

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Compliance of the United Nations Development Corporation With Its Lease Agreement January 1, 2005–December 31, 2006**

*FN07- 106A*

**May 29, 2008**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of the United Nations Development Corporation (UNDC) with the terms of its lease agreements with the New York City Economic Development Corporation (EDC).

UNDC was established to provide office and residential space, and other facilities for United Nations personnel and foreign missions, as well as for other members of the international community. UNDC operates under two lease agreements with the City of New York. We audit private parties that are lessees of the City to ensure that they comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials of UNDC and EDC, and their comments have been considered in preparing this report. Their complete written response is included in this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

**Report: FN07-106A**  
**Filed: May 29, 2008**

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*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on the Compliance of the  
United Nations Development Corporation  
With Its Lease Agreement  
January 1, 2005–December 31, 2006**

**FN07-106A**

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**AUDIT REPORT IN BRIEF**

The United Nations Development Corporation (UNDC) is a public benefit corporation established by the State of New York to provide office and residential space in an area contiguous to the United Nations headquarters. UNDC operates under two lease agreements (collectively referred to as the “lease agreement”) with the City of New York. The lease is administered by the New York City Economic Development Corporation (EDC) and remains in effect either until the year 2080 or until all UNDC bonds and notes are paid in full, whichever is earlier.

The lease requires UNDC to pay three separate rents to the City. The audit determined whether UNDC paid EDC all rent due the City in accordance with the provisions of the lease agreement and whether the payments were made on time; and whether UNDC complied with other major requirements of its agreement (i.e., maintaining required liability insurance and paying appropriate utility charges).

**Audit Findings and Conclusions**

UNDC should remit to the City a total of \$12,012,050 in additional rent resulting from UNDC’s retention of its consolidated surplus in connection with the suspended UN Consolidation Building Project. Otherwise, UNDC generally complied with the provisions of its lease agreement and maintained adequate internal controls over the recording and reporting of revenue and expenses. It reported revenue and expenses accurately, calculated the proper amounts of base rent and net annual rent due the City, and submitted its quarterly payments on time. UNDC also adhered to certain non-revenue-related requirements of the agreement, including maintaining the proper property and liability insurance; endorsing the City and EDC as additional insured parties; and paying electric and water and sewer charges.

Subsequent to our submission of the preliminary draft audit report to UNDC officials, the UNDC Board of Directors approved a resolution to release a portion of the consolidated surplus

reserve and paid the City 90 percent of that portion, or \$6,006,063, in additional rent due. UNDC now owes the City the balance of the \$12,012,050 assessed by this audit, or \$6,005,987.

### **Audit Recommendations**

We make five recommendations based on our findings. We recommend that UNDC:

- Pay the City a total of \$12,012,050 in additional rent due as assessed by this audit. The UNDC Board in its March 28, 2008 meeting resolved to release \$6,006,063 in additional rent. Should this amount be remitted to the City, only a balance of \$6,005,987 will be due the City, as assessed by this audit.
- Maintain an updated status of the progress of the UN Consolidation Building Project.

We recommend that EDC:

- Ensure that UNDC pays the \$6,006,063 in additional rent due the City.
- Ensure that UNDC pays the balance in the consolidated surplus reserve of \$12,012,050 if the UN Consolidation Building Project is not built.
- Monitor the progress related to the UN Consolidation Building Project.

## INTRODUCTION

### Background

The United Nations Development Corporation (UNDC) is a public benefit corporation created in 1968 by the New York State Legislature. UNDC was established to provide office and residential space, and other facilities for United Nations personnel and foreign missions, as well as for other members of the international community. For this purpose, the City and UNDC subsequently negotiated two lease agreements in 1972 and 1981 (collectively referred to as the “lease”). Under the terms of the lease, UNDC was required to develop and operate a three-phase project designated as One UN Plaza, Two UN Plaza, and Three UN Plaza. UNDC is governed by a 15-member Board of Directors consisting of eight members appointed by the Governor of the State of New York, five members appointed by the Mayor of the City of New York, and two members who serve by the nature of their appointed City position. The lease is administered by the New York City Economic Development Corporation (EDC) and remains in effect either until the year 2080 or until all UNDC bonds and notes are paid in full, whichever is earlier.

