CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
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BUREAU OF FINANCIAL AUDIT
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Audit Report on the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts
July 1, 2005–June 30, 2008

FN09-104A

April 27, 2010

THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

April 27, 2010

To the Residents of the City of New York:

My office has audited the financial and operating practices of the New York City Economic Development Corporation (EDC) and its compliance with the Master and Maritime contracts. We audit City entities such as this as a means of ensuring that they comply with the terms of their agreements, properly report and allocate revenues, and comply with established policies and procedures.

EDC is a local development corporation created to carry out economic development services related to the attraction, promotion, and expansion of private investment and employment opportunities in the City. EDC performs its services under two contractual agreements with the City, the Master Contract and the Maritime Contract.

Although EDC provided documentation for revenue, expenses and compliance with certain provisions of the agreements, there was a noticeable lack of transparency in the public classification and disclosure of several revenue transactions, resulting in EDC's failure to remit $125.5 million in payments owed to the City. Also problematic, were internal control deficiencies that resulted in inadequate controls over disposition of City property, incomplete collection of rental income, as well as other weaknesses.

The audit's 12 recommendations included transferring the $125,513,793 owed to the City, enhancing the transparency of the revenue amounts due the City, properly administering the sales of City assets and returning the proceeds to the City in a timely manner, and properly monitoring the 42nd Street Development Project, including maintaining accurate books and records and performing timely reconciliations.

The results of the audit have been discussed with EDC officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please email my audit bureau at audit@comptroller.nyc.gov.

Sincerely,

John C. Liu

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Bureau of Financial Audit

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AUDIT REPORT IN BRIEF

The New York City Economic Development Corporation (EDC) is a local development corporation organized under §1411 of the Not-For-Profit Corporation Law of the State of New York. EDC's primary activities consist of rendering a variety of services and administering economic development programs on behalf of the City. EDC performs its services under two contractual agreements with the City (the Master Contract and the Maritime Contract). Both agreements are for one-year terms and are subject to annual renewal.

The audit determined whether EDC accurately recorded and reported its revenue and expenses to the City, properly retained revenue payments in accordance with the Master and Maritime contracts and remitted amounts due the City; and complied with other significant provisions of the agreements, such as the submission of the budget and financial plan reports to the City, contract procurement requirements for personal and professional services, and the preparation of monthly and annual reports including reports on the monitoring of job retention and expansion.

Audit Findings and Conclusions

EDC generally accounted for its revenue and expenses and complied with other provisions of the agreements. However, we found a noticeable lack of transparency in the classification and disclosure of certain revenue transactions to the public that resulted in EDC's retention of $125.5 million in payments it collected as a conduit on behalf of the City. The amount included payments from the 42nd Street Project (Project), proceeds from the sale of City-owned assets, and inactive public purpose funds that should have been transferred to the City and disclosed accordingly in EDC's financial reports to the City.

Moreover, we identified some internal control deficiencies during the course of our audit that led to EDC's lack of review of payments-in-lieu-of-taxes (PILOT), inadequate control over its property disposition process, and incomplete collection of rental income. Other weaknesses in EDC operating practices included problems with the calculation of the energy discount, the recording of the Revolving Loan Fund Program (RLF), and the monitoring of contract administration, job retention and construction requirements, and timekeeping functions.

Audit Recommendations

We make 12 recommendations based on our findings to EDC:

- Remit the retained funds, totaling $125,513,793, to the City:
  - $98,297,350 in payments collected from the Project.
  - $10,682,600 in fund balance as of June 30, 2008, for inactive Public Purpose Fund #22.
  - $16,533,843 in net proceeds from the special sales of City assets.

- Provide for proper classification and enhance the transparency of its revenue amounts due the City.

- Properly monitor the Project as follows:
  - Maintain accurate and complete books and records for the costs incurred and reimbursements received.
  - Ensure that the reconciliations are prepared in accordance with the terms of the agreements and in a timely manner.
  - Verify the accuracy of PILOT payments collected for the Project.

- Use the total funding balance of $10,079,415 as of June 30, 2008, from inactive Public Purpose Funds #12, #13, #18, #28, #30, and #31 in accordance with the terms and provisions of the respective funding and trust agreements.

- Properly administer the sales of real properties as follows:
  - Consistently classify properties that have previously generated revenues as City assets.
  - Return the proceeds of the sales of City assets to the City in a timely manner, unless expressly waived by the Office of Management and Budget.
  - Require prospective buyers of properties to do their due diligence and take into consideration the possible remediation and other additional development costs before the final offer is accepted on property in order to avoid discretionary negotiation of substantial cost deductions subsequent to the procurement process.
  - Discontinue the use of projected cost data of a prospective buyer's development plan to serve as a basis for the reduction of the appraised value.
  - Adhere to the established fee schedule in charging administrative fees on property sales.

- Recoup the $97,079 in rents and license fees due. Properly calculate, bill, and collect the rent amounts and other tenant reimbursements in accordance with the terms of each lease agreement.

- Recoup the excessive Energy Cost Savings Program (ECSP) discounts of $461,038 credited to six customer accounts and credit the other six accounts with the total shortfall of $122,110. In addition, EDC should credit the difference of $262,962 to Con Edison. Use the correct rate to calculate ECSP discounts and ensure that the amount is consistent with Con Edison's discount.

- Properly record the RLF administered by lenders as loan receivables to ensure accurate tracking of the amount receivable upon the termination of the agreement.

- Recoup contractor workers' compensation for duplicate payments and unrelated capital project costs.

- Implement policy and guidelines to ensure that all contractor submissions are properly reviewed and approved.

- Ensure its project developers and other entities comply with the employment and construction requirements stipulated in their agreements with EDC, validate the employment data submitted, and schedule timely site inspections to authenticate the completion of constructions.

- Ensure that time-keeping records are properly submitted and authorized.

INTRODUCTION

Background

The New York City Economic Development Corporation is a local development corporation organized under §1411 of the Not-For-Profit Corporation Law of the State of New York. EDC was established in 1991 by the merger of two not-for-profit corporations (the New York City Public Development Corporation and the Financial Services Corporation of New York City), both of which carried out economic development services for the City. EDC's mission is to strengthen the City's competitiveness and foster economic growth and prosperity by administering citywide economic development and financial programs. It carries out this mission by attracting, promoting, and expanding private investment and employment opportunity, by rehabilitating and improving commercial and industrial areas, and by providing financial assistance and grants to qualifying businesses.

EDC functions under the direction and control of the Deputy Mayor for Economic Development, and in cooperation with the City's Department of Small Business Services and other City agencies. EDC is governed by a board of directors whose members—the majority of whom are mayoral appointees—serve one-year terms. EDC reported two component units, Metropolitan Business Assistance, Ltd. (MBA)[1] and Apple Industrial Development Corp. (Apple).[2] The financial activities of MBA and Apple have been reported under EDC's financial statements.

EDC provides services under two contractual agreements with the City known as the Master and Maritime contracts. Both agreements are for one-year terms and are subject to annual renewal. Under the Master contract, EDC is required to provide various services relating to retaining and expanding industrial and commercial development within the City, including: (1) overseeing commercial and industrial development projects, (2) stabilizing and improving industrial areas, (3) administering public loans and federal, state, and other grants for the City, and (4) managing and maintaining City-owned properties. Under the Maritime contract, EDC is responsible for managing and promoting the operations of the City's maritime business and waterfront properties.

The Master and Maritime contracts contain the following key provisions:

- Under the Master contract, EDC can retain revenue to a specified maximum threshold, or contract cap.[3] The cap can be increased by the amounts of reimbursable expenses

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[1] MBA was a not-for-profit corporation whose purpose was to promote citywide economic development. MBA administered loan programs as part of EDC's financial service program. According to EDC's financial statements, MBA has been inactive since June 30, 2000. EDC finally dissolved MBA on May 28, 2009.

[2] Apple provides management and maintenance services for City-owned properties. Apple has assumed EDC's rights and obligations under management and maintenance service contracts with the City.

[3] The contract cap consists of the amount of revenue EDC is allowed to retain from specific sources such as the sale and lease of City-owned properties, fees and interest on loans, and interest earned on investments and deposits held by EDC as trustee for the City as part of the Financial Services Program.

received from the City.[4] For Fiscal Years 2006, 2007, and 2008, the caps were $77,268,000, $74,835,000, and $84,464,000, respectively.

- At the direction of the City, EDC must remit to the City an amount by which EDC's current fund balance exceeds $7,000,000 for both the Master and Maritime contracts.

Other contractual provisions require EDC to: submit a program budget to the City showing all anticipated sources of income and proposed expenditures, prepare a quarterly financial plan in accordance with Office of Management and Budget (OMB), submit monthly and annual reports and job retention and creation reports to City officials by January 31 of each year, and comply with procurement requirements for selecting personal and professional services.

EDC generates revenue by developing and managing City resources such as land and buildings, making public infrastructure investments, and managing federal, state, and City financial assistance programs. Revenue sources include the sale and lease of City-owned properties, power sales, fees and other income, and reimbursements and other grants from the City. EDC's capital projects are funded by the City capital project fund through EDC's contracts with the City. For Fiscal Years 2006, 2007, and 2008, EDC reported in its certified financial statements the following total revenue, expenses, and payments to the City, shown in Table I, following.

[4] Reimbursable expenses include tax or brokerage commissions associated with the sale of property, or pertaining to lease agreements, licenses, or other occupancy agreements, lawsuits, insurance, etc.

Table I

Combined Statements of Revenue, Expenses
And Changes in Fund Net Assets

	FY 2008	FY 2007	FY 2006
Operating Revenues:			
Real estate sales, net	$24,645,381	$28,148,171	$132,092,594
Property rentals	98,000,158	79,105,844	75,281,705
Tenant reimbursements	6,623,098	6,204,319	5,123,941
Power sales	63,691,792	58,075,238	51,485,204
Developer contributions	4,841,485	10,356,290	3,428,117
Interest income on loans	1,878,039	1,649,859	1,244,921
Grants from the City			
Reimbursement grants	582,835,907	378,046,005	292,665,483
Other	6,892,030	3,237,163	8,230,664
Fee income	12,004,741	11,181,905	12,099,242
Other income	47,334,912	17,412,372	40,278,745
Total operating revenues	**848,747,543**	**593,417,166**	**621,930,616**
Operating expenses:			
Project costs	64,556,280	50,322,313	66,934,436
Program costs	554,693,336	350,931,791	269,583,479
Property rentals and related operating expenses	37,775,723	35,305,767	34,862,510
Utility expenses	62,867,372	58,101,368	51,277,968
Personnel services	49,614,812	46,356,697	44,429,954
Office rent	7,230,109	7,187,407	7,245,277
Contract and other expenses to the City	44,350,050	33,395,335	139,691,118
Other general expenses	11,569,949	10,679,362	10,068,852
Total operating expenses	**832,657,631**	**592,280,040**	**624,093,594**
Operating (loss) income	16,089,912	1,137,126	(2,162,978)
Non operating revenues:			
Income from investments	7,596,929	8,646,542	6,064,499
Total non operating revenues	**7,596,929**	**8,646,542**	**6,064,499**
Change in net assets	**23,686,841**	**9,783,668**	**3,901,521**
Total net assets, beginning of year	**$169,180,298**	**$159,396,630**	**$155,495,109**
Total net assets, end of year	**$192,867,139**	**$169,180,298**	**$159,396,630**

EDC also performs administrative services for the New York City Industrial Development Agency (IDA) and the New York City Capital Resource Corporation (CRC).[5] Furthermore, EDC oversees the expenditure of significant capital budget amounts, administers the Energy Cost Savings Program for City businesses, collects certain payments-in-lieu-of-taxes for the City, maintains various public purpose funds, and oversees the collection of rental income from lease agreements with commercial and industrial properties.

