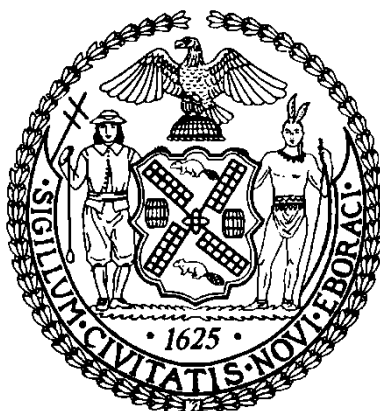


**CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER**

**John C. Liu  
COMPTROLLER**

**FINANCIAL AUDIT  
Tina Kim  
Deputy Comptroller for Audit**



**Audit Report on NYC & Company, Inc.'s  
Compliance with Its City Consulting,  
Marketing, and Licensing Contract**

*FN11-058A*

**June 30, 2011**

<http://comptroller.nyc.gov>



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

John C. Liu  
COMPTROLLER

June 30, 2011

**To the Residents of the City of New York:**

My office has audited NYC & Company, Inc.'s (NYCC) compliance with its City consulting, marketing and licensing contract. The contract requires NYCC to undertake a number of activities designed to enhance the City's ability to maintain and develop the City as a tourism destination, convention site, and to generate revenue and promote economic development through the use of municipally-owned or controlled marketing and licensing resources. We audit entities such as these to ensure that they comply with the terms of their contract, properly report their revenue and expenses, and adhere to established policies and procedures.

The audit found that NYCC did not include at least \$3,139,212 in its calculation of the marketing and licensing fees it reported to the City and as a result, it owes the City at least \$1,771,192 in additional marketing and licensing fees. Specifically, our audit found that NYCC misclassified \$1,602,017 in net sales of marketing and sponsorship agreements and \$1,537,195 in net advertising revenue it received in connection with the City's banner program, and consequently excluded these amounts from its calculation of payment to the City for Fiscal Year 2009. In addition, we were not able to obtain supporting documentation that would allow us to ascertain whether \$10,133,975 in revenue, \$16,378,970 in expenses included under "Other Funds" were appropriate and accurately reported to the City. However, we found that NYCC complied with other requirements of its contract (i.e., submitted its reports to the City in a timely manner and maintained the required insurance).

The audit recommended that NYCC pay the City \$1,771,192 in additional fees due from exclusion of marketing and licensing revenue, ensure that only salary expenses directly related to specific marketing activities are allocated to such activity, and ensure that marketing and licensing project budgets are submitted, reviewed, and approved. The audit also recommended that Department of Small Business Services (DSBS) or the Mayor's Office ensure that NYCC pay the \$1,771,192 in additional Marketing fees, and comply with the report's other recommendations.

The results of the audit have been discussed with NYCC & DSBS officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink that reads "John C. Liu".

John C. Liu

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

**Audit Report on NYC & Company, Inc.’s  
Compliance with Its City Consulting,  
Marketing, and Licensing Contract**

**FN11-058A**

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**AUDIT REPORT IN BRIEF**

On February 13, 2007, NYC & Company, Inc. (NYCC), a not-for-profit corporation, entered into a contract with the City of New York for the provision of consulting, marketing, and licensing services. The contract requires NYCC to undertake a number of activities designed to enhance the City’s ability to maintain and develop the City as a tourism destination, convention site, and location for big events, and to generate revenue and promote economic development through the use of municipally-owned or controlled marketing and licensing resources. In consideration for the performance of the scope of services, for Fiscal Year 2009, the City paid NYCC \$19,556,927 in contract funds. NYCC is also permitted to conduct activities that would leverage public and private sector member dollars to supplement funding for existing programs. The contract, which will terminate on June 30, 2011, is monitored by the Department of Small Business Services (DSBS), and the scope of services performed is subject to the review and approval of the Deputy Mayor for Economic Development.

The audit determined whether NYCC accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with other requirements of its contract.

**Audit Findings and Conclusions**

NYCC did not include at least \$3,139,212 in its calculation of the marketing and licensing fees it reported to the City. As a result, it owes the City at least \$1,771,192 in additional marketing and licensing fees as detailed in the Appendix. Specifically, our audit found that NYCC did not include \$1,602,017 in net sales of marketing and sponsorship agreements and \$1,537,195 in net advertising revenue it received from a sub-license agreement in connection with the City’s banner program. Both amounts were classified as “Other Funds” and, therefore, excluded from NYCC’s calculation of its payment to the City for Fiscal Year 2009. In addition, as discussed in the scope limitation section of this report, we were not able to obtain the supporting documentation that would allow us to ascertain whether \$10,133,975 in revenue, included under “Other Funds,” was accurately reported to the City and whether \$16,378,970 in expenses, also included under “Other Funds,” were appropriate and accurately reported to the City. As a result, we were not able to determine whether additional fees may be due the City.

Furthermore, as discussed in the Other Issues section of this report, we noted that NYCC did not report to the City the activities of the in-kind media resources it received in connection with its contract. We also found that NYCC did not have adequate disclosure of its methodology for allocating the revenue and expenses of its programs in the financial reports it submits to the City. Nevertheless, our review found that NYCC complied with other requirements of its contract (i.e., submitted its reports to the City in a timely manner and maintained the required insurance).

### **Audit Recommendations**

We recommend that NYCC:

1. Pay the City \$1,771,192 in additional fees due in connection with its marketing activities.
2. Include all marketing activity related revenue in the calculation of marketing and licensing fees due the City as required in Section 2.02 of the contract.
3. Ensure that only salary expenses directly related to the marketing activities are allocated to such activity.
4. Ensure that marketing and licensing project budgets are submitted, reviewed, and approved by the Deputy Mayor as required by the agreement.

We recommend that DSBS or the Mayor's Office:

5. Ensure that NYCC pay the \$1,771,192 in additional marketing fees recommended in this report and comply with the audit's other recommendations.
6. Ensure NYCC clearly disclose its methodology for allocating revenue and expenses among its program funds.
7. Require that NYCC reports to the City the in-kind media contribution activities and its basis for valuation.
8. Require that NYCC provides adequate information and disclosure regarding the classification of its revenue and expenses in the financial reports it submits to the City.
9. Ensure that the requirements for recommendations 6 through 8 are clearly articulated in future contract negotiations.

### **Agency Responses**

In NYCC's response received on June 16, 2011, NYCC officials generally disagreed with the audit report's findings and recommendations and stated that "While we appreciate the work of the audit team, we do not as indicated concur with the Draft Audit's findings, conclusions and recommendations." DSBS officials also stated that "We must respectfully disagree with the draft audit's findings, conclusions and recommendations."

## INTRODUCTION

### Background

On February 13, 2007, NYC & Company, Inc. (NYCC), a not-for-profit corporation, entered into a contract with the City of New York for the provision of consulting, marketing, and licensing services. The organization, formerly known as New York Convention & Visitors Bureau, Inc., changed its name to NYCC in December 1999. With the signing of the 2007 contract, the City integrated the functions of three existing not-for-profit City-affiliates-- NYCC, NYC Big Events, and NYC Marketing-- to create a single entity that would assist the City in competing for big events, tourists, and to develop the ability to showcase the City's world-class assets. As a result, NYCC assumed the scope of services previously provided by NYC Marketing and NYC Big Events; these entities were dissolved in 2006. The contract, which will terminate on June 30, 2011, is monitored by the Department of Small Business Services (DSBS), and the scope of services performed is subject to the review and approval of the Deputy Mayor for Economic Development.

The contract requires NYCC to undertake a number of activities designed to enhance the City's ability to maintain and develop the City as a tourism destination, convention site, and location for big events, and to generate revenue and promote economic development through the use of municipally-owned or controlled marketing and licensing resources.

In consideration for the performance of the scope of services, for Fiscal Year 2009, the City paid NYCC \$19,556,927 in contract funds. NYCC is also permitted to conduct activities that would leverage public and private sector member dollars to supplement funding for existing programs. Currently, nearly 1,900 organizations are members of NYCC, including museums, hotels, restaurants, retail stores, theaters, tour organizations, and attractions. Furthermore, NYCC produces and plans some of its own events and programming, which promote different aspects of New York City to visitors and residents.

Regarding the marketing and licensing program, the City allows NYCC to retain the first \$1 million of the net marketing and licensing revenues<sup>1</sup>, remit to the City the second million dollars of such revenue, and retain 50 percent of all such revenue above the second million dollars as further compensation for the performance of the scope of services under its contract.

Other provisions of the contract require NYCC to submit various annual and quarterly reports to support its performance of scope of services to the City and maintain a minimum of \$5 million of liability insurance, \$1 million in automobile liability insurance, and \$1 million in workers compensation and employers' liability insurance, naming the City and Deputy Mayor as additional insured parties. For the fiscal year ended June 30, 2009, NYCC reported revenue and expenses to the City as presented in Table I:

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<sup>1</sup> Net marketing and licensing revenues shall mean gross marketing/licensing revenues derived from a given marketing/licensing project minus the direct expenses for the marketing/licensing project as approved by the Deputy Mayor for Economic Development, pursuant to the requirements of the agreement.