According to the lease, UNDC is required to pay three separate rents to the City. One is paid annually, whereas the other two are paid quarterly. The annual payment, termed additional rent, is calculated based on 90 percent of UNDC’s Consolidated Surplus.<sup>1</sup> The two quarterly rents, base rent, and net annual rent are calculated using the Manhattan’s real property tax formula; however, these rents are paid in lieu of real estate taxes. Lastly, UNDC is required to pay a fixed annual rent in the amount of \$481,000 for Three UN Plaza.<sup>2</sup> In addition, UNDC remits the payment of real estate taxes for the land under Two UN Plaza, which is owned by a private party.

In addition, the lease agreement requires UNDC to maintain comprehensive general liability insurance that names the City and EDC as additional insured parties; and requires UNDC to pay all water and sewer charges and electricity charges imposed on the properties.

For calendar years 2005 and 2006, UNDC paid base rent and net annual rent to the City totaling \$1,295,957 and \$1,293,702 and submitted payment of real estate taxes in the amounts of \$823,104 and \$802,908, respectively.

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<sup>1</sup> As defined in the lease agreement, Consolidated Surplus means the excess of the aggregate amount of UNDC’s revenues from operations and interest and other earnings on all monies, funds, and accounts of UNDC (exclusive of interest and other earnings on amounts which constitute Consolidated Surplus) over the aggregate amounts of revenues paid, including operating expenses, debt service, maintenance of one or more debt service funds, payment to the City of net annual rent, amounts necessary to prevent the occurrence or continuation of an event of default, any other amounts required to be paid, set aside, or held in reserve under any other document, and satisfaction of all obligations of UNDC, including but not limited to payments and reasonable reserves, as determined by the UNDC Board of Directors.

<sup>2</sup> The fixed payment derives from a long-term capital lease with the United Nations Children’s Fund (UNICEF) at Three UN Plaza.

## **Objectives**

The objectives of this audit were to determine whether UNDC:

- paid EDC all rent due the City in accordance with the provisions of the lease agreement and whether the payments were made on time; and
- complied with other major requirements of its agreement (i.e., maintaining required liability insurance and paying appropriate utility charges).

## **Scope and Methodology**

This audit covered the period January 1, 2005, through December 31, 2006. We also conducted additional testing of certain 2003 and 2004 expense transactions and consolidated surplus balances. To achieve our audit objectives, we reviewed and abstracted the relevant terms and conditions of the lease agreement and its five amendments. To determine whether UNDC remitted the required statements and paid all fees due EDC on time, we reviewed EDC's file records, including EDC tenant history ledger; UNDC rent statements; and copies of check payments.

We evaluated UNDC's internal controls over the process of recording and reporting its revenue and expense transactions. To familiarize ourselves with UNDC's accounting and record-keeping functions, we reviewed its operating procedures and chart of accounts, conducted a walk-through of the operations, and interviewed UNDC officials and key personnel, including the Executive Vice President and Director of Development, Controller, Deputy Controller, and Senior Accountant. We documented our understanding of the UNDC's internal control processes through written narratives and flowcharts.

To verify the accuracy and validity of UNDC's quarterly rent calculations and corresponding payments to the City, we reviewed the blueprints and floor plans to evaluate the space allocation for One and Two UN Plaza. We examined all sub-lease agreements to verify that the United Nations and its related organizations were renting the space. We recalculated each quarter's rent using the applicable assessment valuations and rates obtained from the Department of Finance.

To determine whether UNDC properly recorded its revenues from office space rental, residential apartments, and the capital lease with UNICEF, we reviewed all the rental contracts between UNDC and its tenants to ascertain whether all rental income reported was valid and properly documented. To determine the accuracy of the revenue reported, we judgmentally selected a sample of transactions for the period of the last quarter of 2005 and 2006, the reporting period with all year-end revenue adjustments. For this period, we reviewed all the invoices and traced the amounts to the corresponding journal entries. We then summarized all revenue transactions and compared the total to the amounts reported in the general ledger, trial balance, and certified financial statements.