Objectives

The objectives of this audit were to determine whether EDC:

- Accurately recorded and reported its revenue and expenses to the City,
- Properly retained revenue payments in accordance with the Master and Maritime contracts and remitted amounts due the City, and
- Complied with other significant provisions of the agreements such as the submission of the budget and financial plan reports to the City, contract procurement requirements for personal and professional services, and the preparation of monthly and annual reports including reports on the monitoring of job retention and expansion.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the period July 1, 2005, through June 30, 2008. To obtain an understanding of EDC's operations and internal control processes, we reviewed and abstracted the relevant terms of the annually amended and restated Master and Maritime contracts between EDC and the City. In addition, we reviewed the certified financial statements of EDC and its component units MBA and Apple, various documents and agreements in connection with EDC's financial arrangements with other entities, internal audit reports, reports on internal controls, organization charts, policies and procedures manual, chart of accounts, board of directors' minutes, EDC's quarterly financial plans submitted to the City, and other annual reports issued pursuant to the Public Authorities Accountability Act of 2005 and Local Law 48.

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[5] IDA and CRC are component units of the City of New York and are governed by their own boards of directors.

We reviewed EDC's internal controls over the reporting of its revenue and expense transactions to determine our audit procedures. To familiarize ourselves with EDC's accounting and record-keeping functions, we reviewed the operating procedures manual, conducted walkthroughs of the operations and interviewed key EDC officials and personnel. We documented our understanding of EDC operations and internal control processes through written narratives and flowcharts.

To assess the reliability of EDC's financial data reported to the City, we conducted limited tests of controls over revenue and expense transactions generated by Apple's MRI billing reports and EDC's "Fundware" general ledger reports. We reviewed the flow of transactions and basic structure of accounting controls including user access and authorization controls to assess the data reliability of EDC's accounting system and related IT environment. We reviewed flowcharts, conducted meetings with IT personnel, and traced sampled transactions from the personnel user list to the general ledger. We also traced amounts from the detail general ledger to the trial balance and compared these to the amounts reported in EDC's financial statements for accuracy and consistency.

To determine whether EDC properly recorded and reported all revenue and expense amounts and whether the amounts EDC retained were appropriate, we reviewed the payments to the City and conducted the following tests of revenue and expense categories and the amounts retained for Fiscal Years 2006 through 2008.

To determine whether the real property sales process complied with appropriate guidelines, we reviewed documentation and revenue for all EDC real estate sales from Fiscal Years 2006 through 2008, including sale files, request for proposals, appraisal reports, sole source sales, and approvals from both EDC's board of directors and the Mayor's Office.

To determine whether sale proceeds were collected and properly reported, we traced each transaction from the sales contract to the cash receipts journals and compared the amounts to EDC's schedule of real estate sales. To ascertain whether EDC collected appropriate administrative fees from property sales, we recalculated the fee income based on a fee structure determined by EDC, and compared the amounts with the amount reported in EDC's general ledger. We also reviewed certain deductions, such as remediation costs, asbestos abatements, and increased development costs caused by soil conditions, from the sale prices to evaluate their nature and reasonableness. In addition, we reviewed sales transactions classified by EDC as City assets to determine whether the proceeds of these sales were properly and promptly remitted to the City.

To determine whether EDC properly managed its rental properties on behalf of the City, we judgmentally selected a sample of 87 of the 396 rental properties included in the four lease categories identified in Apple's MRI Lease List report (i.e., Commercial, Maritime, Brooklyn Army Terminal, and Other). For all 87 rental properties, we reviewed the lease agreements, identified the rental income, and compared the amounts to the customer's billing reports for consistency. To ascertain whether the amounts were properly reported, we traced the rental payments from the tenant receivable ledger to the cash receipts journal and the daily deposit reports. To determine whether EDC collected the required security deposit amounts from its tenants, we traced the security deposit amounts from the individual lease agreements to the tenant ledger and bank statements, and also verified the insurance certificates to ensure that proper insurance coverage was in place. Finally, we reviewed the uncollectible receivable account and related documents to determine the basis for

EDC's estimates, whether the amounts were accurately determined, and whether EDC's collection guidelines and write-off policies were followed.

To determine whether EDC accurately calculated and reported revenue and expenses from the energy sales program, we reviewed billing reports from the Power Authority of the State of New York (NYPA) and Consolidated Edison Company of New York, Inc. (Con Edison), and compared them with the amounts EDC billed to the customers for Fiscal Year 2007. We also reviewed the utility rates and level of consumption charged by NYPA and Con Edison for different customers and compared the rates and consumption data billed by EDC for accuracy and consistency. We also determined whether EDC credited customers with the correct amount of Energy Cost Savings Program discount by recalculating the discounts in the customers' certificates and comparing them with the amounts EDC credited to the customers for Fiscal Years 2006 through 2008.

To determine whether EDC properly administered the activities of the financial services program, we reviewed EDC's general ledger report showing the payments to recipients of loans, grants, and other financial services for Fiscal Year 2007. In addition, we reviewed underlying financial documents such as grants, loans and funding agreements, payment vouchers, and contracts for services provided to ascertain whether the loans, grants, and program expenditures were made and reported in accordance with the criteria established for Fiscal Years 2006 through 2008. In addition, we reviewed EDC's billing records and recalculated the loan principal and interest payment amounts to identify any discrepancies. We also determined whether EDC collected the appropriate fee income on loan receivables. We reviewed other fee income reported by EDC and compared the amounts with the terms of individual contracts between EDC and IDA, the Trust for Cultural Resources of the City, and CRC for accuracy.

To determine the business activities of EDC's public purpose funds and their sources of revenue, we reviewed and abstracted the trust and funding agreements between EDC and the individual funds. We reviewed all revenue and expense activities of the public purpose fund accounts and determined whether the funds were active or their missions had been completed, whether EDC appropriately classified the revenue from these funds and maintained the fund balances, and whether any of the fund balances should have been returned to the City or other designated recipients or were retained by EDC. We also reviewed disbursements from the funds to determine whether they were for fund-related projects.

To determine whether the amounts distributed from the 42nd Street Development Project, Inc., (42nd DP) were properly recorded, reported, and retained by EDC, we reviewed various agreements between the City, the Empire State Development Corporation (ESDC), formerly known as the Urban Development Corporation (UDC), the 42nd DP, the office sites developer, and other related parties. To determine whether the City was properly reimbursed for the acquisition costs of the Project, we analyzed the 42nd DP's reconciliation for the reimbursements of the City's acquisition costs, taxes, and other amounts payable to the City. We also reviewed EDC's accounting records with respect to the City's portion of the cost for calendar years 1999 through 2007. In addition, we determined whether EDC, for and on behalf of the City, properly monitored the acquisition cost reconciliation process that would allow the City to recover its investment in the Project and ultimately take possession of the ground leases in a timely manner and in accordance with the agreement between UDC and the City. To determine whether EDC accurately calculated and properly collected PILOT for Sites 7 and 8 East of the Project, we determined the methodology of the PILOT calculation based on the terms of the lease agreements and compared the payments to the amounts reported to and collected by EDC.

To ascertain the accuracy of capital expenditure amounts approved on behalf of the City, we judgmentally selected a sample of vouchers from EDC's largest project that represented $32 million (or nine percent) of the total capital project expenditures in Fiscal Year 2007. We also judgmentally selected nine projects that were active in June 2008. We reviewed their construction management contracts and billing information to substantiate expenses and to determine whether the amounts were accurate and complied with contract terms. We also reviewed requests-for-proposals, the EDC contract approval process, and contract costs, to ascertain whether EDC followed proper contracting and procurement procedures.

To determine whether EDC properly recorded personnel service costs, we judgmentally sampled 14 out of 53 payroll accounts and evaluated the accuracy and reasonableness of the payroll expenses reported for September 2006. We reviewed employees' personnel files, EDC's annual salary adjustment spreadsheets, and timesheets to compare with the pay rates and work hours used for payroll calculations for the two pay periods in September 2006. In addition, we judgmentally selected 28 employees representing the two highest paid employees from the same 14 sampled payroll accounts, and compared ADP payroll records with the amount reported in the employees' W-2 forms for accuracy and consistency. Furthermore, we reviewed the missions and activities of each department reported in EDC's annual report to determine the reasonableness of the personnel expenses, including reimbursements from other agencies.

To determine whether other general expenses were accurately recorded and reported, we reviewed all the transactions in September 2006 for a judgmental sample of 23 expense accounts. We analyzed whether the expenses were properly approved and paid in accordance with the associated contracts and, if deemed necessary, EDC's travel reimbursement guidelines. Additionally, we reviewed consultant fees for September 2006 to ascertain whether fees were paid in accordance with the terms of consultant contracts.

Finally, to determine compliance with employment and construction requirements, we reviewed EDC reports prepared pursuant to Local Law 48 and related to employment commitments. In addition, we reviewed construction status reports for all 24 properties that were undergoing construction from Fiscal Years 2006 and 2008.

The result of the above tests, in conjunction with our other audit procedures, while not projected to the respective population from which the samples were drawn, provided a reasonable basis to satisfy our audit objectives.

Discussion of Audit Results

The matters covered in this report were discussed with EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to EDC officials and was discussed at an exit conference held on March 25, 2010. On March 31, 2010, we submitted a draft report to EDC officials with a request for comments. Subsequent to our exit conference, EDC officials obtained a legal opinion from the City's Law Department regarding EDC's retention of the payments from the

Project. This opinion was then incorporated as a basis for EDC's response. We received written comments from EDC on April 14, 2010. The specific issues raised by EDC and our rebuttals are included within the respective sections of this report.

In their response, EDC officials generally disagreed with the audit report findings and recommendations. EDC officials stated, "While, of course, NYCEDC will continue to work with the City to refine and enhance its existing processes, it believes that these processes do generally classify its revenue amounts due to the City properly and are generally appropriately transparent." With respect to the Project, EDC officials stated:

> NYCEDC is clearly entitled to retain payments from the 42nd Street Project as compensation for NYCEDC's economic development services that generate employment and tax revenues for the City, under the provisions of NYCEDC's annual Master Contracts with the City. . . . [the sums] have been invested by NYCEDC in economic development initiatives that have created jobs and additional tax revenue, which initiatives, at least in part, have enabled NYCEDC to turn over $400 million to the City's general fund during the period in question. Further, City's Law Department has stated in writing that it was entirely proper for NYCEDC to retain the payments it received from the Project in payment for its economic development services.