**Table I**  
 Summary of NYC & Company, Inc. Revenue & Expenses  
 Reported to the City in Its Fiscal Year 2009 Financial Report

Description	City Contract Funds	Marketing/ Licensing Programs	Other Funds	Total Reported
Total Revenue	\$ 19,556,927	\$ 5,257,454	\$ 14,291,258	\$ 39,105,639
Expenses				
Personnel	13,710,032	981,317	2,038,574	16,729,923
Sales & Marketing	4,123,841	2,679,309	11,589,420	18,392,570
Administrative	2,143,914		2,750,977	4,894,891
Capital Expenditure	1,224,114		151,517	1,375,631
Total Expenses	\$ 21,201,901	\$ 3,660,626	\$ 16,530,488	\$ 41,393,015
Total Revenue Less Expenses	\$ (1,644,974)	\$ 1,596,828	\$ (2,239,230)	\$ (2,287,376)
Marketing & Licensing Fees Paid to the City		\$ 596,829		

In addition, for calendar years 2008 and 2009, NYCC's certified financial statements reported in-kind media contributions valued at \$47,005,940 and \$38,080,279, respectively. The majority of the in-kind contributions represent resources such as bus shelters made available to NYCC under the agreement between the City and CEMUSA, Inc. These amounts were not included in NYCC's reports to the City.

**Objectives**

The objectives of this audit were to determine whether NYCC accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with other requirements of its contract (i.e., submitted its required reports in a timely manner and maintained the required insurance).

**Scope and Methodology Statement**

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 except for the scope limitation imposed by NYCC, as discussed in the scope limitation section of this report. This limitation prevented us from obtaining sufficient and appropriate evidence to determine whether NYCC properly reported the revenue and expenses it classified as "Other Funds" in its financial reports to the City and whether any additional fees would be due the City.



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 was Fiscal Year 2009 (July 1, 2008, through June 30, 2009). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted and the disclosure of the Scope Limitation.

### **Discussion of Audit Results**

The matters covered in this report were discussed with NYCC during and at the conclusion of this audit. A preliminary draft report was sent to NYCC, DSBS, and Mayor's Office officials and discussed at an exit conference held on June 2, 2011. On June 3, 2011, we submitted a draft report to NYCC, DSBS and Mayor's Office officials with a request for comments.

We received written responses from NYCC and DSBS on June 16, 2011. In their response, NYCC officials generally disagreed with the audit report's findings and recommendations and stated that "While we appreciate the work of the audit team, we do not as indicated concur with the Draft Audit's findings, conclusions and recommendations." DSBS officials also stated that "We must respectfully disagree with the draft audit's findings, conclusions and recommendations."

The full texts of the written comments from NYCC and DSBS are included as addenda to this report.

## FINDINGS AND RECOMMENDATIONS

NYCC did not include at least \$3,139,212 in its calculation of the marketing and licensing fees it reported to the City. As a result, it owes the City at least \$1,771,192 in additional marketing and licensing fees as detailed in the Appendix. Specifically, our audit found that NYCC did not include \$1,602,017 in net sales of marketing and sponsorship agreements, and \$1,537,195 in net advertising revenue it received from a sub-license agreement in connection with the City's banner program. Both amounts were classified as "Other Funds" and excluded from NYCC's calculation of its payment to the City for Fiscal Year 2009.

In addition, as discussed in the scope limitation section of this report, we were not able to obtain the supporting documentation that would allow us to ascertain whether \$10,133,975 in revenue, included under "Other Funds," was accurately reported to the City and whether \$16,378,970 in expenses, also included under "Other Funds," were appropriate and accurately reported to the City. As a result, we were not able to determine whether additional fees may be due the City.

Furthermore, as discussed in the Other Issues section of this report, we noted that NYCC did not report to the City the activities of the in-kind media resources it received in connection with its contract. We also found that NYCC did not have adequate disclosure of its methodology for allocating the revenue and expenses of its programs in the financial reports it submits to the City.

Nevertheless, our review found that NYCC complied with other requirements of its contract (i.e., submitted its reports to the City in a timely manner and maintained the required insurance).

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

### **NYCC Owes the City \$1,771,192 in Marketing Fees**

NYCC did not include at least \$3,139,212 in its calculation of the marketing and licensing fees it reported to the City. As a result, it owes the City \$1,771,192 in additional marketing and licensing fees. The misclassified revenue consists of \$1,602,017 in net marketing and sponsorship sales, and \$1,537,195 in net advertising revenue NYCC received from a sub-license agreement in connection with the City's banner program. In both revenue scenarios, NYCC misclassified the revenue as "Other Funds" which excluded the amounts from the calculation of the marketing and licensing fees payment to the City.

## **NYCC Did Not Include \$1,602,017 in Net Marketing Sales**

As the City's marketing and licensing consultant, NYCC has the ability to provide a variety of marketing and licensing services.<sup>2</sup> Our review of NYCC's general ledger detail, the marketing and sponsorship agreements between NYCC and private parties, and the quarterly financial reports NYCC submitted to the City noted that NYCC generated and recorded a total of \$1,854,425 in marketing revenue which was discretionarily classified as "Other Funds." Our review also noted that NYCC allocated \$252,408 as marketing sales expense to this activity. The net of these two items represents \$1,602,017 of additional revenue that NYCC should report under marketing/licensing program revenue and pay a related fee to the City.

Based on the contract, NYCC is required to pay the City a portion of its net marketing and licensing revenue as follows: "Consultant may retain 50 percent of the 'Net Marketing/Licensing Revenue'...as compensation under the Contract...provided that Consultant shall retain the first one million dollars of such revenue, shall remit to the City the second one million dollars of such revenue, and shall retain 50 percent of all such revenue above the second million dollars."

Our review of the individual marketing and sponsorship sales agreements also noted that the revenue derived from the agreements are directly related to the use of either (a) NYCC's programs developed using City funds or other City resources, and (b) in-kind advertising media such as bus shelters, kiosks, or banners derived from City agreements with third parties. In all cases, NYCC is using City marketing resources in exchange for a fee. Therefore, all the revenue generated by entering into these agreements should be reported and shared with the City in accordance with the methodology established in Section 2.02 of the City contract. As a result, NYCC should properly classify the additional \$1,602,017 in net marketing sales and pay the related fees to the City as calculated in the Appendix.

**NYCC Response:** NYCC disagrees. "The \$1,602,017 represents NYC & Company's private marketing and sponsorship sales which are not subject to revenue sharing with the City. Only "Marketing/Licensing Services" as defined by our contract are subject to revenue sharing with the City. These services are limited to activities designed "to promote and encourage New York City's growth, economic development, and tourism, through the use municipally owned marketing and licensing resources." Therefore, NYC & Company's marketing activities are subject to revenue sharing with the City only when such City-owned property, as described in Section 2.02 of the contract, is a primary focus of the particular activity...."

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<sup>2</sup> Section 2.02 of the Contract defines marketing and licensing services to include entering into sponsorship arrangements associating the City with products and/or services; contracting for the use of City-owned or City-controlled marketing assets (for example, advertising panels on street furniture where the use of such panels is controlled by the City; entering into sponsorship or co-branding arrangements with non-City entities in support of or in connection with events occurring at City facilities or otherwise being supported, sponsored, or facilitated by the City; all for the purpose of assuring that the use of such resources is conducted in a manner consistent with the City's interest, including the generation of City revenue.

“...The contract does not address our use of City-owned media in NYC & Company's private programs, that is, in situations where the focus of the activity is not the promotion of the City through City resources....”

“...NYC & Company marketing programs, like *NYC Restaurant Week* and *Just Ask the Locals*, feature NYC & Company-owned assets as the focus of the sponsorship agreements, including NYC & Company trademarks, access to the NYC & Company membership base, inclusion on nycgo.com, advertising sales in NYC & Company publications, among other non-City assets. These programs, such as *NYC Restaurant Week*, are long-running NYC & Company programs that existed before the current contract. The intention of the current contract was to engage NYC & Company to provide additional services for additional compensation - historically NYC & Company had performed only tourism, and not marketing services - not for the City to share in preexisting and private NYC & Company revenue streams. As such, there is no basis for converting those historically private activities into contractual marketing services.”

**Auditor Comment:** NYCC’s attempt to shortchange the City by reallocating certain marketing and sponsorship agreement sales to “other funds” contravenes the terms of the contract and NYCC’s mission statement. It is our position that the scope of NYCC’s services as the City’s marketing and licensing consultant cover a broad range of activities, which generate revenue for the City. Thus, according to Section 2.02 of the contract, NYCC is required to undertake a number of activities designed to promote and encourage New York City’s growth, economic development, and tourism, through the use of municipally-owned marketing and licensing resources in a manner consistent with the City’s interest including the generation of City revenue.

Given the wide-ranging mission and responsibilities of NYCC, we assert that the improperly excluded revenues identified in the audit were derived from marketing agreements whose purpose was to utilize City resources to promote and encourage the City’s economic development and tourism and the generation of revenue. Indeed, NYCC’s belief that it can exclude certain revenue from programs such as NYC Restaurant Week lacks merit. We note that NYCC’s 2009 Aggregated Marketing Plan highlights Restaurant Week as an integral part of its overall strategy to promote the City’s economic interests as “one of the City’s most celebrated and anticipated events” that “is designed to support the restaurant community, especially during difficult economic times.”

We further note that NYCC’s association with the City enabled it to obtain significant financial benefits by promoting marketing agreements that utilize resources, products, and services that are owned or controlled by the City. Accordingly, NYCC should have included \$1.6 million in “other” revenues as marketing/licensing revenues, for which licensing fees are payable to the City.

