing, improving, maintaining, equipping and furnishing qualifying projects. The express powers granted to IDAs in furtherance of these purposes include the ability to acquire, hold and dispose of personal property for its corporate purposes (GML Section 858(3)), to acquire and dispose of real property (GML Section 858(4)), and to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (GML Section 858(10)). Additionally, serving as a supportive basis for general development powers, GML Section 858(17) provides that an IDA can do all things necessary or convenient to carry out its purposes and exercise the powers expressly granted within the Act.

The New York State Office of the Attorney General ("OAG") and the New York State Office of the State Comptroller ("OSC") have issued several legal opinions that provide guidance in determining proper expenditures of IDA moneys pursuant to the IDA enabling act. In formal Opinion No. 2014-F1 the OAG stated that an IDA is a creature of statute and as such only has the powers granted to it by express or necessarily implied legislative delegation. The OAG held that while an IDA is expressly permitted to accept gifts, grants, loans and contributions from various entities and to use such moneys for its corporate purposes, the enabling statute does not explicitly authorize an IDA to make grants or loans of its money to any type of entity and thereby concluded that an IDA may not grant or loan its own money to public or private interests (See Op. Att'y Gen. No. 2014-F1). The OAG has also noted that provisions granting general powers to an IDA cannot be read in isolation separate and apart from those provisions describing the purposes of the IDA (See Op. Att'y Gen. No. 99-F1 at 3). Lastly, in utilizing an IDA's power to "do all things necessary or convenient", the OAG determined that if an action is not necessary or convenient to fulfill the purposes of the IDA, it is not permitted (See Op. Att'y Gen. No. 2007-F4 at 7-8).

# MEMORANDUM

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In OSC Opinion 99-4, OSC addressed whether an IDA may make a grant of its funds to a municipality, for whose benefit the IDA was established, in order for such municipality to conduct a feasibility study of expanding the municipality's water service to help attract industrial or economic development. OSC opined that the IDA may not make a gift of its moneys; however, it could fund improvements where such improvements are *incidental to the undertaking of a proper IDA project and are intended primarily for the benefit of that project* (OSC Opinion 99-4). In OSC Opinion 99-4, OSC distinguished this method of funding from an outright (and unconstitutional) gift because the IDA funds were primarily being used in furtherance of an IDA project.

In determining whether an IDA could expend its money to extend and improve a water main which services an IDA project (an Industrial Park) as well as other property owners abutting the street served by the water line, OSC opined that such activity is incidental to the construction of the park itself and, therefore, is a project, as defined in GML 854(4), for which an IDA may expend its money.

OSC Opinions 99-4 and 86-69 make clear that the statutory purposes and powers of an IDA do not provide an IDA the authority to make a gift or grant of its money. However, such opinions also make clear that an IDA has the statutory authority to expend its funds in furtherance of its purposes where such expenditures are in connection with or incidental to a qualified IDA project and are intended primarily for the benefit of such project.

Therefore, based upon the foregoing, it is reasonable to conclude that it is permissible for IDA's to spend money on land and improvements, equipment, contractual obligations, etc., where such improvements are intended primarily for the benefit of a qualifying project, which in the determination of the IDA board, are necessary or convenient for the IDA to carry out its purposes. In the event an IDA wants to assist a company economically (beyond tax abatements) this can be accomplished through a contractual arrangement whereby the IDA is party to a contract and agrees to make purchases of equipment and/or services (we have done this with a number of other IDA clients). However, it is recommended that the IDA identify specific cost items it pays for to evidence that such expenditures are project expenditures for project improvements. We also have IDA clients that have purchased land for development with some very good success (for example, Orange County IDA has invested heavily in accelerator projects throughout Orange County; this has been highly successful and has made for some great press at a time when it seems all IDA press is negative).

## LDC's

LDC's have much more flexibility in how they can expend fund balances. Essentially, an LDC can spend its money on any of its corporate purposes. Because LDC's corporate purposes are typically very broad, LDC's have the ability to spend money for any economic development purpose.