We maintain that EDC lacks transparency in the classification and disclosure of certain revenue transactions it entered into on behalf of the City. Regarding the 42nd Street Project, the money invested in the Project came directly from the City's budget, not from EDC. Under the 1988 City-UDC Agreement, the amounts collected from the Project were to be used to fund various projects and operations and to reimburse UDC and City costs, with the balance ultimately remitted to the City. The only role EDC played in the Project was limited to collecting the funds on behalf of the City, and for the costs EDC incurred due to its limited involvement, EDC was reimbursed a total of $541,518. As stated in EDC's Fiscal Years 2008 and 2009 financial statements, "where NYCEDC is directed to collect money on behalf of The City as a mere conduit, NYCEDC must remit such amounts to The City." We therefore strongly maintain that EDC improperly and inappropriately retained the payments collected from the Project and should immediately remit those amounts to the City.

Notwithstanding the City Law Department's interpretation that EDC has the authority under its Master Contract with the City to retain the 42nd Street Project payments, the agreement governing that project states that any balances remaining after all applicable reimbursements are made are to "remain in the City Account." Additionally, it should also be noted that the City's June 19, 1990 Delegation Letter regarding EDC's authority is clear; it delegates to EDC only "the power to enforce on behalf of the City" the receipt and disbursement of funds. EDC itself is on record as recognizing the nature of its responsibilities for funds collected from the Project. An EDC letter dated April 27, 1995, to the Deputy Mayor for Finance and Economic Development stated, "Pursuant to the Delegation Letter, as part of its role as the City's representative for the 42nd Street Project, EDC was and remains the party responsible for receiving and dividing these payments. . . [and] *EDC had forwarded the City's entire share. . . to the City*." (Emphasis ours.) It is also important to note that, Section 3.07 (c) the Master Contract specifically states that EDC is not permitted to retain

PILOT payments. A significant portion of the amounts collected from the 42^{nd} Street Project represents PILOTs.

With regard to EDC's response to the other findings, EDC is disingenuous in characterizing some of the errors cited by our audit as a tiny fraction of EDC's total portfolio. Given the oversight role it plays on behalf of the City for a vast number of projects and revenue streams, EDC has a responsibility to ensure that all funds are equally and properly accounted for, regardless of the percentage such funds account for in EDC's portfolio.

The full text of the written comments from EDC is included as an addendum to this report.

FINDINGS

EDC generally accounted for its revenue and expenses and complied with other provisions of the agreements such as the submission of the budget and financial plan reports to the City. However, we found a noticeable lack of transparency in the classification and disclosure of certain revenue transactions to the public that resulted in EDC's inappropriate retention of $125.5 million in payments it collected as a conduit on behalf of the City. The amount included payments from the Project, proceeds from the sale of City-owned assets, and the balance of an inactive public purpose fund that should have been transferred to the City and disclosed accordingly in EDC's financial reports to the City.

Moreover, we identified some internal control deficiencies during the course of our audit that led to EDC's lack of review of the PILOT payments, inadequate control over its property disposition process, and incomplete collection of rental income. Other weaknesses in EDC operating practices included problems with the calculation of the energy discount, the recording of the Revolving Loan Fund Program (RLF), and the monitoring of contract administration, job retention and construction requirements, and timekeeping functions.

These matters are discussed in greater detail in the following sections of this report.

EDC Did Not Remit $125.5 Million It Collected on Behalf of the City

EDC retained a total of $125,513,793 in revenue payments that should have been returned to the City. Our review of the schedule of payments due the City that EDC submitted to OMB for Fiscal Years 2006, 2007, and 2008 found that EDC did not remit a total of $98,297,350 in payments from the 42nd Street Project, $10,682,600 in dormant balance of an inactive public purpose fund, and $16,533,843 in proceeds from certain sale of City-owned assets, as follows:

$98,297,350 in Payments from the Project Not Returned to the City

EDC did not remit to the City $98,297,350 in payments that it collected from ground lease holders for the Project. The amounts consisted of reimbursements for site acquisition costs, taxes such as PILOT, and other payments to the City as shown in Table II below.

Table II
Summary of the Amount Retained by EDC from the 42nd Street Project
November 1, 1999–December 31, 2007

Period	City/EDC Costs Incurred	Monies Collected by EDC Cost Reimbursements (*)	Taxes to the City (**)	Other Payments (***)	Total
11/1/99-12/31/00	$50,706,904	$11,406,265	$836,875	$460,370	$12,703,510
1/1/01-12/31/01	230,458	5,166,532	279,873	907,611	6,354,016
1/1/02-12/31/02	31,789,691	10,867,604	395,332	1,589,731	12,852,667
1/1/03-12/31/03	894,195	7,101,004	592,999	1,511,754	9,205,757
1/1/04-12/31/04	3,335,553	6,379,305	-	2,361,406	8,740,711
1/1/05-12/31/05	281,973	10,394,517	395,332	2,612,339	13,402,188
1/1/06-12/31/06	56,648	11,447,545	395,332	2,638,871	14,481,748
1/1/07-12/31/07	33,601	17,884,135	395,332	2,818,804	21,098,271
Total	$87,329,023	$80,646,907	$3,291,075	$14,900,886	$98,838,868
Less: EDC Costs (Staff Costs and Legal Fees for 1/1/2001-12/31/2007)					**(541,518)**
Amount Returnable to the City					**$98,297,350**

*The cost reimbursements included base rent and PILOT payments from:

- Office Sites 1, 3, 4, and 12 based on §4(b)(x) of the City-UDC Agreement,
- Site 7 based on §8.02 of the Site 7 Acquisition Agreement, Site 8 East based on §8.01(b) (i) & (ii) of the Site 8 East Acquisition Agreement, and Sites 8 N and 8 S.

** The Taxes payments to the City were determined by§8.01(a) of the Site 8 East Acquisition Agreement.

*** The other payment represented the City payments per §4(b) (vii) of the City-UDC Agreement.

In 1988, the ESDC, formerly known as the State Urban Development Corporation (UDC) and the City entered into an agreement to contribute jointly to the acquisition costs for some of the Project's sites. Immediately thereafter, ESDC formed the 42nd DP to administer the Project, including leasing out the sites to the developers and collecting revenue in return. All payments under the ground leases would be deposited into an escrow account. The 42nd DP reconciled all the revenues generated from the Project and the expenses of acquiring the land and other operating expenses. The 42nd DP also distributed the monies collected in accordance with §4(b) of the City-UDC agreement which specifically stipulates that the 42nd DP should reimburse the state and the City amounts in proportion to their Project costs. Based on the distribution schedule stated in the City-UDC agreement, the monies collected from the Project were to be used to fund various projects and operations and to reimburse UDC and City costs, with the balance ultimately remitted to the City in accordance with §4(b)(xi) of the City-UDC agreement.

Our review of the reconciliation records found that from November 1, 1999, through December 31, 2007, EDC received payments in the amount of $98,297,350 on behalf of the City and that instead of passing the funds through to the City, it retained the payments and reported the amounts as Fee Income and Other Income in its financial statements. The amounts received represent a return of the Project cost incurred by the City. EDC itself was not actively involved in the development of the Project; therefore, it was inappropriate for EDC to report these revenues as Fee Income or Other Income. Moreover, given that EDC was merely to act as a conduit on behalf of the City to collect the reimbursements of Project acquisition costs and tax revenue, these funds totaling $98,297,350 should have been remitted to the City, properly classified, and disclosed in EDC's financial statements as payments to the City.

Furthermore, EDC did not conduct proper review to determine the accuracy and appropriateness of the 42nd DP's reconciliation and whether the payments were received on time, nor did it ensure that the fund distribution was in accordance with the methodology stated in the agreement, which resulted in improper reimbursement of $1,430,588 from Site 8 East in 2006[6]. According to §8.01(b)(ii) of the Site 8 East Acquisition Agreement, after all the City and UDC Site 8 East costs are reimbursed in full, the monies from the site are thereafter to be applied and paid in accordance with the distribution stated in the City-UDC Agreement. We also noted that most of the reconciliations we reviewed were finalized more than two years after the closing of the operating cycle, resulting in delays in the reimbursement of costs to the City. Since the reconciliations were not submitted promptly and reviewed properly, the distribution process resulted in significant delays in the reimbursement of City's costs.

Finally, according to §10.01(a) of both the Site 7 and Site 8 East Acquisition Agreements, EDC is required to maintain complete and accurate books and records for all amounts received by the City or EDC in reimbursement of the costs paid by the City or EDC. However, of the nine reconciliations completed, EDC was unable to provide us with documentation in support of the first reconciliation and part of the second reconciliation.

Return $10,682,600 from Inactive Public Purpose Fund to the City

Of the $41,867,624 in public purpose funds EDC reported as of June 30, 2008, a total of $20,762,015 derived from funds that either have no outstanding obligations to fulfill or are dormant.

EDC maintained a total of 20 public purpose funds that were established through funding or trust agreements between the entities or project developers and EDC. Most of the funding comes from the project developers (Developers' Contributions) in the form of tax savings on the costs of construction for sales and compensation. EDC establishes these funds by requiring the entity to pay a certain amount or lump sum, which EDC deposits into an individual fund. As noted, the purpose for which these public purpose funds are created is often accomplished when building construction or rehabilitation ends. Therefore, once the purpose of a fund is achieved, EDC should distribute the fund balance in accordance with the trust or funding agreement.

EDC maintains a balance of $10,682,600 collected from the Project, and has not disbursed a total of $10,079,415 from six other funds that were established as long ago as 1981 to meet specific fund purpose requirements. As noted, these funds remain dormant even though they may still have active commitments to fulfill. As a result, of the $20,762,015 in inactive funds held by EDC, at least $10,682,600 should be returned to the City's general fund based on their funding agreement, and the

[6] Since the full amount of Site 8 Project cost had already been reimbursed, the amount of $1,430,588 should have been put back into the pool to reimburse other sites' outstanding costs. Instead, this amount was distributed as payment to UDC and EDC.

remaining $10,079,415 should be distributed in accordance with the designated fund purposes, as shown in Table III.

Table III

Total Funding in Inactive Public Purpose Fund Accounts
As of June 30, 2008

Fund #	Agreement Dates	Funding Source	Unfulfilled Fund Purposes	Status During FY 2006 - 2008	Fund Balance as of 6/30/2008
22	9/14/1993	42nd Street Development Project- Interim Rent	§4(c)(ii) of City-UDC Agreement allows to use the interim rent fund balance to: (1) & (2) reimburse UDC and City costs, and then (3) pay the balance to the City	No Activities and the Costs for Office Sites 1, 3, 4, & 12 have been fully reimbursed according to the 2007 reconciliation	$10,682,600
			Total Returnable to the City		**$10,682,600**
12	9/22/1982	Sales Tax savings	For the purpose of the Building 13 Rehabilitation	No activities Reported $8,933.70 in audit fees	$348,058
13	12/15/1981	Sales Tax savings	For uses benefiting the people of the City, primarily the South Street Seaport neighborhood	No activities Reported $8,933.70 in audit fees	$561,588
18	12/1/1991	Bear Stearns's Job Training Contribution	Seek the Deputy Mayor's authority to allocate the fund balance for general employment training and development goals of the Job Training Program	No activities	$64,133
28	6/27/1996	Sales Tax savings	For public improvements benefiting the people of the City of New York, primarily the borough of Brooklyn	No activities Reported $8,933.70 in audit fees	$157,841
30	4/30/1997	Sales Tax savings	For public improvements intended to benefit the people of the City of New York	No activities	$146,200
31	Unavailable	Improvement Fund	For the betterment of the Harlem River Rail Yards	No activities	$8,801,595
			Total Inactive Funding that has not been used by EDC		**$10,079,415**
			Total Inactive Funding as of 6/30/2008		**$20,762,015**

$16,533,843 from Sale of City Assets Not Remitted to the City

EDC did not remit $8,663,843 to the City for 2 of the 10 properties it sold under the category of special sales. Under §3.07(a)(1) of the City Master Contract, EDC is allowed to keep the revenue generated from the sale of City real estate properties to support its operations. However, for some special sales, EDC is required to remit the net proceeds to the City. Based on a memorandum approved by the Deputy Mayor in 2005, when these assets are sold, EDC, acting as an agent and consultant, retains a sale fee consisting of 2 percent of the first $5 million and 1 percent in excess of $5 million, and remits the remaining sales proceeds to the City. According to EDC officials, EDC is required to remit to the City the net sales proceeds of certain income-producing property, such as, garages, parking lots, or buildings that are rented out by other City agencies such as DCAS.