## **NYCC Did Not Include \$1,537,195 in Net Marketing Revenues from a Banner Advertising Sub-Licensee**

As a City not-for-profit affiliate, NYCC has the ability to access the City's banner program<sup>3</sup>. In addition, as stated in the New York City Department of Transportation (DOT)'s banner program guidelines, as the official marketing arm of New York City, NYCC is allowed to install banners on street lights/lampposts for any marketing campaign provided the campaign is spread throughout the five boroughs (i.e., Citywide Campaign). Given the level of accessibility to the program granted to NYCC, in May 2004, NYCC entered into an agreement with a third party vendor for the exclusive right to manage all aspects of the Banner Program; use NYCC's trademarks in connection with such banner program; sell advertising space; and ensure that NYCC received revenue from the sale of advertising space on banners used in the banner program. These rights are assigned to NYCC through DOT under DOT's Highway Rules.

Under the agreement, NYCC requires its vendor to pay a fee to NYCC equal to a percentage of net advertising revenues<sup>4</sup>. For Fiscal Year 2009, the vendor paid \$1,537,195 of net advertising revenue to NYCC. However, NYCC did not include these revenues in the calculation of its marketing and licensing fee payment to the City. Instead, it classified banner income as "other income" under the "Other Funds" revenue in its financial reports to the City. According to Section 2.02 (C) of the City contract, marketing/licensing revenue includes the "Contracting for the use of City-owned or City-controlled marketing assets (for example, advertising panels on street furniture where use of such panels is controlled by the City)...." Under DOT's Street Design Manual, street furniture is a collective term for objects and pieces of equipment installed on streets and roads for various purposes, including bicycle racks, bicycle shelters, bus stop shelters, benches, phone booths, newsstands, streetlamps, traffic lights, traffic signs, public lavatories, and waste receptacles. Because of NYCC's role as the official marketing representative of the City, DOT grants NYCC the right to access an unlimited number of banners citywide unlike other entities whose banner access and jurisdiction is limited. Therefore, NYCC's right to sub-license its banner to sell advertising revenue cannot be detached from the scope of services under the City contract. As a result, we firmly maintain that NYCC should reclassify \$1,537,195 as additional marketing revenue and pay the respective fees to the City as calculated in the Appendix.

**NYCC Response:** NYCC disagrees. "With regard to the \$1,537,195 in sales from NYC & Company's street pole banner program, the authority for NYC & Company's banner program comes from DOT's highway rules (34 RCNY §2-01 et seq.), not NYC & Company's contract with the City...."

"...Accordingly, the \$1,537,195 in sales from NYC & Company's street pole banner program should not be included in the calculation of Marketing/Licensing Fees."

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<sup>3</sup> According to DOT's permits guidelines, the Commissioner may issue permits for the display of banners promoting cultural exhibits and events or public and historical events which foster tourism and/or enhance the image of the City. The Commissioner may issue permits to business improvement districts, local development corporations, or other eligible organizations.

<sup>4</sup> Net Advertising Revenues mean gross revenues received by its vendor from selling advertising space on and in connection with the banner program, less expenses incurred, such as the cost of banner design, installation, and all fees associated with it.

**Auditor Comment:** We disagree. According to Section 2.02 of the contract, NYCC is required to use its best efforts to assist the City and its agencies to achieve maximum benefits from marketing and licensing projects, and DOT is a City agency. Therefore, NYCC's claim that the banner program comes from DOT's highway rules (34 RCNY §2-01 et seq.) and, therefore, not governed by NYC & Company's contract with the City is unfounded. Furthermore, as previously stated, the scope of NYCC's contract services as the City's marketing and licensing consultant cover a broad range of activities. In fact, solicitations for NYCC banner advertising, states that "banners are a very effective sponsorship medium that are meant to promote the image of New York City in affiliation with a brand." Moreover, NYCC's role as the City's official marketing representative grants it the right to access an unlimited number of banners citywide unlike other entities whose banner access and jurisdiction is limited. Clearly, by soliciting banner advertising, NYCC is simply carrying out the intent of the marketing services as defined in the contract agreement. Therefore, revenue generated from the street pole banner program must be reported to the City.

### **Did Not Provide Documentation in Support of Its "Other Funds" Activities**

#### **Failed to Substantiate \$16,378,970 in Operating Expenses It Reported to the City**

As explained in the scope limitation section of this report, we were not able to obtain documentation that would allow us to ascertain whether a total of \$16,378,970 in reported operating expenses was appropriate and accurately reported to the City.

According to Article 3 of Exhibit B of the General Provisions of the Contract, "All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Comptroller by the New York City Charter and the Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto....Such audit may include examination and review and copying of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise."

Despite our various requests for the documentation in support of the \$16,378,970 in expenses NYCC classified under "Other Funds," NYCC firmly denied us access to these records. As stated in NYCC's written response to our request, "Your most recent request to audit all private funds is beyond the Scope of Services outlined in our contract and beyond the Comptroller's power as outlined in the City Charter." According to NYCC officials, those expenses were not covered by City contract funds and, therefore, should not be subject to review in connection with our audit. However, as noted in the above contract requirements, NYCC is required to provide the Comptroller's Office copies of the sources and application of all funds whether from the City, State, or Federal Government, or a private source. Additionally, the expenses classified in the "Other Fund" column of NYCC's reports to the City, as well as the detailed schedule NYCC attached to its IRS Form 990, are all expenses within the scope of services provided in the City contract. Therefore, and as noted above, NYCC's refusal to allow us to review information on the application of all its funds represents a significant departure from a key requirement of its City contract.

### **Did Not Provide Documentation in Support of \$10,133,975 in Revenue Received**

NYCC did not provide all the required documentation in support of the revenue it classified under “Other Funds” in its financial reports to the City. Of the \$14,291,258 in revenue NYCC classified as “Other Funds” in its financial reports to the City, we only obtained documentation in support of \$4,157,283. As noted previously, our review found that \$3,139,212 of the \$4,157,283 was inappropriately classified as “Other Funds.” Therefore, we question NYCC’s methodology for classifying revenue that was generated through the use of City resources as “private funds.” In addition, even for those funds that are directly generated from private sources, such as membership funds, the City contract requires that NYCC provide support details. Therefore, NYCC did not comply with this requirement of its City contract.

**NYCC Response:** NYCC disagrees. “Supporting documentation for the \$16,378,970 in Operating Expenses sought by the auditors for review relate to the private activities of NYC & Company which are outside the scope of the City contract. A review of all private expenditures paid for with private funds is beyond the purview of this audit...”

“NYC & Company's private funds relate solely to the organization's private tourism activities. These funds are separate from City Contract Funds and Marketing/Licensing Revenue as defined in the contract. Based on our discussion with the City's Law Department, these private revenues and expenditures are not subject to the audit activity of the Comptroller's office....”

“...NYC & Company did not provide documentation in support of \$10,133,975 in private revenue. This private revenue represents NYC & Company's private funds which are clearly, based on our reporting classifications, activities that would not be considered sponsorships or advertising activities, and therefore fall outside the scope of services in the contract....”

**Auditor Comment:** We disagree. In addition to the requirements of the contract, the review of the supporting documentation for the “Other Fund” category is important because, as presented, it is not a well-defined category and, therefore, may be open for misuse. NYCC’s contention that the revenues and expenses in question are outside the scope of the City contract is unsound. Contract Section 10.01 (A) (Maintenance of Records and Right to Audit and Inspect) states that “The City shall have the right at all times to inspect records of the Consultant related to its performance of the Scope of Services.” Section 10.01 (F) further states that “NYCC agrees that the Comptroller shall have audit authority over the Consultant coextensive with the Comptroller’s authority with respect to City agencies under 93(b) and (c) of the City Charter.” Article 3 of Exhibit B of the General Provisions of the Contract adds audit rights with regard to payments made under the contract and **documents related to the contract and the work thereunder [Emphasis Added]**. The \$19.6 million in revenue provided for by the City contract allows NYCC to generate these additional revenues to support its activities under the scope of service. Therefore, whether classified as City marketing or other, these revenues are generated through the use of City resources such as personnel salaries, office space, and other operational resources paid for by the City and the performance of the scope of

services defined by the contract. Specifically, City contract funds are used to pay \$14.7 million in personnel expenses related to employees whose efforts generate these revenues and expenses.

More than 73 percent of the revenues generated and 61 percent of the expenses incurred by NYCC are reported as “Other Funds.” As reported to the City, the operating activities of the Other Funds consist of \$14.3 million in revenue, \$16.5 million in operating expenses, and a net operating deficit of \$2.2 million. By not allowing access to these records for our review, as required by the agreement, we could not ascertain whether the revenue and expenses reported in the Other Funds category were accurate and appropriate.

### **Other Issues:**

#### **Value of In-Kind Media Contributions Not Included in the Reports Submitted to the City**

As the official marketing representative of New York City, NYCC received in-kind media in connection with the agreement between the City and CEMUSA Inc., the company that manages the City’s coordinated street furniture franchise through DOT. Specifically, for calendar years 2008 and 2009, NYCC reported total in-kind media values of \$47,005,940 and \$38,080,279, respectively, in its certified financial statements. The majority of the media was received in connection with the CEMUSA agreement and also represents part of CEMUSA’s alternative compensation to the City. These amounts were not included in NYCC’s financial reports to the City.

Given the significant value of these City-controlled media resources, NYCC should be required to provide better disclosure regarding the in-kind contributions it receives from CEMUSA. Specifically, NYCC should provide the City with a detailed reconciliation of the total balance of its in-kind media available, the amounts used during the period, and the methodology for establishing the assigned values. NYCC should also provide to the City the basis for arriving at those values, whether based on a rate card or the market conditions at the time. This would allow the City to accurately determine the amount of City-controlled resources NYCC uses in the performance of the scope of services under the contract and to assess the level of accountability in NYCC’s management of those in-kind media resources.

