CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

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COMPTROLLER

FINANCIAL AUDIT

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Deputy Comptroller for Audit

Audit Report on the Administration of Public Purpose Funds by the New York City Economic Development Corporation

FN11-077A

September 21, 2011

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THE CITY OF NEW YORK
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NEW YORK, N.Y. 10007-2341

John C. Liu
COMPTROLLER

September 21, 2011

To the Residents of the City of New York:

My office has audited the administration of public purpose funds by the New York City Economic Development Corporation (NYCEDC). We audit City entities like the NYCEDC as a means of ensuring that they comply with the terms of their agreements, properly report and allocate revenues, and comply with established policies and procedures.

Public purpose funds generally represent the amounts project developers are required to deposit with NYCEDC in lieu of what would have been otherwise remitted to New York State and the City had no exemption from sales and compensating use taxes been granted. Public purpose funds are established to accomplish specific purposes for the benefit of the projects or the surrounding communities. As the trustee for these funds, NYCEDC has the custodial responsibility to ensure that the assets of the public purpose funds are safeguarded and properly maintained.

NYCEDC has not been able to disburse $9,362,895 in public purpose funds, including $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yards facility in the Bronx, and $464,574 in three other funds that were established as far back as 1982. Additionally, NYCEDC failed to collect a total of $725,720 due from Keyspan to fund local community interests, did not properly administer total fund disbursements of $247,800, and incurred unnecessary audit fees of $28,934 on certain funds that did not have financial activities or audit requirements.

The audit's four recommendations included that NYCEDC reconsider whether the original purposes of the inactive funds are still viable or whether the $9,362,895 funding should be remitted to the City's general fund; ensure collection of the remaining balance of $725,720 in unbilled developer contributions identified by this audit; properly verify future submissions for payment to ensure all funding criteria have been met prior to disbursements; and discontinue incurring unnecessary audit fees.

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

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

Very truly yours,

John C. Liu

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AUDIT REPORT IN BRIEF

Public purpose funds comprise restricted assets designated by the New York City Economic Development Corporation (NYCEDC) in connection with project agreements among various project developers, the City, and NYCEDC. Under these agreements, NYCEDC acts as trustee for the City regarding amounts received from the developer of certain projects in the City. NYCEDC's custodial duties with respect to the public purpose funds are also governed in part by NYCEDC's Master and Maritime Contracts with the City, as discussed in our prior audit, *Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts—# FN09-104A*, dated April 27, 2010.

The restricted assets of the public purpose funds generally represent the amounts (developer contributions) project developers are required to deposit with NYCEDC in lieu of what would have been otherwise remitted to New York State and the City had no exemption from sales and compensating use taxes been granted. Public purpose funds are established to accomplish specific purposes for the benefit of the projects or the surrounding communities.

As the trustee for these funds, NYCEDC has the custodial responsibility to ensure that the assets of the public purpose funds are safeguarded and properly maintained. Currently, NYCEDC maintains a total of 20 public purpose funds. For Fiscal Years 2009 and 2010, the total balances reported for the 20 funds in NYCEDC financial statements were $41,894,681 and $37,714,617, respectively.

<u>Audit Findings and Conclusions</u>

NYCEDC has not been able to disburse $9,362,895 in public purpose funds created from developer contributions and maintained by NYCEDC as a trustee on behalf of the City or the project developers. Accordingly—and given the lengthy amount of time that has elapsed since these funds were created—NYCEDC should reconsider whether the original purposes of the funds are still viable or whether the $9,362,895 funding should be remitted to the City, given that the funds represent City tax savings and other City benefits.

Of the retained funding, NYCEDC has been unable to utilize $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yards facility in the Bronx. Although project correspondence indicates that, since 2002, NYCEDC has been involved in attempts to find a use for these funds, these attempts have apparently been unsuccessful. In another case, NYCEDC retained $464,574 in three funds, including funds that were established in 1982 and 1991 to rehabilitate Astoria Studios in Queens and create job training programs.

Further, NYCEDC failed to collect a total of $725,720 due from Keyspan that was to be used to fund local community interests. (On July 15, 2011, NYCEDC collected $250,000—two years after all the funding was supposed to have been obtained.)

We also found that NYCEDC did not properly administer total disbursements of $247,800 from Fund #39 and incurred unnecessary audit fees of $28,934 on certain funds that did not have financial activities or audit requirements.