Similarly, EDC did not return to the City $7,870,000 from the sale of the Queens Family Courthouse in 2007, even though its quarterly financial plans classified the transaction as a special sale of a City asset and indicated that the proceeds would be transferred to the City. At a meeting with EDC officials, they stated that OMB ultimately determines whether EDC should return the sales proceeds of City assets to the City. However, EDC has no process in place that would indicate how OMB approves or permits EDC to transfer or retain these funds. That being the case, OMB might not be able to properly determine which sales should be returned to the City. Consequently, we determined that EDC owes the City $16,533,843 in additional revenue it collected on the City's behalf. (See Appendix for details.)

Internal Control Deficiencies

We identified some internal control deficiencies during the course of our audit that led to EDC's lack of review of the PILOT payments, inadequate control over its property disposition process, and incomplete collection of rental income. Other weaknesses in EDC operating practices included problems with the calculation of the energy discount, the recording of the Revolving Loan Fund Program, and the monitoring of contract administration, job retention and construction requirements, and timekeeping functions.

PILOT Revenue Calculation Not Verified

Our review of the PILOT payments EDC collected in connection with Site 8 East of the Project found that EDC did not collect the correct PILOT amount. As revealed in the ground lease agreement, PILOT calculation is determined by the higher of a minimum amount or an amount calculated based on a formula as provided in the agreement. However, since 2000, EDC has been collecting the minimum amount without verifying that the calculation was in accordance with the terms of the agreement. Our review of Fiscal Year 2007 found that EDC returned to the lessee $167,756 in PILOT payments it collected in excess of the minimum amount of $291,579 without verifying that the payment represented the correct amount based on the formula provided in the agreement.

Inadequate Controls over the Disposition of City Properties

Our review of the records related to the 39 properties sold by EDC from 2006 through 2008 revealed certain problematic practices in the disposition process. According to Title 5-A of Article 9 and §2824(1)(e) of the Public Authorities Law guidelines as adopted by EDC's board of directors, "EDC shall dispose of real property in accordance with Title 5-A and other applicable laws in a manner so as to permit such full and free competition as is appropriate under the circumstances and shall award contracts to parties offering the most advantageous terms, financial and/or otherwise. . . . The real property may be disposed of for not less than fair market value. . . . No disposition of real property shall be made unless an appraisal has been made by an independent appraiser and included in the EDC file." However, EDC did not always follow a consistent process resulting in potential revenue loss.

- EDC allowed substantial deductions to the proposed sales price after the procurement process was completed and the purchaser selected. Of the 39 properties under review, EDC granted 10 of the purchasers total deductions of $7,576,926 for remediation costs, asbestos abatements, increased development costs caused by soil conditions, and other repair costs. As a result, 5 of the 10 purchasers benefited from price reductions, ranging from 26 percent to 47 percent.

- EDC made a substantial modification to the value of a property as a result of a second appraisal based on the projected cost data of a prospective buyer's development plan. The second appraisal for this particular sale resulted in a cost reduction of $7.2 million from the original appraised value of $16.8 million. After the significant cost modification, EDC accepted the offer of $10 million from the same prospective buyer (further reducing the purchase price by an additional $2 million for remediation costs and selling the property for $8 million).

- EDC discretionarily reduced its administrative fees for properties sold and undercharged 11 purchasers a total of $225,917.

By allowing discretionary negotiations of price reductions after a final offer has been accepted, EDC circumvents the integrity and effectiveness of the property disposition process and excludes potential buyers whose offers could have been more favorable.

Rental Income and Fees Not Collected

Our review of EDC's property rental ledger disclosed that EDC, in several instances, did not collect the rent according to the lease agreements. As indicated in one of the sample agreements reviewed, the rent increase rate is to be calculated based on the ratio of the Producer Price Index for Farm Products for two consecutive lease years. However, EDC miscalculated the ratio and incorrectly determined the rent amount going back to Fiscal Year 2003. As a result, EDC's rental income was $85,643 less than it should have been. In another instance, since 2005, EDC has not applied the correct methodology in determining the Adjustment Factor, a basis for calculating rent, which resulted in undercharging a lessee $6,349 in rent. Further, our review of the ferry landing agreements that EDC managed for and on behalf of the Department of

Transportation revealed that EDC did not properly bill several licensees a total of $5,087, and did not bill two licensees two months' slot use charges and one tenant for dockage and wharfage charges. In addition, EDC did not bill 16 tenants for water and sewer charges and did not bill 2 of them for electricity charges.

Energy Discount Improperly Calculated

EDC did not correctly calculate the energy discount it provides to eligible businesses under the Energy Cost Savings Program (ECSP). Under the program established with the New York City Public Utility Services (NYCPUS), the Power Authority of the State of New York (NYPA) and Consolidated Edison Company of New York, Inc. (Con Edison) agreed to offer a power discount to EDC's eligible business clients. NYPA offers discounts on its power, transmission and energy charges, while Con Edison offers a discount on its delivery charges to the customers based on a discount rate. EDC is responsible for calculating the ECSP discount, billing the customers and recouping Con Edison's portion of the ECSP discount.

Our review of 17 accounts eligible for the ECSP discount found that EDC did not recoup a total of $75,966 in power delivery credits from Con Edison. Also, EDC did not use the correct rate when applying the discount. As a result, EDC overcredited 6 accounts by $461,038 and undercredited another 6 accounts by $122,110, thereby yielding an improper net discount of $338,928. As a result, EDC gave $338,928 in excess credit to customers and did not recoup $75,966 from Con Edison.

Loan Disbursements Improperly Recorded

EDC improperly recorded as expenses $861,529 in loan amounts it disbursed under the Economic Development Administration Revolving Loan Fund Program (RLF) from Fiscal Years 2006 through 2008. EDC is the City's exclusive agent for the management of the RLF. Under the terms of the RLF, EDC is required to make loans to organizations that provide various loans to small businesses in economically depressed areas of the City. As loans are repaid, the grantee adds the interest and principal repayment to the RLF's capital base to make new loans.

In August 2004, EDC formed NYC New Markets Corporation (New Markets) to administer the RLF. In November 2006, New Markets dissolved and EDC assumed New Markets funding agreement obligations with Seedco Financial Services, Inc., and Project Enterprise as the lenders. According to the funding agreements, any portion of the available fund not expended or committed before termination of the agreement is to be returned to EDC. In addition, both the lenders and EDC have to monitor the activities of these loans in their books and records to ensure that the RLF is properly maintained.

However, EDC improperly expensed a total of $861,529 in loans that were still outstanding in the lenders' books and records. The loans should have been recorded as receivables—not as expenses. As a result, EDC books and records did not properly reflect the status of the RLF, which resulted in an overstatement of its program costs and understatement of its loan capital base. Monitoring the recording of the RLF is an important accounting control for ensuring that the funds will eventually be remitted after program termination.

Problems with Administering Capital Construction Contracts

EDC lacks appropriate procedures for approving capital expenditures submitted by contractors. The Master Contract permits EDC to administer capital expenditures that are channeled to EDC by the City's Department of Small Business Services and funded under the City's capital budget. (For Fiscal Year 2008, EDC administered more than $546 million in capital projects for the City.) However, our review of one of EDC's major contractors found that EDC did not always ensure that payments to contractors complied with the provisions of project contracts.

- EDC paid $1,247,276 in contractor salaries without checking whether the hourly rates had been properly approved.
- EDC, in March 2009, retroactively approved personnel salary adjustments for salaries paid as far back as 2004.
- EDC overpaid a contractor $61,207 for workers' compensation expenses, when in fact hourly rates of the contractor's personnel already included workers' compensation.
- EDC paid $21,441 in expenses that were not related to capital project costs. Questionable expenses included purchases of equipment that were delivered to different contractor facilities and expenses incurred from vehicle and weekly business expense reports that were seemingly unrelated to the project or for activities that occurred outside the vicinity of the project.

EDC Did Not Adequately Enforce Client Employment and Construction Compliance Requirements

EDC does not have a system in place to ensure that its clients, such as private developers and other entities, comply with the employment requirement specified in their agreements. Part of EDC's program includes ensuring that economic development projects are proposed on the basis of their potential impact on the City's economy in relation to job creation and retention. However, we found no evidence that EDC takes the necessary steps to verify that the data submitted by its clients in relation to the number of jobs created or retained is accurate and in compliance with the employment requirements stated in the agreements. EDC compiled the employment data for its Annual Investment Projects Report (prepared pursuant to Local Law 48) without validating the data to ensure that it reflected actual employment. Therefore, we were not able to determine whether EDC's project developers and other clients created or maintained the number of jobs required.

Furthermore, of 24 clients with construction requirements for 2006 and 2008, only 13 projects were reported completed as of October 8, 2009, and the inspections for 9 of the 13 projects were not performed in a timely manner. The inspection time lag ranged from two months to two years, approximately, with the result that the projects can continue behind schedule or remain pending without having appropriate modifications made to their deeds.

Based on the issues stated above, EDC did not properly enforce the employment and construction requirements of its agreements. Consequently, significant compliance requirements were not met.

Problems with Employee Timesheets

EDC lacks adequate controls and policies to ensure that its employee timekeeping records are reviewed and approved promptly, and that its employee timesheets are validated before payment. Our review of 411 timekeeping records for two biweekly payroll cycles found that 183 timesheets were processed for payment without the proper documentation. Specifically, EDC was unable to substantiate 127 of the 183 timekeeping records upon which payments were based. Other problems included 24 timesheets that were pending approval, 15 that were not submitted, 16 that were not filled out, and one that was disapproved. Despite these discrepancies, the EDC employees were paid in full in all cases.

In a separate review, we found that three employees submitted questionable hours for holidays, one employee's timesheet was approved for 140 hours for one pay cycle, and seven employees submitted timesheets showing holidays as workdays. Furthermore, EDC did not process payments according to the information provided in the timesheets. Some employees were paid for vacation hours that were noted in the timesheets as being "unpaid" hours.

RECOMMENDATIONS

We recommend that EDC:

1. Remit the retained funds, totaling $125,513,793, to the City:
   - $98,297,350 in payments collected from the Project.
   - $10,682,600 in fund balance as of June 30, 2008, for inactive Public Purpose Fund #22.
   - $16,533,843 in net proceeds from certain sales of City assets.