***NYCC Response:*** NYCC disagrees. “NYC & Company included in-kind media in its certified financial statements. It is not required under the contract to include in-kind media or its valuation method on any other reports to the City. These certified financial statements were provided to the auditors. The Plan of Expenditures under the contract and the Quarterly Financial Report contemplate the reporting of only cash revenue and expenditures.”

***Auditor Comment:*** We disagree. The contract requires NYCC to submit quarterly reports with respect to the performance of the scope of services including all revenues (Contract Funds, Marketing/Licensing program Revenues, and other non-City funds) recorded during the quarter. As discussed in this report, NYCC receives a significant value of in-kind media in connection with its contract with the City. It is also important to note



that the in-kind media made available to NYCC through its contract represents a form of alternative compensation to the City under the CEMUSA agreement. By adding a requirement of more detailed reporting of the media value NYCC received and used, the City would be able to determine the amount of City-controlled resources NYCC uses in the performance of the scope of services under the contract and to assess the level of accountability in the NYCC's management of those in-kind media resources.

### **Lack of Adequate Disclosure of NYCC's Methodology for the Allocation of Revenue and Expenses to the City**

Our review noted that NYCC did not have proper disclosure that would allow the City to determine the reasonableness of NYCC's basis for allocating revenue and expenses among the City Funds, Marketing/ Licensing Program, and Other Funds categories reported to the City. For example, as noted in our review:

- In its financial reports to the City, NYCC allocated a total of \$1,854,425 in marketing revenue to its "Other Funds" column. However, our review of the marketing and sponsorship sale agreements supporting the amounts found that the sales should have been allocated to the Marketing/Licensing Program category and not to the Other Fund category.
- NYCC reported a total of \$2,300,548 in revenue it identified as "other income" and allocated the total amount to the Other Funds category in its financial reports to the City. However, our review of the supporting documentation found that \$1,537,195 of the total \$2,300,548 reported in the Other Funds category, was derived from marketing activities in connection with the sale of City-controlled banner advertising. As a result, NYCC failed to include \$1,537,195 as Marketing/Licensing Program revenue to the City.
- We were not able to ascertain whether \$981,317 in salary expenses allocated to the Marketing/Licensing Program category were fully allocable to the program in accordance with the contractual scope of services. According to the contract, NYCC is allowed to deduct direct expenses associated with the Marketing and Licensing Projects.

Additionally, Section 2.03 (B) (1) of the contract stipulates that "Prior to submitting substantial staff time to otherwise undertaking a Marketing/Licensing Project...The Consultant shall submit to the City a description ... in detail satisfactory to the City, a performance schedule detailing...staff time to be spent on the Marketing and Licensing Project." However, these salary expenses were not separately identified and submitted to the City for approval as part of the required Plan of Expenditures for a Marketing/Licensing Project Budget. Consequently, we were not able to determine whether the salary expenses allocated to the Marketing/Licensing Programs were properly reviewed and approved by the Deputy Mayor before they were allocated to the corresponding individual Marketing/Licensing program activities.

As a result and, given the level of discretion exercised by NYCC in allocating its revenue and expenses in its financial reports to the City, we cannot be assured that the financial information reported would assist the City in determining: (a) whether NYCC reported all its revenue and paid

the related marketing and licensing fees due to the City, and (b) the expenses were related to the performance of the scope of services as required in the contract. Therefore, in the interest of transparency, NYCC should clearly disclose the allocation methodology of its revenue and expenses in its financial reports to the City. In addition, NYCC should submit detailed Marketing/Licensing Project Budgets to the Deputy Mayor for approval in accordance with Section 2.03 (B) (1) of the contract.

**NYCC Response:** NYCC disagrees. “Each Marketing/Licensing Program was undertaken in accordance with the contract and included an approval by the Deputy Mayor pursuant to Section 2.03(B). Such documentation was given to the auditors. Additionally, we provided the auditors all supporting documentation of the \$981,317 in salary expenses described in the audit findings including the accounting treatment and allocation method. Our treatment was consistent with the Deputy Mayor's approval and understanding; and was also consistent with historically how salary costs were allocated for these marketing programs which were assigned to NYC & Company from NYC Marketing as a result of the merger.”

**Auditor Comment:** We disagree. NYCC did not provide us with any evidence of individual Marketing/Licensing Budgets submitted or approved as required by Section 2.03(B). Therefore, while we were able to substantiate the \$981,317 salary information in the aggregate, NYCC was unable to directly allocate those salaries to any specific Marketing/Licensing projects. Section 6.01 (A) of the contract states that “the Consultant agrees to employ all personnel as may be required to perform the Scope of Services pursuant to the terms contained in the Plan of Expenditures. The Consultant agrees that it alone is responsible for its personnel's work, compensation, direction and conduct during the performance of the Contract. No Contract Funds in excess of \$150,000 shall be expended for any personnel hired by the Consultant to assist the Consultant in performing the Scope of Services.” The personnel expenses charged to Marketing/Licensing Programs were within the scope of services and, due to lack of required disclosure, unclear if it was related exclusively to the specific Marketing/Licensing programs reported in the financial reports to the City. NYCC could have utilized contract funds to pay these employees instead of reducing the Marketing/Licensing revenues which the City shares in without sufficient support. Therefore, we maintain our questioning the methodology for the reporting and allocation of these expenses to the Marketing/Licensing program.

As a result, NYCC should establish a more transparent methodology that would allow the City to determine whether the amounts reported as revenue and expenses are appropriate and accurately calculated in accordance with the contract.

## **Recommendations**

We recommend that NYCC:

1. Pay the City \$1,771,192 in additional fees due in connection with its marketing activities.

**NYCC Response:** NYCC disagrees. “NYC & Company respectfully disagrees with the contention that NYC & Company owes the City additional monies with regard to privately raised marketing revenue. The \$3,139,212 in net revenue referenced in the Draft Audit represents marketing revenue earned by NYC & Company via private marketing activities, which are beyond the scope of the contract and not subject to revenue sharing with the City.”

**Auditor Comment:** We maintain our position that these marketing activities meet the criteria defined as marketing/licensing services under the contract and, as such, should be reportable. Consequently, we continue to recommend that \$1,771,192 in fees related to these revenues be paid to the City.

2. Include all marketing activity related revenue in the calculation of marketing and licensing fees due the City as required in Section 2.02 of the contract.

**NYCC Response:** NYCC disagrees. “NYC & Company respectfully disagrees with the contention that all NYC & Company marketing revenue, regardless of whether it comes from activities under the contract’s scope of services or NYC & Company’s private activities should be included in the calculation of Marketing/Licensing Fees due the City....”

**Auditor Comment:** The marketing activities related to the revenue in question resulted from marketing programs which meet the criteria set forth in the scope of “Marketing/Licensing Services” defined in the agreement. Consequently, it should be included as such in the financial reports submitted to the City.

3. Ensure that only salary expenses directly related to the marketing activities are allocated to such activity.

**NYCC Response:** NYCC disagrees. “NYC & Company will continue to ensure that salary expenses directly related to marketing activities under the contract are properly allocated. We provided to the audit staff sufficient detail and supporting documentation as required under the contract to verify that all salary charges taken by NYC & Company that were allocated to Marketing/Licensing activities were properly allocated to such activities.”

**Auditor Comment:** As stated above, while NYCC was able to support the marketing/licensing salary expenses in the aggregate, we were unable to determine

expenses on a specific project budget level as required by the agreement. NYCC should match and report marketing and licensing salary expense separately for each individual project to ensure expenses are directly related to specific projects reported in the period.

4. Ensure that Marketing and Licensing project budgets are submitted, reviewed, and approved by the Deputy Mayor as required by the agreement.

**NYCC Response:** NYCC disagrees. “For every Marketing/Licensing Project undertaken by NYC & Company we have ensured that the Marketing/Licensing Project budgets are submitted, reviewed and approved by the Deputy Mayor as required by and in accordance with the contract. All such documentation was provided to the audit staff during the audit. NYC & Company will continue to provide Marketing/Licensing Project budgets as required by the contract.”

**Auditor Comment:** We did not receive any Marketing/Licensing project budgets for any of the projects reported in the audit period. We only received an aggregate revenue/expense budget submitted at the beginning of the fiscal year. Therefore, NYCC should maintain and submit separate Marketing/Licensing Project Budgets in sufficient detail as required by the agreement.

We recommend that DSBS or the Mayor’s Office:

5. Ensure that NYCC pay the \$1,771,192 in additional marketing fees recommended in this report and comply with the audit’s other recommendations.

**DSBS Response:** “DSBS respectfully disagrees with this recommendation. NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with all other requirements of its contract. Accordingly, no additional fees are owed to the City by NYC & Company.”

**Auditor Comment:** During our audit, we were not able to obtain any information that would indicate that DSBS was involved, at any level, in reviewing the financial information NYCC submitted to the City. Additionally, no person present at the exit conference meeting contributed any specific discussion on the issues. Therefore, DSBS’s claim that “NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with all other requirements of its contract...” is baseless. As stated above, we maintain our position that these marketing activities meet the criteria defined as marketing/licensing services under the contract and, as such, should be reportable. Consequently, we recommend that the City re-examine the issue, and we continue to recommend that \$1,771,192 in fees related to these revenues be paid to the City.

6. Ensure NYCC clearly disclose its methodology for allocating revenue and expenses among its program funds.

**DSBS Response:** “NYC & Company clearly articulates its methodology for allocating revenue and expenses among its program funds in the Plan of Expenditures pursuant to the City contract, and via regular reporting to OMB and the Deputy Mayor. At the beginning of each fiscal year NYC & Company submits to OMB a preliminary budget for analysis and approval. The City is further provided, on a quarterly basis, current and projected revenues, expenses and cash position which are subject to a careful review by assigned staff and compared against adopted budget. The City and NYC & Company further engage in on-going dialogue in order to identify circumstances that could significantly alter the approved budget.”