Audit Recommendations

To address these issues, we make four recommendations, including that NYCEDC:

- Reconsider whether the original purposes of inactive Funds #12, #18, #31, and #36 are still viable or whether the $9,362,895 funding should be remitted to the City's general fund.
- Ensure collection of the remaining balance of $725,720 in unbilled developer contributions identified by this audit.
- Properly verify future submissions for payment to ensure all funding criteria have been met prior to disbursements.
- Discontinue incurring unnecessary audit fees.

Agency Response

We received a written response from NYCEDC on August 26, 2011.

In their response, NYCEDC officials partially agreed with the finding regarding the Harlem River Rail Yards facility in the Bronx, stating that "Over the last few decades EDC has worked very hard to secure and disburse over 80% of the nearly $50 million in public purpose funds and fully expects to spend the remainder of the funds prudently and as soon as practical. . . . The fact that funds in these accounts have not yet been spent is not an indicator that funds should have been spent."

The main issue is not that NYCEDC must expend the funds noted above and in the other sections of this report, but rather that NYCEDC must work diligently to identify the needs of the community areas where the funds can be invested as opposed to maintaining the funds indefinitely in dormant accounts.

For decades, NYCEDC has not been diligent in identifying community projects where these funds could be utilized in accordance with their purposes. While we agree that most fund agreements specifically designate a fund purpose, each fund represents a developer contribution established in connection with a project developed in the City and with the overall purpose of benefiting the City and its residents. At a time of scarce resources, it would not be appropriate for NYCEDC to wait another decade for a decision to use these public resources. This audit is not suggesting that NYCEDC expend the funds inappropriately, but rather that NYCEDC work to fulfill its stewardship responsibility in ensuring these public resources are properly and timely utilized in the respective City communities.

NYCEDC officials did not address the report recommendations.

INTRODUCTION

Background

Public purpose funds comprise restricted assets designated by the New York City Economic Development Corporation (NYCEDC) in connection with project agreements among various project developers, the City, and NYCEDC. Under these agreements, NYCEDC acts as trustee for the City regarding amounts received from the developer of certain projects in the City. NYCEDC's custodial duties with respect to the public purpose funds are also governed in part by NYCEDC's Master and Maritime Contracts with the City, as discussed in our prior audit, *Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts—# FN09-104A*, dated April 27, 2010.

The restricted assets of the public purpose funds generally represent the amounts (developer contributions) project developers are required to deposit with NYCEDC in lieu of what would have been otherwise remitted to New York State and the City had no exemption from sales and compensating use taxes been granted. Public purpose funds are established to accomplish specific purposes for the benefit of the projects or the surrounding communities. As noted, the basis for which these public purpose funds are created is often accomplished when the project, building construction, or rehabilitation ends. These funds have no separate legal status or existence.

Assets of the funds are not available for use by NYCEDC for corporate purposes. As the trustee for these funds, NYCEDC has the custodial responsibility to ensure that the assets of the public purpose funds are safeguarded and properly maintained. Currently, NYCEDC maintains a total of 20 public purpose funds. For Fiscal Years 2009 and 2010, the total balances reported for the 20 funds in NYCEDC financial statements were $41,894,681 and $37,714,617, respectively, as detailed in the following table.

Table

Summary of the Public Purpose Funds
as of June 30, 2009, and 2010

Fund #	Agreement Dates	# of Years	Related Projects	Fund Balance as of 6/30/2009	Fund Balance as of 6/30/2010
12	9/22/1982	28	Astoria Studios Building 13 Rehabilitation	$ 348,543	$ 344,659
13	12/15/1981	29	South Street Seaport Project	564,528	290,650
18	12/1/1991	19	Bear Stearns Job Training	64,870	64,834
22	9/14/1993	17	Renovation and rehabilitation of the theaters located in the mid-block on 42nd Street	10,841,086	10,964,258
23	Commenced in 1980s	30	College Point Industrial Park Improvements	3,579,583	3,931,955
27	11/22/1996	14	Improvement of Brooklyn Army Terminal Building B and Terminal Common Facilities	34,366	34,352
28	6/27/1996	14	Development and occupancy of the Brooklyn Renaissance Plaza	2,386	(1,303)
29	7/15/1997	13	42nd Street Site 7 Development Project	3,665,580	4,148,140
30	4/30/1997	13	Redevelopment and occupancy of Pier A	147,332	147,249
31	12/17/1992	18	Capital improvements at the Harlem River Rail Yards	8,903,344	8,898,321
32	12/13/1996	14	42nd Street Site 8 Development Project	5,055,995	4,461,036
33	7/16/1993	17	Operation and maintenance of the Brooklyn Army Terminal	30,532	30,515
34	8/30/1996	14	Development of the Brooklyn Metrotech project	136,660	133,249
35	11/17/1993	17	Development of the Brooklyn Metrotech project	166,477	163,642
36	4/20/2000	10	Redevelopment of 75/85 East Broadway	55,060	55,081
38	6/14/2002	8	Natural Gas Pipeline Project in the Bronx	384,508	384,291
39	Facility Commenced in 5/2004	6	For renewable power projects and for the community and environmental improvement projects at or in the vicinity of the Keyspan Facility	0	0
40	Memorandum of Agreement of 2005	5	Fresh Kills Landfill	0	(Note 1)
41	Memo dated 4/18/2006	4	Hunts Point Food Distribution Center Improvements	717,570	1,056,252
42	Letter dated 2/16/2007	3	Highline Improvements	7,196,261	2,708,644
72	2/26/2010	1/2	Co-invest with private investors in start-up City based technology enabled companies	0	(101,208)
			TOTALS	**$ 41,894,681**	**$ 37,714,617**