EDC Response: Regarding the $98,297,350 in payments collected from the Project: "NYCEDC disagrees. . . . NYCEDC is clearly entitled to retain payments from the 42nd Street Project as compensation for NYCEDC's economic development services that generate employment and tax revenues for the City, under the provisions of NYCEDC's annual Master Contracts with the City. . . . The provisions that entitle NYCEDC to retain the payments have been in both the drafts and the final Contracts each year. Further, the City's Law Department has stated in writing that it was entirely proper for NYCEDC to retain the payments it received from the Project in payment for its economic development services."

Regarding the $10,682,600 in fund balance as of June 30, 2008, for inactive Public Purpose Fund: "NYCEDC disagrees. NYCEDC cannot legally remit these funds to the City—a fact that is made clear in materials previously provided to the Comptroller's Office. The reason for this is contained in the agreements governing the 42nd Street Project, which provide for formulaic sharing of rents with Empire State Development Corporation ('ESDC') until ESDC and the City fully recover their costs of the project (a process known as ('reconciliation'). In accordance with these agreements, Fund #22 holds interim rent received by NYCEDC from the 42nd Street Project, which may not be released by NYCEDC to any party (the City included) until the reconciliation occurs Though final reconciliation is expected to occur within the coming two years, it has not yet occurred and, therefore, the amounts in Fund #22 may not now be released."

Regarding the $16,533,843 in net proceeds from certain sales of City assets: "NYCEDC disagrees. The documents that govern which sums NYCEDC may retain to pay for its economic development initiatives on behalf of the City are NYCEDC's Master Contracts (not the 2005 memorandum from the Deputy Mayor cited in the Audit Report, which discussed which amounts on NYCEDC's balance sheet that the City then-anticipated sweeping as the City is entitled to do, from time to time)."

***Auditor Comment*:** EDC is only entitled to what is set forth in the Master and Maritime Contracts with the City. We continue to maintain that EDC should not have retained the 42nd Street Project payments. First, as clearly stated in §4(b)(xi) of the 1988 City-UDC Agreement regarding the planning and development of the Project, the sums collected from the Project were to be used to fund various projects and operations and to reimburse UDC and City costs, with the balance ultimately remitted to the City. The money invested in the Project came directly from the City's budget, not from EDC. Second, EDC has not managed the Project property. Therefore, the money collected is not part of the rental revenue or other monies that EDC is permitted to retain under §3.07(c) of the Master Contract. The only role EDC played in the Project was limited to collecting the funds on behalf of the City, and for its limited involvement EDC was individually reimbursed a total of $541,518. Third, pursuant to §3.07(c) of the Master Contract, EDC is not permitted to retain any PILOT payments. Therefore, we strongly maintain that EDC improperly and inappropriately retained the $98,297,350 in payments collected from the Project and should immediately remit the amounts to the City.

With respect to EDC's retention of the $10,682,600, §4(c)(ii) of the City-UDC Agreement specifies that a Reserve Account (i.e., Public Purpose Fund # 22) funded by the interim rent received from the Project should be applied towards the cost of operating and maintaining the sites during the Management Period (the period subsequent to the vesting date and prior to delivery of possession of 42nd Street sites to the tenant). Upon the delivery and possession of all the sites, any amounts remaining in the Reserve Account may be disbursed to reimburse UDC and City shortfalls on an annual basis for (1) current UDC and City shortfalls and (2) other UDC and City shortfalls. After payments for these shortfalls, any amounts remaining in the Reserve Account should be paid to the City

EDC, not only failed to apply the reserve fund balance for the 42nd Street Development Project reconciliation in accordance with §4(c)(ii)(2) of the Agreement, but claims in its response, without citing any specific factual support, that EDC "cannot legally remit these funds to the City . . . for formulaic sharing of rents . . . until ESDC and the City fully recover their costs of the project." §4(c)(ii)(3) of the City-UDC Agreement in fact legally allows releasing the fund balance to the City when the UDC and City shortfalls have been paid. Since the shortfalls for Sites 1, 3, 4, and 12 were fully reimbursed following the 2007 reconciliation, the fund balance of Public Purpose Fund #22 should immediately be paid to the City.

Regarding the $16,533,843 in net proceeds from certain sales of City assets, EDC reported the sale of Queens Family Courthouse as a sale of a City asset in several financial plans submitted to OMB and that the sale proceeds would soon be remitted to the City. Finally, in its 4th Quarter Financial Plan, Fiscal Year 2008, EDC indicated, "[t]he Payments to the City for FY 08 include $8 million received in June 2007 for the sale of the Queens Family Courthouse." However, in contradiction to that statement of intent, EDC never effected the payment, and the discrepancy, if noticed, went unremarked.

2. Provide for proper classification and enhance the transparency of its revenue amounts due the City.

EDC Response: "NYCEDC disagrees. NYCEDC provides detailed financial plans to the City on a quarterly basis and is in constant consultation with the City regarding various economic development projects. NYCEDC also provides audited financial statements to various public officials (including the Comptroller's Office) on an annual basis, while posting these statements in-full on its website. While, of course, NYCEDC will continue to work with the City to refine and enhance its existing processes, it believes that these processes do generally classify its revenue amounts due to the City properly and are generally appropriately transparent."

Auditor Comment: We continue to maintain that EDC lacks transparency in the classification and disclosure of certain revenue transactions it entered into on behalf of the City. Although EDC reported the amounts it collected from the 42nd Street Project in its financial statements, EDC failed to properly classify the amounts as reimbursements and other payments to the City. By reporting these amounts as other income, EDC has not classified the payments appropriately. These amounts represent rent and PILOT payments EDC received on behalf of the City as opposed to income generated by EDC and should have been made available to the City and its expenditure determined in the course of the City's annual budget process.

3. Properly monitor the Project as follows:
   - Maintain accurate and complete books and records for the costs incurred and reimbursements received.
   - Ensure that the reconciliations are prepared in accordance with the terms of the agreements and in a timely manner.
   - Verify the accuracy of PILOT payments collected for the Project.

EDC Response: "NYCEDC disagrees. The calculation used in this finding is simply incorrect. There have been no underpayments from the tenant. As was explained both in documentation provided to the Comptroller's Office the week before the Exit Conference and in discussions during the Exit conference, the agreements relating to Site 8 East clearly state that 'Percentage Rent' is to be the greater, of (a) a calculation based on annual income and project costs and (b) a scheduled minimum amount. In each year, the scheduled minimum payment was greater, and, therefore, the amount which the tenant paid was proper."

Auditor Comment: EDC responded only to the last point in this recommendation. With respect to "verify the accuracy of PILOT payments collected for the Project," EDC employees were unaware of the formula stipulated in the Agreement since 2000 until the audit team brought up the issue for discussion. Whether or not there have been underpayments from the tenant, EDC should have diligently documented whether the formula would have resulted in a higher PILOT amount.

4. Use the total funding balance of $10,079,415 as of June 30, 2008, from inactive Public Purpose Funds #12, #13, #18, #28, #30 and #31 in accordance with the terms and provisions of the respective funding and trust agreements.

EDC Response: "NYCEDC partially agrees. NYCEDC has spent the vast majority of Funds #12, #13, #18, #28 and #30 (over 80% to date) on appropriate economic development uses. NYCEDC will, of course, continue to work, as it has always done, with appropriate partners to find further appropriate economic development uses for the balance of these funds. With respect to the amounts remaining in Fund #31 (the so-called Harlem River Yard Fund), the restrictions on the use of these amounts are extremely narrow in scope, permitting these amounts only to be used at the Harlem River Yard rail facility, which is controlled by Harlem River Yard Ventures ('Ventures'). . . . NYCEDC has always been responsive to the Ventures and is continuing to work with the Ventures to develop an appropriate and responsible use for these funds."

Auditor Comment: We are glad that EDC partially concurred with our recommendation and agreed to initiate a process to utilize Funds #12, #13, #18, #28, and #30. EDC should continue to explore the opportunities to use these fund balances in accordance with the respective fund purposes.

5. Properly administer the sales of real properties as follows:
    - Consistently classify properties that have previously generated revenues as City assets.
    - Return the proceeds of the sales of City assets to the City in a timely manner, unless expressly waived by the Office of Management and Budget.
    - Require prospective buyers of properties to do their due diligence and take into consideration the possible remediation and other additional development costs before the final offer is accepted on property in order to avoid discretionary negotiation of substantial cost deductions subsequent to the procurement process.
    - Discontinue the use of projected cost data of a prospective buyer's development plan to serve as a basis for the reduction of the appraised value.
    - Adhere to the established fee schedule in charging administrative fees on property sales.

EDC Response: "NYCEDC disagrees. NYCEDC has rigorous processes and protocols in place for the sale of City-owned properties that ensure that the City receives the most advantageous terms, based on its fiscal and policy goals. . . . The decisions that NYCEDC makes with respect to the proper mix of monetary versus in-kind compensation, as well as with respect to whether or not to waive its administrative fees, are decisions that are quite case specific, depending on a number of factors, including the allocation of certain risk factors between the City or NYCEDC as seller and the purchaser, the policy goals articulated by the Administration to NYCEDC and the stated goals of the local community and elected officials. NYCEDC regularly consults with the City about these issues during the course of its negotiations."

Auditor Comment: We continue to question EDC's practices in the disposition of City properties. For example, the second Queens Family Courthouse appraisal report for the selected development plan stated that "as appraiser, we are not experts in construction cost estimates. We have been instructed by the client [EDC]/intended user to assume the developer's cost estimates as reasonable and apply them in our valuation analysis. . . . Should the construction costs differ from those reported . . . a dramatic impact on the value of the subject project may result." In some other EDC independent appraisal reports, the appraisers also recommended not basing the valuation on the construction costs. We question the appropriateness for EDC to instruct the appraiser to apply estimated costs that would drastically reduce the appraised value.

In addition, the first appraisal report dated as of March 18, 2004, had already noted that "an asbestos abatement program commenced on the courthouse building and is currently in Phase I." All bidders were made aware of the existence of asbestos and should have done the diligence on the site before, not after the bidding process. Therefore, since the asbestos issue was already disclosed, EDC should not have stated in its response that it allowed $2 million as a soil remediation deduction because "unforeseen environmental conditions were discovered, including asbestos and contaminated soil."

When bidders submit their offers, they should already have considered the soil conditions, the required administrative fees, and other costs so as not to disrupt the integrity of the selection process.

6. Recoup the $97,079 in rents and license fees due. Properly calculate, bill, and collect the rent amounts and other tenant reimbursements in accordance with the terms of each lease agreement.

EDC Response: "NYCEDC partially agrees. As was discussed with the Comptroller's Office during the Exit Conference, there have been no collection issues with respect to MS Marine Development or the Port Authority leases and the Comptroller's Office audit is simply incorrect in stating that there have been. Where NYCEDC does agree with the Comptroller's Office's findings, NYCEDC has already corrected or is in the process of correcting any billing issues. It should be noted that the $97,079 cited by the Audit Report relating to these errors represents a tiny fraction (0.34%) of NYCEDC's total portfolio revenue of $284.9 million during the three-year audit period."

Auditor Comment: We are glad that EDC agreed in substance with our finding and is moving to correct the problems identified in our audit report.