**Auditor Comment:** We disagree. As discussed in this audit report, NYCC does not submit separate marketing/licensing budgets as required by the agreement. The reports also do not disclose all revenues and expenses recorded during the period as evidenced by the exclusion of in-kind media-related revenues and expenses. Also, in the sake of transparency, all “on-going dialogue” between the City and NYCC should be clearly documented to support any significant reporting changes or determinations made. Based on the findings in this report, NYCC and DSBS should work in good faith to negotiate a new and more detailed reporting system that would allow for a more accurate and straightforward review.

7. Require that NYCC reports to the City the in-kind media contribution activities and its basis for valuation.

**DSBS Response:** “NYC & Company clearly reports in-kind media activities to the City in its annual certified financial statements. There are no other reporting requirements under the contract for non-cash revenues and expenditures.”

**Auditor Comment:** The reporting requirements in the contract are clear. The contract requires NYCC to submit quarterly reports with respect to the performance of the scope of services including all revenues (Contract Funds, Marketing/Licensing program Revenues, and other non-City funds) recorded during the quarter. There is no suggestion in the contract for the exclusion of non-cash transactions. Therefore, NYCC should include the value of the in-kind media in its financial reports submitted to the City. Additionally, DSBS should require NYCC to submit detailed reports to the City regarding the utilization of this in-kind media in order to assess NYCC’s management of its in-kind media resources.

8. Require that NYCC provides adequate information and disclosure regarding the classification of its revenue and expenses in the financial reports it submits to the City.

**DSBS Response:** “NYC & Company provides clear information and disclosure regarding the classification of revenue and expenses under the contract in its financial reports submitted to the City, including the Plan of Expenditures under the contract. In

its quarterly reporting and regular meetings with NYC & Company submits clear information and disclosure regarding the classification of revenue and expenses under the contract....”

**Auditor Comment:** We disagree. As evidenced by the issues raised in the report, DSBS did not properly monitor NYCC’s report submission. Once again, we maintain that NYCC does not submit separate marketing/licensing budgets as required by the agreement. The reports also do not disclose all revenues and expenses recorded during the period, i.e., the exclusion of in-kind media-related revenues and expenses from its financial reports to the City. NYCC also lumps various revenues and expenses together under single line items in its quarterly reports and annual budget submitted to the City. NYCC and DSBS should work in good faith to negotiate a new and more detailed budget/reporting system that would allow for more transparent reporting.

9. Ensure that the requirements for recommendations 6 through 8 are clearly articulated in future contract negotiations.

**DSBS Response:** “DSBS has determined that the disclosures and reporting performed by NYC & Company in fact fully comport with the terms of the contract and with the City’s policy goals for this business relationship. DSBS has conferred with the Law Department on the matters reflected in this audit. The Law Department concurs in the analysis provided in this audit response, both with respect to the fact that NYC & Company’s actions, as described, meet its reporting and disclosure obligations under the contract, and that DSBS has framed those obligations in the current contract in a manner that is fully consistent with all applicable laws and rules. For these reasons, DSBS does not agree that any amendment to the contract is necessary or appropriate.”

**Auditor Comment:** We disagree. As discussed in this report, NYCC did not fully comply with the terms of the contract and with the City’s policy goals for this business relationship. We recommend that DSBS re-examine its position regarding the issues addressed in this report when negotiating a new agreement.

## DETAILED 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 except for the scope limitation imposed by NYCC, as discussed in the scope limitation section of this report. This limitation prevented us from obtaining sufficient, appropriate evidence to determine whether NYCC properly reported the revenue and expenses it classified as “Other Funds” in its financial reports to the City and whether NYCC paid all the appropriate fees due the City. 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 was Fiscal Year 2009 (July 1, 2008, through June 30, 2009). To obtain an understanding of NYCC’s operations and internal control procedures, we reviewed the consulting, marketing, and licensing services contract between NYCC and the City. We conducted a walk-through meeting with NYCC officials and reviewed organization charts, revenue and expense ledgers, and quarterly financial reports submitted to the City. We documented our understanding of NYCC’s operations and its internal control processes through written memoranda.

To determine whether NYCC accurately reported its revenue and expense activities to the City, we reviewed NYCC’s financial statements for calendar years 2008 and 2009 and compared the amounts to the financial reports submitted to the City in Fiscal Year 2009. For City contract funds, we reviewed general ledger transactions and traced the totals to the trial balance, the financial statements, and the financial reports submitted to the City for Fiscal Year 2009.

To determine the accuracy and completeness of the revenue reported for all marketing projects, we reviewed the agreements for Fiscal Year 2009. We analyzed the contract terms and reviewed the related invoices issued and copies of the checks received. Finally, we compared the total revenue reported to the amounts recorded in the NYCC general ledger detail.

To determine the accuracy and completeness of licensing revenue reported to the City, we judgmentally sampled \$713,759 (82 percent) of the \$865,462 in licensing revenue included as part of the total \$5,257,454 Marketing and Licensing Program Revenue identified in Table 1. We analyzed the revenue reported by the vendor, licensing agreements, and payments collected by NYCC. We then compared these amounts to the amounts recorded on NYCC’s general ledger detail and reported on the financial reports submitted to the City in Fiscal Year 2009.

To determine the accuracy and validity of expenses charged to City Contract funds, we judgmentally selected a sample of all expense transactions over \$10,000, totaling \$3,297,209 (53 percent of the total \$6,267,755) of total City contract funds expenses reported. We analyzed the invoices, contracts, and other payment information, and compared the amounts to the amounts recorded in the general ledger detail for the period.

To determine the accuracy and completeness of reported direct marketing and licensing expenses, we reviewed and summarized all the expense categories reported in the general ledger

detail and traced the total to the financial statements. To assess the accuracy and validity of the amounts reported, we reviewed a sample of invoices, contracts, and other payment-related documentation for all the marketing/licensing expenses over \$10,000. In total, we reviewed \$2,679,309 of total Marketing/Licensing Program expenses reported to the City.

To determine whether NYCC properly recorded and reported its personnel expenses to the City in Fiscal Year 2009, we compared the personnel expense amounts reported to the City with the total amount recorded in the NYCC general ledger. For our detail test, we judgmentally selected a sample of payroll records from the ADP Master Control report for the last three quarters of Fiscal Year 2009, totaling \$12,820,769 or 77 percent of the total personnel expenses reported to the City. We then traced salary information in the ADP Master Control report to the general ledger for accuracy.

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.

### **Scope Limitation**

To conduct our audit of the consulting, marketing, and licensing agreement between NYCC and the City, we requested supporting documentation to verify that the revenue and expenses reported as “Other Funds” were appropriately reported and classified in NYCC’s financial reports submitted to the City in Fiscal Year 2009. However, NYCC provided limited information regarding the revenue it reported as “Other Funds” and did not provide any information regarding the related expenses. This limitation impaired our ability to perform sufficient audit steps that would allow us to properly determine whether the revenue and expenses were accurate and appropriately classified in NYCC’s financial reports submitted to the City.

As noted, NYCC classified a total of \$14,291,258 in other revenue and \$16,378,970 in operating expenses in its report to the City for the fiscal year ended June 30, 2009. However, despite numerous requests for the supporting documentation to substantiate the amounts, NYCC only provided some support for \$4,157,283 of the total \$14,291,258 revenue reported and did not provide any documentation in support of the total \$16,378,971 in expenses reported. For example, we were not able to review detail general ledger reports, invoices, payment vouchers, and service contracts associated with the amounts classified as other revenue and expenses. Therefore, we were not able to ascertain the accuracy and appropriateness of the sources and application of the “Other Funds.”

According to Article 3 of Exhibit B of the General Provisions of the Contract, “All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Comptroller by the New York City Charter and the Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.” Such audit may include examination and review and copying of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.”



However, we were not able to ascertain whether the amounts reported under the “Other Funds” category were properly classified in general and whether the expenses were appropriate and related to the performance of the scope of services under the contract.

**Calculation of Additional Marketing/Licensing  
Net Revenue and Fees Due the City**

<b>Description</b>	<b>Marketing/ Licensing Programs Revenue Reported by NYCC</b>	<b>Audit Adjustments</b>	<b>Adjusted Marketing/ Licensing Revenue</b>
<b>Revenue</b>			
Sales	\$ 4,391,992	\$ 1,854,425	\$ 6,246,417
Licensing	865,462		865,462
Banner Income	-	1,537,195	1,537,195
<b>Total Revenue</b>	<b>\$ 5,257,454</b>	<b>\$ 3,391,620</b>	<b>\$ 8,649,074</b>
<b>Expenses</b>			
Personnel	\$ 981,316	\$ -	\$ 981,316
Sales	2,043,550	252,408	2,295,958
Licensing	635,759	-	635,759
<b>Total Expenses</b>	<b>\$ 3,660,625</b>	<b>\$ 252,408</b>	<b>\$ 3,913,033</b>
<b>Net Revenue</b>	<b>\$ 1,596,829</b>	<b>\$ 3,139,212</b>	<b>\$ 4,736,041</b>

<b>Payment Calculation</b>	<b>NYCC Marketing/ Licensing Fees Calculation</b>	<b>Audited Marketing/ Licensing Fees Calculation</b>	<b>Additional Marketing/ Licensing Fees Due to City</b>
<b>Net Revenue</b>	<b>\$ 1,596,829</b>	<b>\$ 4,736,041</b>	
First \$1 Million to NYCC Contract Funds	(1,000,000)	(1,000,000)	
Subtotal Over \$1 Million	596,829	3,736,041	
<b>Payment to the City</b>	<b>\$ (596,829)</b>	<b>\$ (1,000,000)</b>	<b>\$ 403,171</b>
Total Over \$2 Million	-	2,736,041	
50% Over \$2 Million to NYCC Contract Funds	-	(1,368,021)	
<b>50% Over \$2 Million to the City</b>	<b>\$ -</b>	<b>\$ (1,368,021)</b>	<b>\$ 1,368,021</b>
<b>Total Due the City</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,771,192</b>

June 16, 2011

By Hand

Ms. H. Tina Kim  
Deputy Comptroller  
Bureau of Audit  
NYC Office of the Comptroller  
1 Centre Street  
New York, NY 10007

Dear Ms. Kim:

We appreciate the opportunity to respond to the June 3, 2011, Draft Audit of NYC & Company's compliance with its City consulting, marketing and licensing contract.