To determine the accuracy of UNDC's payroll expense, we judgmentally selected the last quarter of 2005 and 2006, the period covering all year-end adjustments. For these periods, we reviewed UNDC's employees' files, payroll summary, employee benefits, and payroll tax accounts. We also traced the amounts from the general ledger to the payroll journal and supporting documentation. To determine whether UNDC properly recorded its building cleaning expenses, we reviewed UNDC's agreement with its cleaning services provider and summarized the pertinent payment terms and conditions. We then analyzed the cleaning expense account, traced the amounts to the general ledger, and compared the balances with the amount reported in the building management report, for One, Two, and Three UN Plaza. Finally, we reviewed the building management's certified letter of payments, invoices, copies of checks paid, and UNDC's allocation expense vouchers for One, Two, and Three UN Plaza.

To determine whether UNDC properly recorded its building security expenses, we reviewed all the agreements for security services and prepared a summary of the terms and monthly payment amounts. We reviewed the contract security general ledger account and traced the amounts to their supporting documents such as invoices, security guard billings, and UNDC's expense allocation vouchers. We recalculated the payments to verify that the allocated amounts were correct. Additionally, we reviewed UNDC's analysis of building expenses and traced the year-end adjustments to the general ledger for One, Two and Three UN Plaza.

To determine whether UNDC properly reported and paid the additional rent due the City from UNDC's operating surplus, we reviewed the surplus amounts reported in UNDC's certified financial statements and traced the amounts to the operating surplus account. To determine whether UNDC appropriately established a consolidated surplus reserve fund, we reviewed and analyzed the terms and conditions of the lease's fifth amendment, which permits the establishment of a surplus reserve fund to be used for undertaking the UN Consolidation Building Project.<sup>3</sup> We also compared the balance in the surplus reserve fund with UNDC's investment status report and general ledger for accuracy and consistency.

To determine the accuracy and appropriateness of the expenditures in connection with the Consolidation Building Project, we analyzed all related project amounts reported as write-offs in UNDC's certified financial statements for calendar years 2005 and 2006. Based on our analysis, we then conducted tests of transaction details by reviewing surplus fund requisition and distribution journal entries for operating years 2005 and 2006. In addition, we traced the expenditure amounts to the related invoices, copies of check payments, vendor payment histories, payment allocation vouchers, and general ledger. Finally we compared the total requisition amounts to the Officer's certificate and the surplus fund distribution request letters.

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<sup>3</sup> In 2002, UNDC began planning for the construction of the Consolidation Building Project to provide "swing space" for the UN during the refurbishment of the UN headquarters. After completion of the refurbishing of the UN headquarters, the building would provide space for the UN to relocate and consolidate its offices that are presently elsewhere in Manhattan, including offices in One and Two UN Plaza. After several years of planning, however, UNDC failed to get state legislative approval for the use of the land as the only proposed site for project. Finally, in 2005, the Consolidation Building Project was suspended.



We reviewed the minutes of Board of Directors meetings to ascertain whether the amounts placed in reserve were properly authorized. We also interviewed UNDC officials concerning the nature of the reported Consolidation Building Project's expenditures, the development and planning of the Project including the Project's legislative approval, planning and design process, and the status of the Project and any related project for which the surplus reserve fund was established.

To determine whether UNDC paid the appropriate electric charges for One, Two, and Three UN Plaza, we reviewed copies of check payments and compared the payments to New York Power Authority's billing statements. Further, we traced the general ledger entries to UNDC's schedule of electric "usage & billing by floors as measured by sub-meters," calculation of electric invoices, and payment vouchers for the allocation of the expenses at One, Two, and Three UN Plaza. Additionally, we checked whether UNDC maintained the proper insurance coverage that named the City and EDC as additional insured parties, and also reviewed the certificates of insurance and the related insurance premium payment records.