7. Recoup the excessive ECSP discounts of $461,038 credited to six customer accounts and credit the other six accounts with the total shortfall of $122,110. In addition, EDC should credit the difference of $262,962 to Con Edison. Use the correct rate to calculate ECSP discounts and ensure that the amount is consistent with Con Edison's discount.

EDC Response: "NYCEDC partially agrees. With the assistance of NYCEDC's Internal Audit Department, NYCEDC has been in the process of reviewing and reconciling these accounts, including the amount 'due Con Edison.' In some instances, certain accounts do appear to have been over- or under-billed. NYCEDC is in the process of re-billing and/or crediting the impacted customers and Con Edison, as appropriate. It is worth noting, however, that the differences cited in the Audit Report represent approximately 0.8% of total billing under NYCEDC's energy programs. In December 2009, NYCPUS management enhanced its billing process (including with respect to ECSP discount calculations) to ensure that any issues that may have previously existed would be remedied going forward."

Auditor Comment: We are glad that EDC agreed in substance with our finding and is moving to correct the problems identified in our audit report.

8. Properly record the revolving loan fund program administered by lenders as loan receivables to ensure accurate tracking of the amount receivable upon the termination of the agreement.

EDC Response: "NYCEDC disagrees. A complete review of this transaction was undertaken with NYCEDC's independent auditors at Ernst & Young at the time it was recorded in 2006. The auditors, who have vast experience auditing organizations with comparable loan programs, concurred with NYCEDC's decision to expense the entire amount (given the nature of this program and the expected collectability of these loans based on the creditworthiness of the program participants). Furthermore, the potential net receivable that would have been recorded after computation of the appropriate reserve would have been immaterial to the NYCEDC's financial statements. All of this information has been shared with the Comptroller's Office. NYCEDC actively monitors and reports to the U.S. Economic Development Administration on a semi-annual basis the status of this program."

Auditor Comment: We disagree with EDC based on our audit position. EDC did not provide us with documentation to support its assertion that a review was done. Monitoring the recording of the RLF is an important accounting control for ensuring that the funds will eventually be remitted after program termination.

9. Recoup contractor workers' compensation for duplicate payments and unrelated capital project costs.

EDC Response: "NYCEDC partially agrees. . . . NYCEDC found that the contractor initially included in its staff salaries a cost for workers' compensation. The contractor, with NYCEDC's approval, subsequently decided on a Contractor Controlled Insurance Program ('CCIP') for the project. While the CCIP resulted in overall project savings, it also caused some overpayments. Since this discovery, NYCEDC's Capital Program Department has been tracking the workers' compensation payments in coordination with NYCEDC's Internal Audit Department on this project. NYCEDC expects all overpayments will be recouped by December 2010. The total cost of this project is approximately $200 million and the $61,207 in potential overpayment cited by the Audit Report represents less than 0.03% of the total cost."

Auditor Comment: We maintain that EDC lacks appropriate procedures for approving capital expenditures submitted by contractors. Instead of relying on its internal auditors' reviews to identify the overpayments, EDC should implement the proper procedures to prevent payment discrepancies.

10. Implement policy and guidelines to ensure that all contractor submissions are properly reviewed and approved.

EDC Response: "NYCEDC partially agrees. Where the Comptroller's Office has identified the potential payment of disallowed expenses, the amount identified represents less than 0.01% of the total cost of the applicable projects. NYCEDC, of course, will work to recoup any and all disallowable expenses. Given the foregoing, NYCEDC believes that it has strong systems in place to monitor staff salaries of contractors and to approve rate increases. However, it will, of course, continue to develop and implement improvements to these systems if and where issues are identified."

Auditor Comment: We are glad that EDC agreed in substance with our finding and is moving to correct the problems identified in our audit report.

11. Ensure its project developers and other entities comply with the employment and construction requirements stipulated in their agreements with EDC, validate the employment data submitted, and schedule timely site inspections to authenticate the completion of constructions.

EDC Response: "NYCEDC disagrees. . . . NYCEDC annually contacts purchasers to obtain employment information needed to ensure compliance with Local Law 48 of 2005. This information is collected, in many instances, from projects where employment requirements either were not part of the underlying agreement with the private sector counterparty or where NYCEDC has no remedies available under the applicable agreement. Notwithstanding that much of this information can be used only for informational purposes, since 2007, NYCEDC's Compliance Department has been instituting a series of changes designed to improve the quality of data received and generally to enhance the monitoring of construction requirements associated with land sales (including but not limited to infrastructure investment) in a new database currently being constructed."

Auditor Comment: We disagree with EDC's position. By compiling the data without verifying its accuracy, EDC lacks the proper enforcement to regulate those agreements.

12. Ensure that time-keeping records are properly submitted and authorized.

EDC Response: "NYCEDC partially agrees. As of June 22, 2009 (and independent of the Audit Report), NYCEDC implemented ADP Enterprise Etime, a new timesheet system to collect data from all employees (salaried and hourly). The new timekeeping system improves wage and hour compliance and integrates time and attendance for effective tracking of absences. It ensures timely collection and monitors all forms of accrual."

Auditor Comment: We are glad to know that EDC has implemented a new timekeeping system to enhance its payroll processing. However, without a proper approval process, a new system may not prevent those approval errors.

Proceeds from Certain Sale of City Assets Not Remitted to the City

#	Borough, Block, and Lot	Sales Price (I)	Fees Deductible by EDC from Sales Price (II)	Amount Returnable to the City* (III) = (I)-(II)	Property Use Prior to Sale
Real Property Sales - FY 2006					
1	Manhattan, Block 1030, Lot 1	$ 17,050,000	$ 220,500	Scheduled Payments	No information.
2	Manhattan, Block 142, Lot 110	$ 110,082,967	$ -	Returned	Property purchased with Community Development Block Grant Funds.
3	Bronx, Block 4226, Lot 5	$ 2,873,908	$ 149,223	Returned	Lease with option to buy.
Real Property Sales - FY 2007					
4	Chester, Section 3, Block 1 and Lot 1 & 2, Village of Chester, Section 106, Block 2 and Lot 2, Blooming Grove, Section 52, Block 1 & Lot 2	$ 8,500,000	$ 135,000	Returned	Reported as a City Asset by EDC in Financial Plan. Previously Homeless Services facility.
5	Queens, Block 9755, Lot 31	$ 8,000,000	$ 130,000	$ 7,870,000	Reported as a City Asset by EDC in Financial Plan. Formerly Queens Family Courthouse.
Real Property Sales - FY 2008					
6	Manhattan, Block 1615, Lots 5, 7, 66, and 68	$ 6,800,000	$ 118,000	Returned	No information.
7	Brooklyn, Block 140, p/o Lot 123	$ 5,770,000	$ 107,700	Returned	Reported as a City Asset by EDC in Financial Plan.
8	Queens, Block 11327, Lot 1; Manhattan, Block 1726, Lot 11; Bronx, Block 3293, Lots 62, 63 & 65; Bronx, Block 2622, Lots 36-38, 59, 61-63; Brooklyn, Block 1152, Lots 20, 21&23; Brooklyn, Block 3322, Lot 8	$ 10	$ -	$ -	Reported as a City Asset by EDC in Financial Plan.
9	Bronx, Block 2929, Lot 8-18, 20, and 22	$ 506,983	$ 10,140	$ 496,843	Lease with purchase option.
10	Brooklyn, Block 7920, Lots 1-7	$ 8,300,000	$ 133,000	$ 8,167,000	A supermarket leased the land from NYC Small Business Services.
Total Net Sale Proceeds of City Assets Returnable to the City				**$ 16,533,843**	

* Based on the prior use of the property and the category established by EDC, we determined that these 10 properties were City assets and the sales proceeds should be returned to the City.

New York City
Economic Development
Corporation

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April 14, 2010

Ms. Tina Kim
Deputy Comptroller for Audits
The City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Response to Audit Report on the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts
FN09-104A

Dear Ms. Kim:

Thank you for the opportunity to respond to the above referenced Draft Audit Report. I am pleased to note that the Audit found, after extensive testing of our operations that the New York City Economic Development Corporation ("NYCEDC") generally accounted for its revenue and expenses and complied with the provisions of our agreements.

NYCEDC granted the audit team unfettered access to our records and staff throughout the entire 18 months it took to complete this audit. During this time and at the exit conference held on March 25, 2010, NYCEDC gave detailed explanations and provided copies of all requested documentation, including our Master and Maritime Contracts. The Comptroller's audit team was informed that NYCEDC recorded all of its revenues in accordance with these contracts and refuted the claim that $125 million was improperly retained. NYCEDC expects that this will result in a completely revised and corrected audit report.

Attached is a copy of NYCEDC's responses to your recommendations. If you or your staff have any questions please feel free to contact Chris Malin, NYCEDC's Controller at (212) 312-3855.

Very truly yours,

Jason A Wright
Chief Financial Officer

cc: Seth Pinsky
Christopher Malin
Hope Mallari
George Davis III

Recommendation 1a: Remit $98,297,350 in payments collected from the 42nd Street Project

NYCEDC's Response: NYCEDC disagrees.

As has been discussed with, and documented for, the Comptroller's Office on several occasions, the sums described (a) have been repeatedly disclosed by NYCEDC to the City, as well as in documents available to the Comptroller's Office on an annual basis and posted on NYCEDC's website, (b) are permitted to be retained by NYCEDC pursuant to its annual Master Contracts (a fact confirmed by a written opinion by the City's Law Department) which Contracts are registered annually by the Comptroller's Office, and (c) have been invested by NYCEDC in economic development initiatives that have created jobs and additional tax revenue, which initiatives, at least in part, have enabled NYCEDC to turn over $400 million to the City's general fund during the period in question. These points are outlined in greater detail below.

NYCEDC is clearly entitled to retain payments from the 42nd Street Project as compensation for NYCEDC's economic development services that generate employment and tax revenues for the City, under the provisions of NYCEDC's annual Master Contracts with the City. That NYCEDC is entitled to retain these payments under the Contracts should be understood by the Comptroller's Office, as for over 17 years, the Comptroller's Office has annually received drafts of the Contracts during the procurement process and has annually registered the Contracts as provided in the City Charter. The provisions that entitle NYCEDC to retain the payments have been in both the drafts and the final Contracts each year. Further, the City's Law Department has stated in writing that it was entirely proper for NYCEDC to retain the payments it received from the Project in payment for its economic development services.[1]

During the period covered by the Comptroller's Office summary of 42nd Street Project payments (November 1, 1999 through December 31, 2007), NYCEDC received approximately $98 million in payments from the Project, but also paid over $400 million to the City pursuant to the Master Contracts.[2] As the Comptroller's Office knows, NYCEDC uses its revenues both to fund a broad range of economic development activities and to make contributions to the City that pay for vital general services. Absent funding from projects like the 42nd Street Project, NYCEDC could not offer a wide array of programs, such as the Capital Access Loan Guarantee Program, which supports lending to small businesses, or participate in a wide array of area-wide redevelopment projects like Coney Island and Hunter's Point South.