While we appreciate the work of the audit team, we do not as indicated concur with the Draft Audit's findings, conclusions and recommendations. As stated in the response from the Department of Small Business Services ("DSBS") with respect to the audit report, NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid on time the appropriate fees due the City, and complied with all other requirements of its contract.

Further, our essential disagreement with regard to the amount owed of \$1,771,192 as referenced in the Draft Audit is that the report does not account for nor acknowledge that, in addition to its work under the NYC & Company contract with the City, NYC & Company conducts private activities (for which it receives revenue) that are not subject to the audit or revenue sharing with the City. DSBS and the Deputy Mayor were always aware of these private activities before the current contract was put in place, did not intend to interfere with these private activities, and are in agreement with our revenue classifications and our stated position.

As you know, NYC & Company is a private, not-for-profit corporation originally formed in 1935. As a membership organization serving New York City's tourism and convention business, we generate significant revenue from activities which are beyond the scope of services provided to the City—our private funds. These revenues include membership dues, various grants, ticket sales, cooperative marketing programs with members, advertising sales and long-standing sponsorships of member marketing programs such as NYC Restaurant Week.

Moreover, to facilitate the audit, we also provided the Comptroller documentation of our private sponsorships and advertising activities for audit (the \$4,157,283 referenced in the findings). In addition, since the audit's inception last August, we have made available to the Comptroller's office all of the records relating to our contract with the City, City Property and/or City Funds, representing \$27 million in revenue and \$25.5 million in expenses.

NYC & Company annually reports to the City in-kind media and its valuation methodology in its certified financial statements. Non-cash revenues and expenditures are not part of the quarterly or other reporting requirements under the contract.

NYC & Company's methodology for reporting and allocating revenue and expenses is in accordance with the contract and the City's understanding of our operations. NYC & Company meets regularly with the City, where the City approves not only our reporting classifications but also all Plans of Expenditures and City marketing plans.

We are immensely proud of our growing contributions to the City's fiscal health, especially in the current economic climate. Indeed, tourism now represents an estimated \$48.7 billion in economic impact, up from \$44.9 billion in 2007, including \$31 billion in direct spending and \$2.7 billion in local tax revenue annually. Moreover, NYC & Company's private revenues fund our own tourism development efforts, allowing New York City's tourism industry to flourish despite the current economic circumstances and our steady loss of City funding, which has declined 32% annually since 2007.

Above all, the industry supports approximately 318,000 New York City jobs!

Attached you will find a detailed response to each NYC & Company finding and recommendation. As we have explained in audit meetings with your staff, direct City control of NYC & Company's private tourism activities would be inconsistent with the contract and our historic relationship with the City. Indeed, we must emphasize that maintaining NYC & Company's autonomy is critical to our ability to generate additional tourism revenue and success toward helping to ensure the stability and growth of the City's thriving tourism industry.

Sincerely,



George Fertitta

- c. Emily Rafferty, Chairman  
Robert K. Steel, Deputy Mayor of Economic Development  
Robert W. Walsh, Commissioner - Department of Small Business Services

**NYC & Company's Responses to the Findings and Recommendations**

**I. NYC & Company Response to Finding #1:**

**NYC & Company Does Not Owe the City \$1,771,192 in Marketing Fees**

NYC & Company paid the City all Marketing/Licensing Fees owed under its contract with the City. DSBS and the Deputy Mayor were aware of NYC & Company's private sources of revenue before the current contract was put in place, did not intend to interfere with these private activities, and are in agreement with our revenue classifications and our stated position.

The Draft Audit claims that a total of \$3,139,212 in net revenue was misclassified. This figure consists of two categories of revenue – \$1,602,017 in net private marketing and sponsorship sales and \$1,537,195 in advertising revenue. The Draft Audit further claims, as a result of the misclassification, NYC & Company would owe the City \$1,771,192 according to the contract's revenue sharing formula.

The \$1,771,192 represents revenue earned by NYC & Company via marketing activities that are beyond the scope of the City contract and thus not subject to the contractual revenue sharing with the City. The Draft Audit does not acknowledge that, in addition to work under the NYC & Company contract with the City, NYC & Company conducts private activities, for which it receives revenue, that are not subject to revenue sharing with the City.

**Marketing and Sponsorship Sales**

The \$1,602,017 represents NYC & Company's private marketing and sponsorship sales which are not subject to revenue sharing with the City. Only "Marketing/Licensing Services" as defined by our contract are subject to revenue sharing with the City. These services are limited to activities designed "to promote and encourage New York City's growth, economic development, and tourism, through the use of municipally-owned marketing and licensing resources" [Emphasis added]. Therefore, NYC & Company's marketing activities are subject to revenue sharing with the City only when such City-owned property, as described in Section 2.02 of the contract, is a primary focus of the particular activity. For example:

- Section 2.02(A) contemplates the use of City-owned intellectual property (e.g., a license to sell products bearing the NYPD marks);
- Section 2.02(B) contemplates associating the City with products or services (e.g., "The Official XYZ of New York City");
- Section 2.02(C) contemplates contracting for the use of City-owned marketing assets (e.g., the sale of advertising space on City-owned advertising panels);
- Section 2.02(D) contemplates incorporating City-related content (e.g., content syndication from nyc.gov) into non-City entity marketing programs;
- Section 2.02(E) contemplates facilitating City marketing activities for enhancing the City's reputation and image (e.g., BNP Paribas for *MillionTreesNYC*, where the sponsor pays to be associated with a City environmental initiative); and

- Section 2.02(F) contemplates entering into sponsorship or co-branding arrangements with regard to events occurring at City facilities or being supported by the City (e.g., solicitation of an All-Star game).

The contract does not address our use of City-owned media in NYC & Company's private programs, that is, in situations where the focus of the activity is not the promotion of the City through City resources. As such we obtained approval of the City to use City-controlled advertising panels on bus stop shelters and newsstands in our private activities, subject to the following treatment:

(i) To the extent we contract for third-party use of City-controlled media as part of a larger agreement primarily involving private resources, and where the third party would use such media in a purely commercial way for its own advertising (e.g., AT&T uses a bus stop shelter to exhibit an AT&T advertisement), then the value attributed to that media (but only to that media) would be subject to section 2.02(C) of the contract. In such circumstances, we obtained approval of the Deputy Mayor pursuant to the contract. Such approval documentation was provided to the audit staff during the audit process. During the audit period, we shared \$135,000 of revenue with the City from this activity.

(ii) If City-controlled media were used to promote NYC & Company's own, private programs, such as *NYC Restaurant Week*, and the sponsor received only sponsor acknowledgment on the footer of the advertisement (e.g., an advertisement for *NYC Restaurant Week* where American Express, one of the underwriters, received mere logo placement), then the value associated with City-owned media in the agreement was not classified to be shared with the City. The City allows this use of its media to assist in the promotion of NYC & Company's private promotional programs to foster economic development and generate direct and indirect tax benefits to the City. The value of those shelters in NYC & Company marketing programs compared with the value of the NYC & Company proprietary assets in the same program is de minimis. For this type of use the extended media reach afforded by the shelters raises visitors' and residents' awareness of the program to drive business into participant restaurants. As indicated by the contract's language, it was never intended that such use of City-controlled media that promotes private NYC & Company marketing programs be considered a Marketing/Licensing Service under the contract or be subject to the revenue sharing provision of the contract.

As articulated in the audit response of DSBS, the City fully agrees with our position and this treatment of City-owned media in our programs. Additionally, NYC & Company explained this approved methodology to the auditors during the audit process.

NYC & Company marketing programs, like *NYC Restaurant Week* and *Just Ask the Locals*, feature NYC & Company-owned assets as the focus of the sponsorship agreements, including NYC & Company trademarks, access to the NYC & Company membership base, inclusion on nycgo.com, advertising sales in NYC & Company publications, among other non-City assets. These programs, such as *NYC Restaurant Week*, are long-running NYC & Company programs that existed before the current contract. The intention of the current contract was to engage NYC & Company to provide additional services for additional compensation—historically NYC &

Company had performed only tourism, and not marketing services—not for the City to share in preexisting and private NYC & Company revenue streams. As such, there is no basis for converting those historically private activities into contractual marketing services.

Accordingly, the figure of \$1,602,017 in sales from NYC & Company’s private marketing activities stated in the Draft Audit should not be included in the calculation of Marketing/Licensing Fees<sup>1</sup>.