Note 1: Since FY 2010, Fund #40 has not been considered as part of the public purpose funds.

Objectives

To determine whether NYCEDC collects and disburses the public purpose funds in accordance with its trustee custodial responsibilities under the fund agreements and returns any unused fund balances due the City.

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Fiscal Years 2009 and 2010 (July 1, 2008, to June 30, 2010). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with NYCEDC officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCEDC officials on July 18, 2011, and was discussed at an exit conference held on July 29, 2011. On August 12, 2011, we submitted a draft report to NYCEDC officials with a request for comments.

We received a written response from NYCEDC on August 26, 2011. In their response, NYCEDC officials partially agreed with the finding regarding the Harlem River Rail Yards facility in the Bronx. However, they generally disagreed with the audit report's other findings and did not address the recommendations.

The main issue is not that NYCEDC must expend the roughly $9.4 million in funding identified in this report, but rather that NYCEDC must work diligently to identify the needs of the community areas where the funds can be invested as opposed to maintaining the funds indefinitely in dormant accounts.

For decades, NYCEDC has not been diligent in identifying community projects where these funds could be utilized in accordance with their purposes. While we agree that most fund agreements specifically designate a fund purpose, each fund represents a developer contribution established in connection with a project developed in the City and with the overall purpose of benefiting the City and its residents. At a time of scarce resources, it would not be appropriate for NYCEDC to wait another decade for a decision to use these public resources. This audit is not suggesting that NYCEDC expend the funds inappropriately, but rather that NYCEDC work to fulfill its stewardship responsibility in ensuring these public resources are properly and timely utilized in the respective City communities.

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

FINDINGS AND RECOMMENDATIONS

NYCEDC has not been able to disburse $9,362,895 in public purpose funds created from developer contributions and maintained by NYCEDC as a trustee on behalf of the City or the project developers. Accordingly—and given the lengthy amount of time that has elapsed since these funds were created—NYCEDC should reconsider whether the original purpose of the funds are still viable or whether the $9,362,895 funding should be remitted to the City, given that the funds represent City tax savings and other City benefits.

Of the retained funding, NYCEDC has been unable to utilize $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yards facility in the Bronx. Although project correspondence indicates that since 2002, NYCEDC has been involved in attempts to find a use for these funds, these attempts have apparently been unsuccessful. In another case, NYCEDC retained $464,574 in three funds, including funds that were established in 1982 and 1991 to rehabilitate Astoria Studios in Queens and create job training programs.

Further, NYCEDC failed to collect a total of $725,720 due from Keyspan that was to be used to fund local community interests. (On July 15, 2011, NYCEDC collected $250,000—two years after all the funding was supposed to have been obtained.)

We also found that NYCEDC did not properly administer total disbursements of $247,800 from Fund #39 and incurred unnecessary audit fees of $28,934 on certain funds that did not have financial activities or audit requirements.

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

NYCEDC Has Not Been Able to Disburse $9,362,895 in Public Purpose Funds

NYCEDC did not ensure that the balance of $9,362,895 in public purpose funds established for general public purposes was utilized. Accordingly—and given the lengthy amount of time that has elapsed since these funds were created—NYCEDC should reconsider whether the original purposes of the funds are still viable or whether the $9,362,895 funding should be remitted to the City.