To determine whether UNDC paid its water and sewer charges, we reviewed the New York City Water Board's billing amounts and copies of check payments and building management's certified payment letters. Additionally, we traced UNDC payment allocation vouchers to the general ledger. Finally, we reviewed the UNDC's analysis of building expenses to verify that the allocation of water and sewer charges and accrued expenses was properly posted in the general ledger for One, Two, and Three UN Plaza.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller, as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with UNDC and EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to UNDC and EDC officials and discussed at an exit conference on March 31, 2008. On April 8, 2008, we submitted a draft report to UNDC and EDC officials with a request for comments. We received written responses from UNDC and EDC on April 22, 2008.

Although on April 2, 2008, UNDC paid EDC \$6,006,063 representing a portion of the \$12,012,050 in additional rent due the City, as assessed by our audit, in their response, UNDC officials stated, "We do not agree with the conclusions in the Draft Audit Report that Additional Rent in any amount is due to the City under the City leases." The specific issues raised by UNDC and our rebuttals are included within the respective sections of this report.

In their response, EDC officials agreed with all of the audit report recommendations.

The full texts of the UNDC and EDC responses are included as addenda to this report.

## FINDINGS

UNDC should remit to the City a total of \$12,012,050<sup>4</sup> in additional rent resulting from UNDC's retention of its consolidated surplus in connection with the suspended UN Consolidation Building Project.

Nonetheless, UNDC generally complied with the provisions of its lease agreement and maintained adequate internal controls over the recording and reporting of revenue and expenses. In this regard, UNDC reported its revenue and expenses accurately, calculated the proper amounts of base rent and net annual rent due the City, and submitted its quarterly payments on time. UNDC also adhered to certain non-revenue-related requirements of the agreement, including maintaining the proper property and liability insurance, endorsing the City and EDC as additional insured parties; and paying electric and water and sewer charges.

### **UNDC Should Remit \$12,012,050 In Additional Rent to the City**

Our review of UNDC's books and records revealed that for operating years 2003 through 2006, UNDC did not pay the City a total of \$12,012,050 in additional rent due under the lease. According to the lease agreement, UNDC is required to pay the City an additional rent of 90 percent of the aggregate of its consolidated surplus. On January 1, 2004, the City and UNDC signed a fifth amendment to the lease permitting UNDC to use its consolidated surplus to establish a reserve for the completion and opening of the UN Consolidation Building Project. Accordingly, UNDC retained the amount of additional rent of 90 percent of its consolidated surplus required to be paid to the City under the lease.

However, after several years of planning the UN Consolidation Building Project did not take place because New York State never passed legislation to grant the approval, which included the demapping of the Robert Moses Park, a City park, the only site on which the UN Consolidation Building was proposed to be built. Consequently, in 2005, work on the proposed UN Consolidation Building Project was suspended, and the majority of the planning costs incurred in connection with the UN Consolidation Building Project were written off. Specifically, from 2003 to 2005, UNDC incurred approximately \$4,041,973 in planning costs in connection with the suspended Consolidation Building Project. In addition, the UNDC Board of Directors approved the Project's expenses which authorized UNDC to pay such planning costs from the consolidated surplus reserve. Therefore, after deducting the amount of \$4,041,973 in planning costs, UNDC should remit to the City the total of \$12,012,050 in additional rent it retained, as illustrated in the following Table I.

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<sup>4</sup> At our exit conference held on March 31, 2008, UNDC submitted a Board Resolution to release \$6,673,403 representing half of the consolidated surplus reserve and pay the City 90 percent of the amount, or \$6,006,063.