#### Advertising Revenues

With regard to the \$1,537,195 in sales from NYC & Company’s street pole banner program, the authority for NYC & Company’s banner program comes from DOT’s highway rules (34 RCNY §2-01 et seq.), not NYC & Company’s contract with the City. The stated purpose of the banner rule, 34 RCNY §2-14(b) is to allow “the display of banners promoting cultural exhibits and events or public or historical events which foster tourism and/or enhance the image of the City.” As the authority for NYC & Company’s banner program comes from DOT’s rules and not from the contract, revenue generated under the program is not subject to the contract’s revenue-sharing provision. In that sense, NYC & Company is no different from any other not-for-profit organization that applies to DOT for banner permits, none of whom are required to share banner revenue with the City.

Additionally, NYC & Company has run a citywide banner program since 2000. The contract with NYC & Company’s current vendor was executed in 2004, two years before the current contract was put in place as a result of the merger of NYC & Company with NYC Marketing. Services include banner design, permit application, production, installation and disposal. Thus, in addition to the fact that banner use is governed by DOT’s rules, the fact that NYC & Company’s use of banners for private activity predated the current contract supports the conclusion that banner use for private activity is not Marketing/Licensing activity that requires a split of revenues under the contract.

Accordingly, the \$1,537,195 in sales from NYC & Company’s street pole banner program should not be included in the calculation of Marketing/Licensing Fees.

## **II. NYC & Company Response to Finding #2:**

### **NYC & Company Is Not Required to Provide Documentation in Support of Its “Other Funds” Activities**

Supporting documentation for the \$16,378,970 in Operating Expenses sought by the auditors for review relate to the private activities of NYC & Company which are outside the scope of the

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<sup>1</sup> It is important also to note that the Draft Audit, in stating that NYC & Company should classify and share with the City the net revenue from private sponsorships (\$1,854,425 less \$252,408 in expenses, or \$1,602,017), did not consider all direct expenses associated with these programs. If it had, it would be clear that such activities did not yield net revenue, a point that we explained in the exit interview.

City contract. A review of all private expenditures paid for with private funds is beyond the purview of this audit.

We have made available to the auditors all records relating to our contract with the City, City Property or City Funds, representing \$27 million in revenue, \$25.5 million in expenses and \$38 million in in-kind media during the audit period. In addition, we provided materials such as a summary description of all \$14.3 million in private revenues, even including a detailed general ledger of \$4.2 million of this total to help the auditors understand the basis for our classification of this revenue as private.

NYC & Company's private funds relate solely to the organization's private tourism activities. These funds are separate from City Contract Funds and Marketing/Licensing Revenue as defined in the contract. Based on our discussion with the City's Law Department, these private revenues and expenditures are not subject to the audit activity of the Comptroller's office.

It should further be pointed out that Article 3 of Exhibit B to the contract—the article containing the provisions relied on in the Draft Audit as the basis for being able to audit the receipt and use of private funds—grants an audit right only with regard to payments made under the contract and documents related to the contract and the work thereunder.

However, the Draft Audit quotes the contract out of context with regard to Article 3 of Exhibit B. On pages 8-9, and then again on pages 14-15 the Draft Audit states that:

“According to Article 3 of Exhibit B of the General Provisions of the Contract, ‘All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Comptroller by the New York City Charter and the Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.’... Such audit may include examination and review and copying of the source and application of all funds whether from the City, any State, the Federal Government, private sources or otherwise.”

Unfortunately, what the Draft Audit does is combine language from Article 3, Section A with language from Article 3, Section C while, significantly, omitting language from Section C that makes clear that the right to audit private funds relates only to work under the contract. The auditors attempt to use the condensed quotes to support their position with regard to NYC & Company's private funds, when in fact, the full text of Article 3, Section C makes clear that only the books and records “related to this Contract and the work thereunder” are subject to audit. A review of Section C, as written in the contract, makes clear that the private activities of NYC & Company are beyond the purview of this audit.

For reference, the full text of Article 3 of Exhibit B of the General Contract Provisions is reproduced in its entirety below:



ARTICLE 3    AUDIT BY THE DEPARTMENT AND CITY

- A. All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and the Administrative Code of the City of New York, as well as orders and regulations promulgated pursuant thereto.
- B. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and to the Comptroller as they consider necessary.
- C. All books, vouchers, records, reports, canceled checks and any and all similar material **related to this Contract and the work thereunder** may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City, including the Department's Office of the Inspector General. Such audit may include examination and review and copying of the source and application of all funds whether from the City, any state, the Federal Government, private sources or otherwise. [Emphasis added.]
- D. The Contractor shall not be entitled to final payment under the Contract until all requirements have been satisfactorily met.
- E. The fiscal records of the Contractor under this Contract shall be examined by the Department at such times as the Department considers necessary.

Indeed, NYC & Company did make sufficient documentation available to the Comptroller so a determination could be made that all NYC & Company's Other Funds were in fact classified appropriately. NYC & Company did not provide documentation in support of \$10,133,975 in private revenue. This private revenue represents NYC & Company's private funds which are clearly, based on our reporting classifications, activities that would not be considered sponsorships or advertising activities, and therefore fall outside the scope of services in the contract. Such revenue includes membership dues, cooperative marketing programs with members, ticket sales, publications, website income and various grants. However, as mentioned, to help the auditors understand the basis for our classification of this revenue as private, and although not required by our contractual agreement, we provided the auditors documentation of our private sponsorships and advertising activities for audit (the \$4,157,283 referenced in the findings).

III. NYC & Company Response to Other Issues:

**NYC & Company Included In-Kind Media in Its Financial Reports to the City as Required by the Contract.**

NYC & Company included in-kind media in its certified financial statements. It is not required under the contract to include in-kind media or its valuation method on any other reports to the City. These certified financial statements were provided to the auditors. The Plan of Expenditures under the contract and the Quarterly Financial Report contemplate the reporting of only cash revenue and expenditures.

**NYC & Company's Methodology for Allocating Revenue and Expenses to the City Is Done in Accordance with Its Contract**

NYC & Company's contract with the City outlines the Corporation's obligations under the Scope of Services. It provides for, among other things, regular financial reporting and correspondence with the Deputy Mayor, DSBS, and the Office of Management and Budget ("OMB") ensuring each of their oversight. NYC & Company has complied with these provisions since the contract's inception. In fact, NYC & Company meets regularly with OMB and the Deputy Mayor to review its progress and business plans, and the revenue that the City should expect at the end of each fiscal year as a result of NYC & Company's Marketing/Licensing Services. The City reviewed the reporting classifications and approved all revenue and expenditures within the Scope of Services including the methodology for allocating revenue and expense to the City.

It should also be noted how the Draft Audit refers to Section 2.03(B)(1)<sup>2</sup> of the contract. The auditor's modified quotes, reproduced below, are used as the basis for their argument that NYC & Company is required to separately identify its personnel charges. In support, they changed and condensed the language, suggesting that whenever staff time is used in Marketing/Licensing projects, NYC & Company must provide a performance schedule detailing staff time when the contract language, in fact, requires only an estimate.

The Draft Audit quotes the contract as stating:

"Prior to submitting substantial staff time to otherwise undertaking a Marketing/Licensing Project. . . The Consultant shall submit to the City a description... in detail satisfactory to the City, a performance schedule **detailing** staff time to be spent on Marketing and Licensing Project." [Emphasis added]

The provision actually states:

"Prior to devoting substantial staff time to or otherwise undertaking a Marketing/Licensing Project, the Consultant shall submit to the City a description of the proposed Marketing/Licensing Project, including an estimated budget for such

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<sup>2</sup> The Draft Audit referenced Section 2.02(B)(1). No such paragraph exists. We assume the intention was to quote Section 2.03(B)(1)

Marketing/Licensing Project (each such budget for a Marketing/Licensing Project shall be referred to herein as a ‘Marketing/Licensing Project Budget’ and shall reflect, at a minimum, anticipated Marketing/Licensing Program Revenues if any to be generated from such Marketing/Licensing Project and anticipated costs, if any, to the City and the Consultant to be incurred in connection with such Marketing/Licensing Project, in detail satisfactory to the City) a performance schedule, an **estimate** of staff time to be spent on the Marketing/Licensing Project, and a statement of any fees proposed to be charged by the Consultant.” [Emphasis added]

Each Marketing/Licensing Program was undertaken in accordance with the contract and included an approval by the Deputy Mayor pursuant to Section 2.03(B). Such documentation was given to the auditors. Additionally, we provided the auditors all supporting documentation of the \$981,317 in salary expenses described in the audit findings including the accounting treatment and allocation method. Our treatment was consistent with the Deputy Mayor’s approval and understanding; and was also consistent with historically how salary costs were allocated for these marketing programs which were assigned to NYC & Company from NYC Marketing as a result of the merger.

#### IV. NYC & Company Response to Recommendations:

##### NYC & Company Response to Comptroller Recommendation #1:

NYC & Company respectfully disagrees with the contention that NYC & Company owes the City additional monies with regard to privately raised marketing revenue. The \$3,139,212 in net revenue referenced in the Draft Audit represents marketing revenue earned by NYC & Company via private marketing activities, which are beyond the scope of the contract and not subject to revenue sharing with the City.

##### NYC & Company Response to Comptroller Recommendation #2:

NYC & Company respectfully disagrees with the contention that all NYC & Company marketing revenue, regardless of whether it comes from activities under the contract’s scope of services or NYC & Company’s private activities, should be included in the calculation of Marketing/Licensing Fees due the City. NYC & Company is a membership organization serving New York City’s tourism and convention business. We generate significant revenue from activities that are beyond the scope of services provided to the City—our private funds. These revenues include membership dues, various grants, ticket sales, cooperative marketing programs with members, advertising sales and long-standing sponsorships of member marketing programs such as *NYC Restaurant Week*. As discussed above, not all marketing activities undertaken by NYC & Company are “Marketing/Licensing Services” as defined by our contract.