Not only is it clear from the Master Contracts that NYCEDC was entitled to retain payments from the 42nd Street Project, it is also clear that NYCEDC appropriately disclosed its retention of these funds, including through a number of disclosures made directly to the Comptroller's Office. For example, NYCEDC's audited financial statements, which are submitted annually to the New York

[1] Specifically, the Law Department opined that pursuant to Sections 1.04(a) and 3.07 of the Master Contracts, NYCEDC is entitled to retain amounts it receives from a variety of sources, including the Project, in compensation for its services. Sections 1.04 and 3.07 of the Master Contracts contain a cap on the amounts that may be retained, which has increased over the years, but in no year of operation has NYCEDC retained amounts in excess of the applicable cap.

[2] Section 11.05 of the Master Contracts permits the City to sweep amounts in NYCEDC's accounts in excess of $7 million.

City Audit Committee (of which the Comptroller is a member), and discussed with the Committee at meetings that include representatives of the Comptroller's Office, have always included all payments NYCEDC receives from the 42nd Street Project. Since 2007, these audited financial statements have also been available on NYCEDC's website, with the notes to the audited financial statements specifically setting forth the payments NYCEDC retained from the 42nd Street Project. An example of these notes can be found on NYCEDC's website. In addition, pursuant to the oversight provisions of the Master Contracts, NYCEDC submits quarterly financial plans to the City detailing NYCEDC's revenues and expenses. The revenues shown in NYCEDC's financial plans have always included all payments NYCEDC has received from the 42nd Street Project.

The following is a link to NYCEDC's audited financial statements on its website:

(http://www.nycedc.com/AboutUs/FinStatementsPubReports/NYCEDC/Documents/Certified%20Finanical%20audit.pdf).

Recommendation 1b: Remit $10,682,600 in total fund balance as of June 30, 2008, for inactive Public Purpose Fund #22

NYCEDC's Response: NYCEDC disagrees.

NYCEDC can not legally remit these funds to the City – a fact that is made clear in materials previously provided to the Comptroller's Office. The reason for this is contained in the agreements governing the 42nd Street Project, which provide for formulaic sharing of rents with Empire State Development Corporation ("ESDC") until ESDC and the City fully recover their costs of the project (a process known as "reconciliation"). In accordance with these agreements, Fund #22 holds interim rent received by NYCEDC from the 42nd Street Project, which may not be released by NYCEDC to any party (the City included) until the reconciliation occurs Though final reconciliation is expected to occur within the coming two years, it has not yet occurred and, therefore, the amounts in Fund #22 may not now be released.

Recommendation 1c: Remit $16,533,843 in net proceeds from the special sales of City assets

NYCEDC's Response: NYCEDC disagrees.

The documents that govern which sums NYCEDC may retain to pay for its economic development initiatives on behalf of the City are NYCEDC's Master Contracts (not the 2005 memorandum from the Deputy Mayor cited in the Audit Report, which discussed which amounts on NYCEDC's balance sheet that the City then-anticipated sweeping as the City is entitled to do, from time to time). Under the annual Master Contracts with the City (which are registered each year by the Comptroller's Office), NYCEDC is legally entitled to retain the net proceeds from certain land sales (including these three) that NYCEDC carries out on behalf of the City. These net proceeds are part of the compensation that NYCEDC receives for the economic development services it performs for the City – services that generate employment and tax revenues as well as surplus funds that are then turned over to the City (including the nearly $400 million in funds turned over to the City from NYCEDC's activities since 1999 alone).[3] In the Master Contracts, this arrangement relates to land sales regardless of the City's prior use of the real property.

Not only have the drafts and the final forms of the Master Contracts that the Comptroller's Office has annually reviewed and registered for 17 years contained the provisions that provide for this, but NYCEDC also specifically explained this to the Comptroller's Office during the audit period, including during the Exit Conference.

Further, NYCEDC's retention of the sale proceeds for these three transactions was not a secret. It was appropriately disclosed, including through disclosures NYCEDC made specifically to the Comptroller's Office. For example, NYCEDC's audited financial statements, which are submitted annually to the New York City Audit Committee (of which the Comptroller is a member) and which NYCEDC discusses with the Committee at meetings that include the Comptroller's Office representatives, have always contained these proceeds. The relevant audited financial statements have also been available on NYCEDC's website at:

(http://www.nycedc.com/AboutUs/FinStatementsPubReports/NYCEDC/Documents/Certified%20finanical%[illegible].pdf).

In addition to the foregoing, pursuant to the oversight provisions of the Master Contracts, NYCEDC submits quarterly financial plans to the City detailing NYCEDC's revenues and expenses. The revenues shown in the relevant financial plans from NYCEDC included the proceeds from the three sales cited by the Comptroller's Office.

[3] Specifically, under Section 1.04 (a) and Section 3.07 of the Master Contracts, NYCEDC is entitled to retain amounts it receives from a variety of sources, including land sales, in compensation for its services. Section 3.07 of the Master Contracts contains a cap on the amounts that may be retained, which has increased over the years, but in no year of operation has NYCEDC retained amounts in excess of the applicable cap.

Finally, it is also worth noting that the three land sales identified as problematic in the Audit Report (as noted above, so identified incorrectly) represent only 8% of the land sales examined by the Comptroller's Office during the audit process.

Recommendation 2: Provide for proper classification and enhance transparency of its revenue amounts due to the City

NYCEDC's Response: NYCEDC disagrees.

NYCEDC provides detailed financial plans to the City on a quarterly basis and is in constant consultation with the City regarding various economic development projects. NYCEDC also provides audited financial statements to various public officials (including the Comptroller's Office) on an annual basis, while posting these statements in-full on its website. While, of course, NYCEDC will continue to work with the City to refine and enhance its existing processes, it believes that these processes do generally classify its revenue amounts due to the City properly and are generally appropriately transparent.

The following is a link to NYCEDC's audited financial statements on its website:

http://www.nycedc.com/AboutUs/FinStatementsPubReports/NYCEDC Documents/Certified%20financial%20audit.pdf

Recommendation 3: Properly monitor the 42nd Street Project as follows: Maintain accurate and complete books and records for the costs incurred and reimbursements received. Ensure that the reconciliations are prepared in accordance with the terms of the agreements and in a timely manner. Verify the accuracy of PILOT payments collected for the Project.

NYCEDC's Response: NYCEDC disagrees.

The calculation used in this finding is simply incorrect. There have been no underpayments from the tenant. As was explained both in documentation provided to the Comptroller's Office the week before the Exit Conference and in discussions during the Exit conference, the agreements relating to Site 8 East clearly state that "Percentage Rent" is to be the greater, of (a) a calculation based on annual income and project costs and (b) a scheduled minimum amount. In each year, the scheduled minimum payment was greater, and, therefore, the amount which the tenant paid was proper.

Recommendation 4: Use the total funding balance of $10,079,415 as of June 30, 2008, from inactive Public Purpose Funds #12, #13, #18, #28, #30 and #31 in accordance with the terms and provisions of the respective funding and trust agreements.

NYCEDC's Response: NYCEDC partially agrees.

NYCEDC has spent the vast majority of Funds #12, #13, #18, #28 and #30 (over 80% to date) on appropriate economic development uses. NYCEDC will, of course, continue to work, as it has always done, with appropriate partners to find further appropriate economic development uses for the balance of these funds.

With respect to the amounts remaining in Fund #31 (the so-called Harlem River Yard Fund), the restrictions on the use of these amounts are extremely narrow in scope, permitting these amounts only to be used at the Harlem River Yard rail facility, which is controlled by Harlem River Yard Ventures ("Ventures"). In addition, as the Comptroller's Office knows from materials provided during the audit process and during the Exit Conference, the amounts in this fund are further limited to projects related to development of a specific type of intermodal rail facility. Though Ventures has come to NYCEDC with proposals for the utilization of the Fund from time to time, NYCEDC and the Ventures have not yet been able to agree upon a proposal that, on the one hand, achieves the ends required in the relevant documentation, and, on the other hand, ensures that these valuable public resources are used in a sensible manner – a goal that presumably would be shared by the Comptroller's Office. NYCEDC has always been responsive to the Ventures and is continuing to work with the Ventures to develop an appropriate and responsible use for these funds.

<u>Recommendation 5: Properly administer the sales of real properties as follows: consistently classify properties that have previously generated revenues as City assets. Return the proceeds of the sales of City assets to the City in a timely manner, unless expressly waived by the Office of Management and Budget. Require prospective buyers of properties to do their due diligence and take into consideration the possible remediation and other additional development costs before the final offer is accepted on property in order to avoid discretionary negotiation of substantial costs deductions subsequent to the procurement process. Discontinue the use of projected cost data of a prospective buyer's development plan to serve as a basis for the reduction of the appraised value. Adhere to the established fee schedule to charge administrative fee on property sales.</u>

NYCEDC's Response: NYCEDC disagrees.

NYCEDC has rigorous processes and protocols in place for the sale of City-owned properties that ensure that the City receives the most advantageous terms, based on its fiscal and policy goals.

As was explained during the Exit Conference and as is provided for in NYCEDC's Master Contracts, which the Comptroller's Office has annually registered for 17 years, NYCEDC is charged with negotiating and closing dispositions of certain City-owned real property assets. NYCEDC disposes of real property in accordance with the Public Authorities Accountability Act of 2005 and other applicable laws, and awards contracts to parties offering the most advantageous overall terms.

In executing a disposition contract, NYCEDC ensures that the City is compensated for its land, either through direct monetary compensation or through a combination of direct monetary compensation and other in-kind compensation (including environmental remediation for which the City would have otherwise been required to pay, construction by the purchaser of facilities for the public benefit and/or use restrictions that achieve a particular economic development policy objective of the City). In addition, as it is permitted to do under its Master Contracts, in certain instances where NYCEDC has believed that doing so would result in a better overall value for the City and its taxpayers, NYCEDC has opted to waive all or some portion of its standard administrative fees as part of its land sales process. The decisions that NYCEDC makes with respect to the proper mix of monetary versus in-kind compensation, as well as with respect to whether or not to waive its administrative fees, are decisions that are quite case specific, depending on a number of factors, including the allocation of certain risk factors between the City or NYCEDC as seller and the purchaser, the policy goals articulated by the Administration to NYCEDC and the stated goals of the local community and elected officials. NYCEDC regularly consults with the City about these issues during the course of its negotiations.

A good example of how this process is carried out (which is generally consistent with the best practices both of other economic development agencies across the country and private land sellers) is provided by the case of the Queens Family Courthouse site. This site was originally appraised for $16.5 million using a generic "highest and best use" appraisal, which valued the site as if it were to be developed as a high rise, market-rate residential and office building. Through a competitive RFP, NYCEDC sought developers to build a mixed-use development (i.e., not the "highest and best use"), because, through consultations with the community and local elected officials, as well as City officials, it was determined that this would be the most appropriate and desirable development for this site. The mixed-use development proposed was to include affordable housing, retail, community space, and ample parking (each of which results in a lower land value than the appraised "highest and best use"). Ultimately, a prospective purchaser was selected. The site was reappraised for $9.6 million taking into account these City-mandated construction requirements, following which NYCEDC negotiated a $10 million purchase price. After a period of due diligence on the site, unforeseen environmental conditions were discovered, including asbestos and contaminated soil. Through an independent analysis, the remediation costs for these conditions were estimated to be $3.46 million. The purchaser requested a $3.5 million adjustment to the purchase price to cover these remediation costs, but NYCEDC limited the purchaser's deduction to $2 million. As a result, the total consideration received for the land ended up being $8 million in cash, plus in-kind work that NYCEDC would have otherwise been forced to undertake were it to remediate the site itself. It is important to note that the cash portion alone of the total consideration was $2 million higher than the next highest bid ($6 million), which next highest bid likely would itself have been reduced upon the identification of the above-described environmental conditions.