**Table I**  
Additional Rent Due the City  
From Consolidated Surplus Reserved by UNDC

	2003	2004	2005	2006	2007	Total
<b>Net Revenues in Excess of Debt Service Requirement and Renewal and Replacement Reserve</b>	<b>\$5,259,042</b>	<b>\$6,922,262</b>	<b>\$2,939,834</b>	<b>\$4,493,700</b>	<b>\$5,708,732</b>	<b>\$25,323,570</b>
Consolidation Building Planning Costs	(\$1,152,333)	(\$2,175,949)	(\$713,691)	-	-	(\$4,041,973)
Additional Reserve for the Renewal and Replacement Fund *	-	-	(\$2,226,143)	-	-	(\$2,226,143)
<b>Total Consolidated Surplus</b>	<b>\$4,106,709</b>	<b>\$4,746,313</b>	<b>-</b>	<b>\$4,493,700</b>	<b>\$5,708,732</b>	<b>\$19,055,454</b>
Reserved for Planning Costs of UN Consolidated Building Project and/or to Assist the United Nations Capital Master Plan **	-	-	-	-	(\$5,708,732)	(\$5,708,732)
<b>Total Consolidated Surplus - Reserved for the UN Consolidation Building Project</b>	<b>\$4,106,709</b>	<b>\$4,746,313</b>	<b>-</b>	<b>\$4,493,700</b>	<b>-</b>	<b>\$13,346,722</b>
<b>90% Due the City</b>	<b>\$3,696,038</b>	<b>\$4,271,682</b>	<b>-</b>	<b>\$4,044,330</b>	<b>-</b>	<b>\$12,012,050</b>

\* In 2005 and 2007, the UNDC Board of Directors voted to reserve the surplus of \$2,226,143 for additional reserve of the Renewal and Replacement (R&R) fund, and \$5,708,732 to for planning costs of the UN Consolidation Building Project and/or the UN Capital Master Plan. As a result, no additional rent payment to the City was made for 2005 and 2007.

\*\* At the exit conference, on March 31, 2008, UNDC provided us with its 2007 certified financial statements that reported a consolidated surplus amount of \$5,708,732. UNDC officials stated that the 2007 consolidated surplus was reserved to assist the United Nations in relation to its Capital Master Plan and related needs. As a result, no additional rent payment to the City was assessed for 2007. We did not audit the UNDC consolidated surplus amount reported for the year ended December 31, 2007. Our review was limited to determining the amount of consolidated surplus reported and whether payments were made to the City accordingly, for this period.

As a result of the findings of our preliminary draft audit report, on April 2, 2008, UNDC paid EDC \$6,006,063 in additional rent due the City representing 90% of the \$6,673,403 in reserve released by the UNDC Board of Directors.

**UNDC Response:** “We do not agree with the conclusion in the Draft Audit Report that Additional Rent in any amount is due to the City under the City Leases. The City Leases expressly permit UNDC to set aside reserves for corporate purposes such as the UN Consolidation Building Project (‘the Project’) and assisting the United Nations with its Capital Master Plan and related needs. All reserves must be approved by our Board of Directors. All reserves referred to in the Draft Audit Report were set aside in strict compliance with the express provisions of the City Leases. Such amounts are not required to be paid to the City as Additional Rent because once reserved, they are no longer part of the ‘Consolidated Surplus’ as defined in the City Leases.”

**Auditor Comment:** First, although UNDC is permitted to set aside reserves, according to paragraph 7. §01(j)(2) of the Fifth Amendment to the 1972 and 1981 lease agreements, such reserves are limited to expenses that are reasonable and necessary. As provided in the Fifth Amendment, this consolidated surplus reserve was set aside for the period commencing with the UNDC fiscal year on January 1, 2003, and ending with the UNDC fiscal year in which the Consolidation Building Project completion date occurred. However, as confirmed during our review and meetings with UNDC, as of December 31, 2005, the Consolidation Building Project was suspended and inactive. Therefore, since the Project, which was the reason for setting up this consolidated reserve, was not a viable possibility at the time, it was unreasonable and unnecessary for UNDC to continue to hold its consolidated surplus and not remit payments of additional rent to the City, as required in the lease agreements. As a result, we see no basis in the lease agreements or otherwise for UNDC to hold payments for additional rent due the City.