##### NYC & Company Response to Comptroller Recommendation #3:

NYC & Company will continue to ensure that salary expenses directly related to marketing activities under the contract are properly allocated. We provided to the audit staff sufficient detail and supporting documentation as required under the contract to verify that all salary

charges taken by NYC & Company that were allocated to Marketing/Licensing activities were properly allocated to such activities.

Our contract clearly allows a deduction for staff time as an expense of Marketing/Licensing Projects. These charges were acknowledged and approved by the City and the Deputy Mayor in accordance with the contract and the Plan of Expenditures. It should be noted that salaries were only allocated for marketing activities previously provided by NYC Marketing and were consistent with the historical allocation methods reviewed and approved by the Deputy Mayor and OMB. To the extent we enter into new Marketing/Licensing Services under the contract that include direct salary expenses, we will continue to ensure that these budgets be submitted to the Deputy Mayor in accordance with the requirements of the contract.

**NYC & Company Response to Comptroller Recommendation #4:**

For every Marketing/Licensing Project undertaken by NYC & Company we have ensured that the Marketing/Licensing Project budgets are submitted, reviewed and approved by the Deputy Mayor as required by and in accordance with the contract. All such documentation was provided to the audit staff during the audit. NYC & Company will continue to provide Marketing/Licensing Project budgets as required by the contract.

**V. Conclusion:**

In conclusion, we are pleased that the Draft Audit acknowledged that NYC & Company, except for the findings and recommendations noted, otherwise complied with all contract requirements and submitted its reports to the City in a timely manner and maintained the required insurance. Unfortunately, as stated, we cannot concur with the Draft Audit's findings, conclusions and recommendations. We affirm with the City and DSBS that NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with all other requirements of its contract.



Small Business  
Services

June 16, 2011

Robert W. Walsh  
Commissioner

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212-513-6300 tel  
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**By Hand**

Ms. H. Tina Kim  
Deputy Comptroller  
NYC Office of the Comptroller  
1 Centre Street  
New York, NY 10007

Dear Ms. Kim:

Thank you for the opportunity to respond to the draft audit report of NYC & Company's compliance with its City consulting, marketing and licensing contract, dated June 3, 2011.

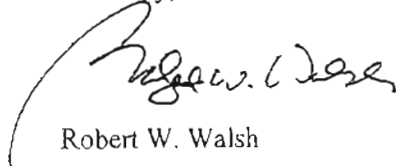
We must respectfully disagree with the draft audit's findings, conclusions and recommendations. NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with all other requirements of its contract.

A fundamental flaw in the draft audit is that it fails to recognize that NYC & Company conducts private, revenue generating activities that are unrelated to the scope of services under the Department of Small Business Service's ("DSBS") procurement contract. These private activities are not subject to the audit or revenue sharing with the City. DSBS was fully aware of these private activities before the current contract was executed and neither intended to prevent these private activities, nor expected to share in the revenue generated by them. Furthermore, the contract itself does not make these private activities part of the contract's scope of services.

NYC & Company annually reports to this agency in-kind media and its valuation methodology in its certified financial statements, which it provides to the City. There are no other reporting requirements under the contract for non-cash revenues and expenditures. Furthermore, NYC & Company's methodology for reporting and allocating revenue and expenses was done in accordance with the contract.

Attached you will find a detailed response to each finding and recommendation pertaining to DSBS. We are grateful for the time and consideration afforded to us by your audit staff throughout the audit process.

Sincerely,



Robert W. Walsh

c: Robert K. Steel  
George Fertitta  
George Davis, III

**Comptroller Recommendation:**

5) Ensure that NYC & Company pay the \$1,771,192 in additional marketing fees in connection with its marketing activities and comply with the audit's other recommendations.

**DSBS Response:**

DSBS respectfully disagrees with this recommendation. NYC & Company accurately reported its revenue and expenses to the City, properly calculated and paid the appropriate fees due the City on time, and complied with all other requirements of its contract. Accordingly, no additional fees are owed to the City by NYC & Company.

DSBS is satisfied that NYC & Company properly characterized and reported its revenue to the City. The audit report seeks to make all marketing revenue raised by NYC & Company subject to revenue sharing under section 2.03 of the contract, regardless of whether such revenue came from activities under the contract or from private activities. Marketing revenue from NYC & Company's private activities is not Marketing/Licensing Revenue under NYC & Company's contract with the City. Furthermore, it was not the intention of DSBS to make such private activities subject to the contract and we fully acknowledge that NYC & Company may generate marketing revenue from private sources and retain 100% of such proceeds.

"Marketing/Licensing Services" as defined by the contract are the limited activities enumerated in Section 2.02 that promote the City "through the use of municipally -owned marketing and licensing resources." Therefore, NYC & Company marketing activities are subject to revenue sharing with the City only when such City-owned property, as described in Section 2.02 of the contract, is a primary focus of the particular activity.

The contract does not address NYC & Company's use of City owned media in NYC & Company's private programs, that is, in situations where the focus of the activity is not the promotion of the City through City resources. Recognizing that NYC & Company could use the media in its own programs, and by doing so it would be in the best interest of the City for the fostering of economic development and generation of direct and indirect tax benefits to the City, the City agreed to a policy for such use in NYC & Company's private programs and a methodology for valuation. NYC & Company is permitted to use city-owned media in its proprietary tourism marketing programs such as Restaurant Week and Just Ask the Locals and in its private marketing activity. To the extent that such activity results in a third party using such media in a purely commercial manner for its own advertising (e.g., Jet Blue uses a newsstand to exhibit a JetBlue advertisement), then any revenue attributed to that media (but only to that media) would be subject to the revenue sharing provisions of the contract.

With regard to NYC & Company's street pole banner program, such activity is not part of the scope of services of the contract, because the authority for NYC & Company's banner program comes from DOT's highway rules (34 RCNY §2-01 et seq.), not NYC & Company's contract with the City.

Accordingly, both the \$1,602,017 and the \$1,537,195 in sales from NYC & Company's activities should not be included in the calculation of marketing and licensing fees as such revenue was

generated from private activities of NYC & Company, beyond the scope of the procurement contract. We were aware of these activities and fully expect them to continue.

**Comptroller Recommendation:**

6) Ensure NYC & Company clearly disclose its methodology for allocating revenue and expenses among its program funds.

**DSBS Response:**

NYC & Company clearly articulates its methodology for allocating revenue and expenses among its program funds in the Plan of Expenditures pursuant to the City contract, and via regular reporting to OMB and the Deputy Mayor. At the beginning of each fiscal year NYC & Company submits to OMB a preliminary budget for analysis and approval. The City is further provided, on a quarterly basis, current and projected revenues, expenses and cash position which are subject to a careful review by assigned staff and compared against adopted budget. The City and NYC & Company further engage in on-going dialogue in order to identify circumstances that could significantly alter the approved budget.

The City, through DSBS, OMB and the Law Department, employs the same principles and practices it undertakes in oversight of similar contractors. The City engages in standard and consistent methods when evaluating the financial activities of NYC & Company and makes use of any resource necessary to ensure that the objectives set forth in the City contract are fully complied with. The activities of NYC & Company will continue to be subject to DSBS's and OMB's careful scrutiny to ensure the appropriateness and timely remittance of revenues required by the contract to the City.

In view of this audit recommendation, DSBS conferred with OMB and confirmed that OMB understood and approved this methodology at the time the contract was initially executed, and continues to approve its use at this time.

**Comptroller Recommendation:**

7) Require that NYC & Company reports to the City the in-kind media contribution activities and basis for analysis.

**DSBS Response:**

NYC & Company clearly reports in-kind media activities to the City in its annual certified financial statements. There are no other reporting requirements under the contract for non-cash revenues and expenditures.

**Comptroller Recommendation:**

8) Require that NYC & Company provides adequate information and disclosure regarding classification of its revenue and expenses in the financial reports it submits to the City.

**DSBS Response:**

NYC & Company provides clear information and disclosure regarding the classification of revenue and expenses under the contract in its financial reports submitted to the City, including the Plan of Expenditures under the contract. In its quarterly reporting and regular meetings with NYC & Company submits clear information and disclosure regarding the classification of revenue and expenses under the contract. DSBS employs the same principles and practices it undertakes in oversight of similar contractors. The City engages in standard and consistent methods when evaluating the financial activities of NYC & Company and makes use of any resource necessary to ensure that the objectives set forth in the City contract are fully complied with. The Corporation's activities will continue to be subject to DSBS's and OMB's careful scrutiny to ensure the appropriateness and timely remittal of revenues required by the Contract to the City.

**Comptroller Recommendation:**

9) Ensure that the requirements for recommendations 6 through 8 are clearly articulated in future contract negotiations.

**DSBS Response:**

DSBS has determined that the disclosures and reporting performed by NYC & Company in fact fully comport with the terms of the contract and with the City's policy goals for this business relationship. DSBS has conferred with the Law Department on the matters reflected in this audit. The Law Department concurs in the analysis provided in this audit response, both with respect to the fact that NYC & Company's actions, as described, meet its reporting and disclosure obligations under the contract, and that DSBS has framed those obligations in the current contract in a manner that is fully consistent with all applicable laws and rules. For these reasons, DSBS does not agree that any amendment to the contract is necessary or appropriate.