> ***NYCEDC Response:*** "Over the last few decades EDC has worked very hard to secure and disburse over 80% of the nearly $50 million in public purpose funds and fully expects to spend the remainder of the funds prudently and as soon as practical. These funds are important sources of revenue for economic development at a time of scarce resources, but, as the steward of these funds, EDC has a duty to adhere strictly to the terms of each agreement. As the Comptroller is likely aware after this audit, each fund is uniquely tailored to a specific set of terms and it is our goal to continue to administer these funds wisely and within the legal bounds of each agreement.

EDC disagrees with the Comptroller's general recommendation that EDC consider transferring these funds to the City's General Fund. The fact that funds in these accounts have not yet been spent is not an indicator that funds should have been spent. EDC believes that these funds remain viable. Furthermore, EDC strongly believes that it would violate many of the stated terms of the public purpose funds to liquidate and transfer the funds to the City's General Fund."

Auditor Comment: Based on the scope of our review and the issues identified during this audit, we disagree with NYCEDC's assessment. NYCEDC is being disingenuous in its response. The issue is not that NYCEDC must expend the funds, but rather that NYCEDC must work diligently to identify the needs of the community areas where the funds can be invested as opposed to maintaining the funds indefinitely in dormant accounts with no purpose.

For decades, NYCEDC has not been diligent in identifying community projects where these funds could be used in accordance with their purposes. While we agree that most fund agreements specifically designate a fund purpose, each fund represents a developer contribution established in connection with a project developed in the City and with the overall purpose of benefiting the City and its residents. Because the funds were created for City use, it would not be a violation to transfer these idle fund balances to the City. At a time of scarce resources, it would not be appropriate to wait another decade for a decision to use these public resources. This audit is not suggesting that NYCEDC expend the funds inappropriately, but rather that NYCEDC work to fulfill its stewardship responsibility in ensuring these public resources are properly and timely utilized in the respective City communities.

Retained $8,898,321 in Unused Public Purpose Fund

NYCEDC has been unable to utilize the balance of $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yards facility (Facility) in the Bronx. The City and NYCEDC established the fund with a contribution from a private developer in connection with a residential building project in Manhattan. Improvements to benefit the Facility were intended to facilitate rail freight traffic to the City.

Project correspondence indicates that, since 2002, NYCEDC has been involved in several attempts to find a use for the $8.9 million funding by the Harlem River Yard Ventures, Inc., a private company that obtained a lease at the Facility location. These attempts have apparently been unsuccessful. However, documentation indicates that efforts to make enhancements to the Facility have been fraught with difficulties and have involved coordination with other government entities. The inactive status of this fund was also one of the issues discussed in our prior audit of NYCEDC, *Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts—# FN09-104A*, dated April 27, 2010. As a result, and given the lengthy amount of time since this fund was established, NYCEDC should reconsider whether the original purpose of the fund is still viable or whether the $8,898,321 funding should be remitted to the City.

NYCEDC Response: "NYCEDC Partially Agrees. NYCEDC is appreciative that the Comptroller's Office acknowledges the significant efforts EDC has put into previous attempts to use the Harlem River Yards public purpose fund, and the difficulties associated with multi-party negotiations. The Harlem River Rail Yards Fund ("Fund 31") may not be remitted to the City pursuant to the governing Restrictive Declaration. As the Comptroller acknowledges, the purpose of Fund 31 is specifically for development of rail freight at the Harlem River Rail Yards. As the Comptroller also should know, from the prior and current audit, the use of Fund 31 is further limited to the development of a very specific type of intermodal rail facility.

NYCEDC believes that the original purpose of Fund 31 remains difficult but viable and will continue to work with Harlem River Yard Ventures, Inc. to develop a capital improvement project or projects that are eligible for support from the public purpose fund. While NYCEDC remains committed to the original purpose of Fund 31, NYCEDC may, in the future, consider exploring other related purposes, with the approval of the City Council and City Planning Commission, as required by the Restrictive Declaration.

Additionally, NYCEDC wishes to correct a misstatement that could potentially be misunderstood by readers of the audit. Specifically, it is important to point out that although Fund 31 was legally established in 1992, payments into Fund 31 did not begin until 1997 and the fund was not fully capitalized (and thus unavailable for disbursement) until 2005. Accordingly, it is somewhat misleading of the audit to say that "EDC has been unable to utilize $8,898,321 in a public purpose fund created in 1992…"

Auditor Comment: Contrary to NYCEDC's interpretation, the audit did not find that NYCEDC made significant efforts to ensure the funds were used. The report found that NYCEDC's attempts to use the funds have been unsuccessful, because NYCEDC failed to effectively coordinate with other government entities as required in order to develop projects in the area. Further, NYCEDC's near decade-long history of fruitless meetings with Harlem River Yard Ventures, Inc. only serves to reinforce our opinion that NYCEDC is unable to effectively coordinate the development of a realistic plan. Therefore, we question NYCEDC's basis for determining whether the original purpose is viable in the near term. We also question NYCEDC's decision to keep $8,898,321 in public purpose funds for a project that has no foreseeable future when NYCEDC itself agrees that, through the amendment process, the money may potentially be used for other projects in the area that are more viable.