<u>Recommendation 6: Recoup the $97,079 in rents and license fees due. Properly calculate, bill and collect the rent amounts and other tenant reimbursements in accordance with the terms of each lease agreement.</u>

NYCEDC's Response: NYCEDC partially agrees.

As was discussed with the Comptroller's Office during the Exit Conference, there have been no collection issues with respect to MS Marine Development or the Port Authority leases and the Comptroller's Office audit is simply incorrect in stating that there have been. Where NYCEDC does agree with the Comptroller's Office's findings, NYCEDC has already corrected or is in the process of correcting any billing issues. It should be noted that the $97,079 cited by the Audit Report relating to these errors represents a tiny fraction (0.34%) of NYCEDC's total portfolio revenue of $284.9 million during the three-year audit period.

Additional information about these issues is provided below.

<u>NYCEDC under-billed one tenant $85,643 from 2003 through 2008:</u> NYCEDC agrees with this finding. As was described to the Comptroller's Office during the Exit Conference, in June 2003 NYCEDC performed the applicable rent escalation calculation using the proper price index called for under the lease. Subsequently, the US government revised the price index. At this point, NYCEDC should have gone back and revised its rent escalation calculation. NYCEDC failed, however, at the time to do so, resulting in a retroactive under-billing of the tenant that started at $1,349.05 per month (or 0.38% of the then-monthly rent). This has accumulated to the reported amount over the five year period. NYCEDC has already billed the tenant for this retroactive amount and has implemented processes for avoiding this type of issue going forward.

<u>NY Water Taxi and NY Water Tours:</u> First, NYCEDC does not have record of an entity known as NY Water Tours. Second, in order to determine whether the alleged underbilling with respect to NY Water Taxi is correct, NYCEDC requires substantially more information than was provided in the Audit Report, since the alleged underbilling represents only 0.037% of the total amount billed to water taxis at the relevant facilities under hundreds of short-term licenses.

<u>Bridgemarket Associates:</u> NYCEDC agrees that there has been a miscalculation of fees due to an indexing error, but disagrees with the $6,349.04 amount referenced in the Comptroller's Office audit. NYCEDC has performed a recalculation and has determined the amount of under-billing during the period of the audit to be $2,770.50. This error represents 0.19% of the $1,258,523.40 in total revenue collected on behalf of the City from this tenant by NYCEDC. NYCEDC has retroactively billed the newly calculated amount and is implementing processes to ensure that this type of error does not occur in the future.

<u>Brooklyn Army Terminal:</u> As referenced in NYCEDC's response to former Comptroller Thompson's 2008 Audit of the Brooklyn Army Terminal, NYCEDC agrees that water and sewage charges needed to be billed to the 11 tenants identified in the Audit Report. To this end, dating back to 1989, NYCEDC had been proactively requesting bills for water and sewage from the City to allow it to assess these charges. This continued during the period covered in the Audit Report. In 2009, independent of the Audit Report, NYCEDC received the appropriate bills

from the City and immediately paid all outstanding charges. The reimbursable portions of these utilities were subsequently back-billed to the applicable tenants, resolving this item.

Thesaurus Contracting Corp, Community Association of Progressive, Chase Manhattan Bank: NYCEDC agrees with this finding and has contracted to install submeters for these tenants and commence billing as soon as possible.

MS Marine Development: NYCEDC disagrees with this finding. This business maintains and pays for a landing slot license administered by NYCEDC. As with all landing slot licenses issued by NYCEDC, there are no dockage and wharfage charges payable.

Port Authority Leases: NYCEDC disagrees with this finding. First, NYCEDC has verified with DEP that there is no unpaid amount under the Port Authority's former lease of the heliport or for the other two Port Authority-leased properties described in the Audit Report. Second, NYCEDC believes that, under the lease, the tenant (and not the landlord as implied by the Audit Report) is and was directly responsible for making payments to DEP. The Port Authority (the former landlord at the heliport) agrees with this interpretation.

Recommendation 7: Recoup the excessive ECSP discounts of $461,038 credited to six customer accounts and credit the other six accounts with the total shortfall of $122,110. In addition, EDC should credit the difference of $262,962 to Con Edison. Use the correct rate to calculate ECSP discounts and ensure that the amount is consistent with Con Edison's discount.

NYCEDC's Response: NYCEDC partially agrees.

With the assistance of NYCEDC's Internal Audit Department, NYCEDC has been in the process of reviewing and reconciling these accounts, including the amount "due Con Edison." In some instances, certain accounts do appear to have been over- or under-billed. NYCEDC is in the process of re-billing and/or crediting the impacted customers and Con Edison, as appropriate. It is worth noting, however, that the differences cited in the Audit Report represent approximately 0.8% of total billing under NYCEDC's energy programs.

In December 2009, NYCPUS management enhanced its billing process (including with respect to ECSP discount calculations) to ensure that any issues that may have previously existed would be remedied going forward.

Recommendation 8: Properly record the revolving loan fund program administered by lenders as loan receivables to ensure accurate tracking of the amount receivable upon the termination of the agreement.

NYCEDC's Response: NYCEDC disagrees.

A complete review of this transaction was undertaken with NYCEDC's independent auditors at Ernst & Young at the time it was recorded in 2006. The auditors, who have vast experience auditing organizations with comparable loan programs, concurred with NYCEDC's decision to expense the entire amount (given the nature of this program and the expected collectability of these loans based on the creditworthiness of the program participants). Furthermore, the potential net receivable that would have been recorded after computation of the appropriate reserve would have been immaterial to the NYCEDC's financial statements. All of this information has been shared with the Comptroller's Office.

NYCEDC actively monitors and reports to the U.S. Economic Development Administration on a semi-annual basis the status of this program.

Recommendation 9: Recoup contractor workers' compensation for duplicate payments and unrelated capital project costs.

NYCEDC's Response: NYCEDC partially agrees.

As was discussed with the Comptroller's Office during the Exit Conference, prior to receiving this recommendation from the Comptroller's Office, NYCEDC began its own independent audit of the contractor workers' compensation payments. NYCEDC found that the contractor initially included in its staff salaries a cost for workers' compensation. The contractor, with NYCEDC's approval, subsequently decided on a Contractor Controlled Insurance Program ("CCIP") for the project. While the CCIP resulted in overall project savings, it also caused some overpayments. Since this discovery, NYCEDC's Capital Program Department has been tracking the workers' compensation payments in coordination with NYCEDC's Internal Audit Department on this project. NYCEDC expects all overpayments will be recouped by December 2010. The total cost of this project is approximately $200 million and the $61,207 in potential overpayment cited by the Audit Report represents less than 0.03% of the total cost.

Recommendation 10: Implement policy and guidelines to ensure that all contractor submissions are properly reviewed and approved.

NYCEDC's Response: NYCEDC partially agrees.

NYCEDC partially agrees.

Where the Comptroller's Office has identified the potential payment of disallowed expenses, the amount identified represents less than 0.01% of the total cost of the applicable projects. NYCEDC, of course, will work to recoup any and all disallowable expenses. Given the foregoing, NYCEDC believes that it has strong systems in place to monitor staff salaries of contractors and to approve rate increases. However, it will, of course, continue to develop and implement improvements to these systems if and where issues are identified.

NYCEDC paid $1,247,276 in contractor salaries without checking whether the hourly rates had been properly approved: NYCEDC has a rigorous review process in place and believes, based on its current information, that the approvals made were appropriate. Among other steps taken in connection with the applicable approvals were the following: NYCEDC reviewed the staff salaries and approved the rates on each invoice approved and paid; NYCEDC requested salary summaries to help to track staff rates, and salaries were constantly (upon the review of each invoice) monitored against the general conditions to ensure that construction managers were working within their budgets for staff. Though NYCEDC believes, as noted above, that these steps were appropriate and adequately protected City taxpayers, it is true that the contract in question did not specifically address how staff rates should be approved. Going forward, NYCEDC will ensure that it defines its processes more specifically in its agreements with contractors.

NYCEDC, in March 2009, retroactively approved personnel salary adjustments for salaries paid as far back as 2004: On a monthly basis, NYCEDC reviews the staff salaries and approves the rates on each invoice that is approved and paid. In addition, NYCEDC requests salary summaries that help to track the staff rates. NYCEDC believes that these steps are appropriate and adequately protect City taxpaters. However, since the contract in question did not specifically address how staff rates should be approved, again, NYCEDC will, going forward, ensure it defines its processes more specifically in its agreements with contractors.

NYCEDC paid $21,441 in expenses that were not related to capital project costs: This project and related expenses have been under review by NYCEDC's Internal Audit Department independent of the Audit Report. Based on NYCEDC's findings, all disallowable expenses will be recouped by December 2010. The total cost of this project is approximately $200 million. The $21,441 cited in the Audit Report represents less than 0.01% of the total project cost. NYCEDC continues to monitor and review all project expenses and will reject or recoup all disallowable expenses.

Recommendation 11: Ensure its project developers and other entities comply with the employment and construction requirements as stipulated in their agreements with EDC, and validate the employment data submitted and schedule timely site inspections to authenticate the completion of construction.

NYCEDC's Response: NYCEDC disagrees.

NYCEDC and entities staffed by NYCEDC enforce all covenants and requirements of the agreements entered into by them and their private sector counterparties. These requirements generally include requirements related to construction commencement and completion and usage requirements and, in certain circumstances, employment requirements. Projects that are deemed non-compliant (including, where applicable, for failing to comply with employment requirements) are contacted for follow-up information, and are reviewed by NYCEDC staff and senior management. Negotiations and/or remedies, up to and including legal action, can then be implemented by NYCEDC. In fact, since 2002, NYCEDC has collected amounts totaling $34 million from purchasers and other contract counterparties that did not comply with various agreements entered into with NYCEDC or entities staffed by NYCEDC.

Separately, NYCEDC annually contacts purchasers to obtain employment information needed to ensure compliance with Local Law 48 of 2005. This information is collected, in many instances, from projects where employment requirements either were not part of the underlying agreement with the private sector counterparty or where NYCEDC has no remedies available under the applicable agreement. Notwithstanding that much of this information can be used only for informational purposes, since 2007, NYCEDC's Compliance Department has been instituting a series of changes designed to improve the quality of data received and generally to enhance the monitoring of construction requirements associated with land sales (including but not limited to infrastructure investment) in a new database currently being constructed.

Recommendation 12: Ensure that time-keeping records are properly submitted and authorized.

NYCEDC's Response: NYCEDC partially agrees.

As of June 22, 2009 (and independent of the Audit Report), NYCEDC implemented ADP Enterprise Etime, a new timesheet system to collect data from all employees (salaried and hourly). The new timekeeping system improves wage and hour compliance and integrates time and attendance for effective tracking of absences. It ensures timely collection and monitors all forms of accrual.

The employee who incorrectly indicated holidays as work days prior to the implementation of the new system is a salaried employee and was not consequently overpaid. As was discussed with the Comptroller's Office during the Exit Conference, such timesheet errors have been corrected with the implementation of NYCEDC's new system.