**MEMORANDUM**

To: TCIDA Board Members  
 From: Heather McDaniel, President  
 Date: October 12, 2022  
 Re: TCIDA/TCDC Fund Balance Discussion Background

In addition to the memo provided by Russ Gaenzle outlining eligible uses of TCIDA/TCDC funds, I am providing the following background information and recommendations to guide discussion:

**1. The combined fund balance of the TCIDA/TCDC, after projected expenses and reserves, is \$1,463,990. Detail is as follows:**

**TCIDA/TCDC 2021 Year End Fund Balance**

TCIDA 2021 Unrestricted Net Position	\$2,855,223
TCDC 2021 Unrestricted Net Position	\$258,993
<b>Total Net Position</b>	<b>\$3,114,216</b>

**Projected Expenses**

2022 IAED admin	\$452,226
Contract svc / Knickerbocker	\$500,000
TCDC ARC grant match	\$50,000
Misc Admin budgeted for 2022	\$48,000
Less County Suggested Reserve	\$600,000
<b>Total Fund Balance</b>	<b>\$1,463,990</b>

\* In 2021 the IDA approved \$350,000 towards a broadband project. The project service provider was able to fill the gap and will not need this funding.

**2. Fund Balance History**

Revenue consists of fees from projects. Revenue fluctuates based on the size and scale of projects in any given year. During recessionary periods, revenues can slow to a trickle as projects are put on hold. In 2009 annual revenues were \$15,043 and in 2012 were only \$46,506. The primary expenses are administration and the provision of countywide economic development services, which are delivered via contracted services with IAED.

**3. Income Projections**

At present, the pipeline for projects over the next couple of years is extremely low. There is currently one community development project in the pipeline that I am working on, and there are two-three community development projects that are on the horizon but have not progressed from preliminary

planning and design phases. Given the increasing construction costs and rising interest rates, it is unclear if these projects will come to fruition.

In addition, the threat of a recessionary period looms large right now, which will most certainly have a negative impact on future revenues.

Beyond the \$450,000 inhand income for 2022, I cannot with any certainty, project revenue enough to cover the support to IAED for economic development services in 2023 through 2025.

#### 4. Fund Balance Recommendation

Given the history of the revenue dips during recessionary periods, and the projected lack of deal flow coupled with an impending recession, I recommend that funding be preserved to support IAED economic development services from 2023-2025. That would leave a projected \$643,000 available to support economic development projects.

Total Fund Balance	\$1,463,990
Projected 2022 income	\$537,000
IAED contract svcs (2023-25)	<u>(\$1,300,000)</u>
<b>Available to Support Economic Development</b>	<b>\$700,000</b>

#### 5. Priority Funding Opportunities

I have reviewed the Tompkins County Economic Development Strategy and the Countywide Recovery Strategy; discussed priorities with the Economic Development Resource Partners (the professional staff at several organizations that support economic development in Tompkins County) and the Executive Committee of IAED’s board; reviewed the memo provided by Russ Gaenzle regarding uses of TCIDA/TCDC fund balance; and reviewed the TCIDA and TCDC mission statements. In conclusion, I offer the following recommendations for further funding discussion and consideration:

Way Finding Signage	\$100,000
Identified in the ED Strategy and the Recovery Strategy, this project will support visitors and new residents along with the new downtown conference center. Other funds have been identified and there is an existing gap. Project leads are DIA and TC Chamber.	
Airport Strategic Plan	\$100,000
The significant decrease in air service as a result of the pandemic has caused significant revenue loss for this independent business unit of the county. A new strategy and action items to retain and grow service needs to be put developed to support business and visitors. Project could be jointly funded by Tompkins County and TCIDA with IAED and Air Services Board participation.	
SouthWorks / Tech Cluster Graduation Shared Space	\$500,000
Building upon 5 years of successful incubator development (REV, Praxis, and McGovern) and supports for entrepreneurs to start companies here, a new shared ‘graduation’ space for technology companies to continue to put down roots and grow here needs to be designed and fitted out. (Total Project costs are unknown – funds would leverage other grant funding to develop a feasibility study and financial model) (Project lead is IAED).	
<b>Total</b>	<b>\$700,000</b>