Further, NYCEDC is incorrect in its reference to an audit misstatement or attempt to mislead the reader. Specifically, it is important for NYCEDC to note that, according to the Restrictive Declaration, the fund was legally established in 1992 with provisions that fund payments were to be deposited into the trust account as a condition before certain building permits were issued. Whether the amounts were deposited as a total or in installment payments does not alter the fact that the funding for this project was already committed as of 1992 and yet over 19 years later, NYCEDC has still failed to identify a transportation improvement project in the area of the south Bronx where the fund can be appropriately expended. Therefore, NYCEDC's attempt to downplay its ineffective administration of this fund is disingenuous.

Has Not Been Able to Utilize the Balance of $464,574 for Funds that Were Created Decades Ago for General Public Benefits

NYCEDC has not been able to utilize the balance of $464,574 from three public purpose funds that were established as long ago as 1982 to meet general public purposes (see Appendix). These inactive funds were also the subject of discussion in our prior audit of NYCEDC, *Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts—# FN09-104A*, dated April 27, 2010. Specifically, our review noted that NYCEDC has not been able to expend the remaining fund balance as follows:

- NYCEDC still maintains a balance of $344,659 in a fund created in 1982 (28 years ago). According to Section 4.09 of the Lease Agreement related to Astoria Studios in Queens, the Sales Tax Payments should be "for improvements to the Premises or to publicly owned property in the area surrounding the Premises."

- NYCEDC still maintains a total of $64,834 in a fund that was designated as a job training contribution in 1991. Although NYCEDC has disbursed over $1 million from this fund, it has not been able to identify job training to utilize this fund balance.

- NYCEDC has not been able to make use of a fund balance of $55,081 for a fund that was established in the past 10 years with no specified purpose.

Consequently, NYCEDC should reassess whether the fund purposes are still viable or whether the $9,362,895 funding should be remitted to the City for general public use.

NYCEDC Response: "NYCEDC strongly disagrees with this finding. The fact that funds in this account have not yet been spent is not an indicator that funds should have been spent. The purposes of the funds remain viable and will be spent when a project meets the highly bespoke criteria of each public purpose fund. Additionally, we believe the Comptroller's recommendation violates the Federal Deed associated with Astoria Studios. NYCEDC does not intend to violate the specific terms of a Federal Deed transfer in order to liquidate a public purpose fund. The Comptroller's report does not mention the tens of millions of dollars in funds that have been disbursed which, if disclosed, would put the unspent amounts into perspective. EDC plans to disburse the remaining $464,574 as soon as practical.

***Fund #12* – Astoria Studios - $344,659**

Kaufman Astoria Studios and the related parcels were deeded to the City by the United States Department of the Interior in 1982 for the development and historic preservation of the Premises. As required by the Federal deed, the City entered into a lease with NYCEDC

(“Master Lease”), which entered into subleases for the development and expansion of the Premises.

Fund 12 was established as a trust by the Master Lease pursuant to a Federal Deed requirement that NYCEDC apply any sales tax savings in connection with improvement to the Premises “*only toward improvements to the [Premises] or to publicly owned property in the surrounding area*.” Strict adherence to the trust terms precludes the transfer of Fund 12 to the City’s general fund. Repurposing of Fund 12 for any other purpose other than those set forth in the Federal Deed and the Master Lease requires the approval of the United States Department of the Interior. NYCEDC neither intends to violate nor supports violating a Federal Deed to liquidate a public purpose fund.”

Auditor Comment: NYCEDC is being disingenuous in its response. The issue is not that NYCEDC must expend the funds, but rather that NYCEDC must work diligently to identify the needs of the community area in Queens where the funds can be invested as opposed to maintaining the funds indefinitely in a dormant account with no purpose. There is no doubt that once an appropriate purpose is identified, NYCEDC should be able to obtain the necessary approval required to expend the fund and not have to wait until the lease agreement expires by 2049.

NYCEDC Response: **“<u>Fund #18 – Bears Stearns Job Training - $64,834</u>**

Fund #18 was established as a trust for the purpose of funding and supporting “*an employment training program for existing and prospective Bear Stearns employees, other persons designated by Bear Stearns, and students of the New York City Technical College…and other public institutions, particularly for disadvantaged and minority students.* Fund 18 was funded by contributions on or behalf of Bear Stearns for the Job Training Purposes.