Second, Article IV §4.01 (f) of the amended 1981 lease agreement establishes that the amounts payable by UNDC under §4.01 of the 1981 amended lease agreement shall be reviewed by the City and UNDC from time to time, at the request of either party. As noted in this audit, UNDC did not pay additional rent to the City after 2003. Prior to this audit, there was no apparent attempt by either party—the City or UNDC—to review the status of the additional rent payable to the City.

Further, the UNDC’s own actions contradict its response: the UNDC Board of Directors approved the resolution to pay \$6,006,063 in additional rent on March 28, 2008, just before our March 31, 2008 exit conference with UNDC officials, who then told us of the Board’s action. That resolution clearly indicated agreement with our recommendation, which was contained in the preliminary draft audit report, submitted to UNDC officials on March 14, 2008, the subject of the exit conference.

### **Subsequent Events**

At the exit conference, held on March 31, 2008, UNDC submitted a copy of an approved resolution of its Board of Directors at the meeting held on March 28, 2008. In the Resolution, the UNDC Board of Directors voted to address the following issues:

- The Board of Directors approved the release of \$6,673,403 of the total reserve of \$13,346,805 held by UNDC, and payment of \$6,600,063 by UNDC to the City, constituting 90 percent of such release amount as additional rent under Phase II of the lease. According to the Board-approved resolution, UNDC will continue to reserve the other half of the consolidated surplus reserve, or \$6,673,403, for purposes related to the UN Consolidation Building Project and the United Nations Capital Master Plan.
- The Board of Directors approved to reserve the 2007 consolidated surplus of \$5,708,732, as reported in the UNDC certified financial statements, to be used to pay planning costs for the UN Consolidation Building Project/or to assist the United Nations in relation to its Capital Master Plan and related needs.
- The Board of Directors also voted that UNDC continue to seek, in collaboration with the City administration, approval by the New York State Legislature of the UN Consolidation Project legislation, and if that legislation is approved, to resume planning for the UN Consolidation Building Project. As noted, UNDC suspended work on the UN Consolidation Building Project in 2005 because the legislation needed for UNDC to proceed with the project was not approved by the New York State Legislature. The minutes of the September 2006 Board meeting in reference to the status of the UN Consolidation Building Project, stated that “the construction of a building by the Corporation for swing space in connection with the UN Capital Master Plan is no longer a realistic option for the UN because the New York State legislature failed to approve legislation required to begin the project.”

## RECOMMENDATIONS

We recommend that UNDC:

1. Pay the City a total of \$12,012,050 in additional rent due as assessed by this audit. The UNDC Board in its March 28, 2008 meeting resolved to release \$6,006,063 in additional rent. Should this amount be remitted to the City, only a balance of \$6,005,987 will be due the City, as assessed by this audit.

**UNDC Response:** “We do not agree with the conclusion in the Draft Audit Report that Additional Rent in any amount is due to the City under the City Leases. The City Leases expressly permit UNDC to set aside reserves for corporate purposes such as the UN Consolidation Building Project (‘the Project’) and assisting the United Nations with its Capital Master Plan and related needs. All reserves must be approved by our Board of Directors. All reserves referred to in the Draft Audit Report were set aside in strict compliance with expressed provisions of the City Leases. If reserves are released, such amounts only then become part of the Consolidated Surplus, 90% of which is then payable to the City annually under the City Leases. On March 26, 2008, the Board of Directors released \$6,673,403 in reserves and 90% of such amount, or \$6,006,063, was paid to the City on April 2, 2008 as Additional Rent.”

2. Maintain an updated status of the progress of the UN Consolidation Building Project.

**UNDC Response:** UNDC officials stated that although the UN Consolidation Building Project could no longer meet the UN’s needs for “swing space,” it in no way reflected a further conclusion that the project would not proceed to meet other UN needs. UNDC officials also expressed their continued commitment to the project, in conjunction with the City administration.