Strict adherence to the terms of the trust precludes the Comptroller’s recommendation that EDC consider transferring the funds remaining in Fund 18 to the City’s general fund. Notwithstanding the foregoing, the “*Deputy Mayor shall have the sole authority to direct NYCEDC to disburse such remaining monies consistent with the general employment training and development goals of the [employment training program*]”. Consistent with this, NYCEDC is currently exploring the use of Fund 18 for various job training initiatives for disadvantaged and/or minority City residents and will seek a Deputy Mayoral directive consistent with the job training purposes.”

Auditor Comment: We are glad that NYCEDC is currently exploring the use of Fund 18 for various job training initiatives and will seek the Deputy Mayoral “directive consistent with the job training purposes.” We only suggest that NYCEDC explore the use of this fund on a more timely basis and not wait another 19 years to utilize these resources.

NYCEDC Response: **“<u>Fund #36 – Winking Group LLC Lease - $55,081</u>**

Fund #36 was created pursuant to a lease between the City and NYCEDC, which was subsequently assigned to Winking Group, LLC. The Lease provides for the development of

75/85 East Broadway located in Manhattan's Community Board 3 for the purposes of enhancing the overall quality of the community and providing new employment opportunities for its residents. While the Lease does not designate a specific purpose for Fund 36, NYCEDC proposes that Fund 36 be used for improvements to the Premises and within Community Board 3, in accordance with the intent of the Lease. The Comptroller's recommendation that EDC consider transferring funds to the City's General Fund would not secure the use of the remaining funds for Community Board 3 and, therefore, would violate the terms of the original agreement. EDC has identified several projects for which these funds could be used and will deploy those funds at the most appropriate and prudent time. To reiterate, the fact that funds have not *yet* been spent, is not an indication that they *should* have been spent."

Auditor Comment: Considering the fact that it took NYCEDC over a decade to identify certain projects to utilize a total developer contribution of $50,000 for Fund #36, we strongly recommend that NYCEDC not take another decade to decide on a project to deploy these funds in a "prudent and appropriate manner."

Did Not Collect in a Timely Manner Contributions of $725,720 from Keyspan for Fund #39

NYCEDC did not collect contributions of $725,720 from Keyspan in accordance with the Topic Agreement for Fund #39. Under the Topic Agreement, Keyspan was required to create a fund of $1,950,000 with NYCEDC. The fund was to be used for the public interest in the local community where its major generating facility was put into commercial operation in May 2004. NYCEDC was required to use $1 million to fund the installation of photovoltaic panels and/or fuel cells at or in the vicinity of the facility and $950,000 to fund community and environmental improvement projects. According to the agreement, Keyspan was required to provide the funding over a period of no more than five years, beginning no later than the date of its facility's commercial operation. However, as of June 30, 2010, NYCEDC only collected $1,224,280 with an outstanding balance of $725,720. This outstanding balance should have been collected by May 2009.

In response to our discussion with NYCEDC officials on June 27, 2011, NYCEDC met with TC Ravenswood, LLC officials on June 28, 2011, and requested immediate funding of $250,000, which was transmitted to NYCEDC on July 15, 2011. This $250,000 was collected two years after all the funding was supposed to have been obtained. A balance of $475,720 remains unpaid.

NYCEDC Response: "NYCEDC Disagrees. Pursuant to an order from the New York State Board on Electric Generation Siting and the Environment, in connection with the 250-megawatt expansion of the KeySpan Ravenswood power plant in Long Island City ("Ravenswood Plant"), KeySpan agreed to provide $1,950,000 (the "Original Funds") to NYCEDC for public projects to compensate the local community within Queens Community Board No. 1's district for the inconvenience and disruption caused by the Ravenswood Plant.

The agreement was memorialized in an Amended Public Interest Topic Agreement amended by the Revised Amendment to the Public Interest Topic Agreement, dated April 25, 2003 among KeySpan Ravenswood, Inc., NYCEDC and the City in accordance with a settlement agreement in Public Service Commission Docket No. 99-F-1625.

In 2008, the Ravenswood Plant was acquired by TransCanada Corporation ("TransCanada"). Due to the acquisition, and a dispute over the continuing obligation, the identification of future public interest project was delayed. TransCanada has agreed to pay the remainder of the Original Funds, $725,720, for future public interest projects. Since agreeing to pay out such remaining funds, TransCanada has paid NYCEDC $250,000 for additional projects, leaving a remainder balance of $475,720 for future public interest projects. By letter dated July 19, 2011, TransCanada has agreed to fund the remainder balance. NYCEDC and TransCanada are actively seeking projects for the use of remaining funds. It should be noted for perspective that EDC has been responsible for the deployment of over $1,500,000 in funds to benefit the area and is responsible for the preservation of the remaining balances throughout the merger process."

Auditor Comment: It is interesting to note that only after we presented this finding for discussion at our audit pre-exit meeting, the following day NYCEDC quickly moved to negotiate back part of the uncollected fund from the company in question. With regard to this issue, we recommend that NYCEDC collect the balance of $475,720 as soon as possible.

Did Not Properly Administer Total Disbursements of $247,800 from Fund #39

NYCEDC did not properly review the supporting documentation submitted by the Queens Independent Living Center, Inc. (QILC) that was disbursed from Fund #39. Under the funding agreement, NYCEDC agreed to fund all the project costs related to the purchase and installation of approximately 224 units of energy efficient air conditioners for the Queens community up to $252,000. The funding agreement specified that NYCEDC was not obligated to disburse the funding unless QILC received Vendex clearance and the required number of units of air-conditioning was installed. Upon completion of the work performed, QILC was required to submit a final project report detailing all activities funded to date and the number of air-conditioning units purchased and installed, and provide copies of invoices and contracts related to the project (1) for the final payment of $4,200 or (2) to refund any excess disbursements made by NYCEDC.

Based on our review of the funding agreement and NYCEDC's records, we noted certain deficiencies in NYCEDC's fund disbursement process. Specifically, NYCEDC disbursed the first three payments for a total of $157,800 prior to QILC's Vendex approval being granted on July 15, 2009. Additionally, NYCEDC did not verify whether QILC submitted the required reports and supporting invoices and had the required number of air-conditioning units installed. For example, QILC did not submit the expense reports for December 2008 and June 2009 or copies of invoices when they submitted their requests for disbursement. Additionally, QILC collected a total of $227,800 as of July 27, 2009, when only 48 of the required 134 air-conditioning units were reportedly installed, leaving a balance of 86 uninstalled units.

At the exit conference on July 29, 2011, NYCEDC officials provided us with QILC's submission for the final payment of $4,200, which NYCEDC did not pay. However, QILC's final submission only indicated 184 units were installed and did not include the required final report for the entire project. Without the final report and all the required supporting documents, NYCEDC would not be able to determine whether QILC installed the 184 air-conditioning units as reported or whether any excess disbursements should be returned to NYCEDC.

NYCEDC Response: "NYCEDC Disagrees. NYCEDC believes the Comptroller's Office fundamentally misunderstands the language contained in the documents. Queens Independent Living Center's (QILC) "Warm and Cool" Initiative" has provided people of all ages and disabilities with services that would allow them to develop skills necessary to live independently earn degrees and find jobs. In furtherance of QILC's "Warm and Cool" initiative, QILC sought $250,000 in funding from the Ravenswood Community Funding Program for the administration of the program and the purchase of air conditioning units.

Pursuant to the funding agreement, EDC approved to fund the entire project cost comprising the purchasing of A/C equipment and servicing the installation for approximately 224 units up to the amount of $252,000. The final quantity of units to be purchased and serviced remained an approximation, which correlated to the qualification and eligibility of applicants.

QILC furnished along with its payment request supporting documentation of the purchase and installation of the respective equipment. NYCEDC reviewed all payment requests from QILC and issued payments according to the grants agreement. QILC acknowledges the delivery and installation of all A/C equipment and services installations as per the funding agreement."

Auditor Comment: NYCEDC is not addressing the real issue here. NYCEDC did not have adequate documentation in support of these payment requests. The safeguarding of the funds is a basic requirement of NYCEDC's custodial responsibility regarding the funds it is assigned to administer. Therefore, we continue to emphasize that NYCEDC adhere to the disbursement guidelines stipulated in the funding agreement with respect to the Vendex check, the installation requirements, and the reporting requirements to ensure funds are properly disbursed.

Incurred Unnecessary Audit Fees of $28,934 for Funds #12, #28, #34 and #35

NYCEDC incurred unnecessary audit fees of $28,934 for Funds #12, #28, #34, and #35 for Fiscal Years 2009 and 2010 even though none of these public purpose fund agreements requires an independent audit.