We recommend that EDC:

3. Ensure that UNDC pays the \$6,006,063 in additional rent due the City.

**EDC Response:** “EDC received the payment of \$6,006,063 in additional rent due on April 2, 2008.”

4. Ensure that UNDC pays the balance in the consolidated surplus reserve of \$12,012,050 if the UN Consolidation Building Project is not built.

**EDC Response:** “EDC agrees. If the UN Consolidation Building Project is no longer expected to proceed, EDC will consult with UNDC to determine whether all or part of the balance in the consolidated surplus reserve is needed for the purposes for which the reserve was created as permitted under the lease with the City. If any portion of that balance is not needed for permitted purposes under the lease, EDC will require 90% of

that portion be paid to the City as Additional Rent.”

5. Monitor the progress related to the UN Consolidation Building Project.

***EDC Response:*** “EDC agrees. Please see attached memo from the Deputy Mayor for Economic Development as to the status of the UN Consolidation Building Project.”

United Nations  
Development Corporation

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10017-4403

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April 21, 2008

UNDC

Mr. John Graham  
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Executive Offices  
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New York, NY 10007-2341

**Re: Draft Audit Report on the Compliance of the United Nations  
Development Corporation ("UNDC") with its Lease Agreement  
January 1, 2005-December 31, 2006 FN07-106A, Dated April 8, 2008**

Dear Mr. Graham:

We appreciate the opportunity to review and comment on the Draft Audit Report referred to above. We welcome the conclusions of the Draft Audit Report that UNDC complied with the provisions of its lease agreements (the "City Leases") with the City of New York (the "City") and maintained adequate internal controls over the recording and reporting of revenue and expenses. The Draft Audit Report notes that UNDC reported its revenue and expenses accurately, calculated the proper amounts of Base Rent and net annual rent due the City and submitted its quarterly payments on time. In fact, over the past fifteen years UNDC has paid to the City under the City Leases more than \$170 million in Additional Rent (in addition to Base Rent, net annual rent and real estate taxes).

Set forth below are our responses to the recommendations in the Draft Audit Report that were directed to UNDC. We understand that the New York City Economic Development Corporation ("EDC") concurs with our responses and will respond separately to the recommendations in the Draft Audit Report directed to EDC.



## RESPONSES TO RECOMMENDATIONS

### RECOMMENDATION 1

#### Additional Rent under City Leases

We do not agree with the conclusion in the Draft Audit Report that Additional Rent in any amount is due to the City under the City Leases. The City Leases expressly permit UNDC to set aside reserves for corporate purposes such as the UN Consolidation Building Project (the "Project") and assisting the United Nations with its Capital Master Plan and related needs. All reserves must be approved by our Board of Directors, including the Chairman of the Board, who is appointed by the Mayor, and the *ex officio* Board members who hold City office, as well as the Corporation's Chief Executive Officer who is appointed by the Corporation's Chairman.

All reserves referred to in the Draft Audit Report were set aside in strict compliance with the express provisions of the City Leases. Such amounts are not required to be paid to the City as Additional Rent because once reserved, they are no longer part of "Consolidated Surplus" as defined in the City Leases. Reserved amounts may from time to time be released or reallocated for another corporate purpose as determined by the Board of Directors. If reserves are released, such amounts only then become part of Consolidated Surplus, 90% of which is then payable to the City annually under the City Leases. On March 26, 2008, the Board of Directors released \$6,673,403 in reserves and 90% of such amount, or \$6,006,063, was paid to the City on April 2, 2008 as Additional Rent.

#### Status of UN Consolidation Building Project

The Draft Audit Report concludes that UNDC is required to pay to the City \$12,012,050 (less the \$6,006,063 already paid to the City) as Additional Rent. In order to support this conclusion, the Draft Audit Report notes that in 2005, work on the Project was suspended and refers to a statement in the minutes of a September 2006 meeting of the Board of Directors that "the construction of a building by the Corporation for *swing space* (emphasis added) in connection with the UN Capital Master Plan is no longer a realistic option for the UN because the New York State legislature failed to approve legislation required to begin the project." The quoted statement recognized only that the Project could no longer meet the UN's need for "*swing space*;" it in no way reflected a further conclusion that the Project would not proceed to meet other UN needs.

In relying on the statement quoted above, the Draft Audit Report fails to recognize and consider significant facts with respect to the Project which may not properly be ignored. These critical and controlling considerations include the United Nations' continued need for and interest in the Project not as "swing space" but to meet the UN's ongoing space requirements in a cost efficient and highly secure manner, including the relocation and consolidation of employees from UN offices located

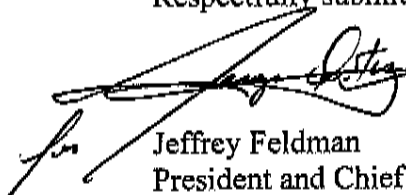
throughout Manhattan. They also include the commitment of the City administration to pursue obtaining the needed New York State legislation for the Project as most recently evidenced by the letter of April 4, 2008, a copy of which is attached, from the City's Deputy Mayor for Economic Development. The Deputy Mayor's letter reaffirms the City's continued interest in pursuing the Project because, in the City's view, it has the potential to provide significant value to the United Nations, the local community and the City. UNDC likewise is committed to the Project to relocate and consolidate employees from United Nations offices located throughout Manhattan.

Consequently, the premise for the conclusion in the Draft Audit Report that UNDC owes Additional Rent to the City is incorrect and contrary to the facts. The conclusion should properly be withdrawn or otherwise modified.

**RECOMMENDATION 2**

As stated above, UNDC and the City are committed to pursuing the Project and will work together in seeking its implementation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey Feldman", is written over a horizontal line. To the left of the signature, there is a small, stylized mark that looks like "for".

Jeffrey Feldman  
President and Chief Executive Officer

Attachment



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N.Y. 10007

ROBERT C. LIEBER  
DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT

April 4, 2008

Jeff Feldman  
President and CEO  
United Nations Development Corporation  
2 UN Plaza  
27th Floor  
New York, NY 10017

Dear Jeff:

This letter is to reaffirm the City's continued interest in pursuing the United Nations Consolidation Building project. We believe this project has the potential to provide significant value to the United Nations, and could provide significant benefits to the local community.

For that reason this project remains on the City's legislative agenda, though we look forward to engaging the United Nations, local elected officials, and the community in a dialogue about it prior to moving forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert C. Lieber".



New York City  
Economic Development  
Corporation

110 William Street  
New York, NY 10038  
212.619.5000

[www.nycedc.com](http://www.nycedc.com)

April 21, 2008

John Graham, Deputy Comptroller  
Audits, Accountancy & Contracts  
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 Compliance of the United Nations  
Development Corporation with Its Lease Agreement  
January 1, 2005 – December 31, 2006  
FN07-106A

Dear Mr. Graham:

Below is our response to the above referenced draft audit report:

Recommendation 3: Ensure that UNDC pays \$6,006,063 in additional rent due the City.

***EDC's Response: EDC received the payment of \$6,006,063 on April 2, 2008.***

Recommendation 4: Ensure that UNDC pays the balance in the consolidated surplus of \$12,012,050 if the UN Consolidation Building Project is not built.

***EDC's Response: EDC agrees. If the UN Consolidation Building Project is no longer expected to proceed, EDC will consult with UNDC to determine whether all or part of the balance in the consolidated surplus reserve is needed for the purposes for which the reserve was created as permitted under the lease with the City. If any portion of that balance is not needed for permitted purposes under the lease, EDC will require 90% of that portion be paid to the City as Additional Rent.***

Recommendation 5: Monitor the progress related to the UN Consolidation Building Project.

***EDC's Response: EDC agrees. Please see attached memo from the Deputy Mayor for Economic Development as to the status of the UN Consolidation Building Project.***

Thank you for the opportunity to respond to the recommendations in the audit report.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Malin".

Christopher Malin  
Comptroller

cc: Seth Pinsky  
Jason Wright  
Steve Lazarus  
Hope Mallari