In addition, our review of NYCEDC's records found that Fund #12 had no activities other than interest income and bank fees. Although Funds #28, #34, and #35 had either consultant fee expenses or developer contributions received during our scope period, the Report of the Independent Auditors did not render an opinion citing that "The Fund does not have access to sufficient evidence supporting the developer's contributions received and receivable from the Fund's inception. We were not able to perform other auditing procedures to verify the developer's contributions."

In FY 2010, although Fund #28 had no fund activities other than interest income of $5.26 and bank fee expenses of $6.46, the fund was audited. After the provision of $3,687.20 in audit fees, Fund #28 had a fund deficit of $1,302.71. Because there was no apparent requirement to audit these funds, we question the basis for NYCEDC to continue to have these funds audited. Audits of these funds resulted in audit fees of $28,934 for Fiscal Years 2009 and 2010.

NYCEDC Response: "NYCEDC Partially Disagrees. NYCEDC is encouraged that the Comptroller's office has found that NYCEDC has been overly diligent in the administration of certain funds. NYCEDC sought to ensure the proper reporting and presentation of its consolidated financial information to all external stakeholders. NYCEDC's regular audits of public purpose funds, demonstrates its commitment to transparency and the proper administration of the public purpose funds. The Comptroller's recommendation to discontinue voluntary audits contradicts its general finding that NYCEDC does not properly administer the public purpose funds. NYCEDC will continue to work with its outside auditors to ensure the integrity of its financial statements. Upon their recommendation and assurances, EDC may accept the Comptroller's recommendation and cease all voluntary audit engagements of the public purpose funds.

Termination of the voluntary audits will save the City approximately $3,500 annually per audit."

Auditor Comment: Contrary to NYCEDC's interpretation and in light of the misunderstanding by NYCEDC regarding the unnecessary audit fees it paid, we want to re-emphasize that NYCEDC was not diligent when contracting for CPA audit services for small funds that have no activity or an audit requirement. In addition, NYCEDC's position that "NYCEDC will continue to work with its outside auditors to ensure the integrity of its financial statements" is a clear indication that NYCEDC believes that by retaining its outside auditors, it would resolve all the administrative deficiencies identified in the purpose funds as discussed in this report. Therefore, rather than being "encouraged", NYCEDC should be more careful in incurring expenses on services its personnel should very well be able to provide. NYCEDC should realize that as an agent of the City, it has the responsibility to ensure every dollar expended is properly administered.

RECOMMENDATIONS

We recommend that NYCEDC:

1. Reconsider whether the original purposes of inactive Funds #12, #18, #31, and #36 are still viable or whether the $9,362,895 funding should be remitted to the City's general fund.

2. Ensure collection of the remaining balance of $725,720 in unbilled developer contributions identified by this audit.

3. Properly verify future submissions for payment to ensure all funding criteria have been met prior to disbursements.

4. Discontinue incurring unnecessary audit fees.

Auditor Comment: NYCEDC officials did not address the report recommendations.

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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered Fiscal Years 2009 and 2010 (July 1, 2008, to June 30, 2010). To obtain an understanding of the nature and activities of the public purpose funds administered by NYCEDC, we reviewed all the public purpose funds-related agreements, memoranda, correspondences, and financial records. We also conducted a walk-through meeting with NYCEDC officials, reviewed the detailed general ledger, and reviewed financial reports to familiarize ourselves with NYCEDC's accounting and reporting processes. We documented our understanding of NYCEDC's control processes through written narratives.

To determine whether NYCEDC accurately recorded and reported all the revenue from public purpose funds, we reviewed the terms and provisions of the public purpose fund agreements, general ledger, and financial statements for Fiscal Years 2009 and 2010. We identified the revenue amount established in each fund agreement and traced the revenue activities of each fund from NYCEDC's general ledger to NYCEDC's financial statements for all 20 public purpose funds for accuracy.

We judgmentally sampled the disbursements of all active funds to determine whether NYCEDC properly utilized the funding in accordance with the designated fund purposes. For our detailed test of expense transactions, we reviewed the supporting documentation for all active funds. We traced the sampled expenses from the general ledger to the vendors' invoices, service contracts, the respective public purpose fund documents, and the funding agreements to ascertain whether the expenses were made appropriately and were well supported. We also reviewed all inactive funds account to determine whether the fund purposes have been fulfilled. To determine whether NYCEDC properly reported the revenue in connection with the 42nd Street Development Project, we reviewed the fund balances in accounts #29 and #32. Finally, we reviewed bank statements and analyzed the fund accounts to determine whether NYCEDC properly managed the investment of the fund balances.

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.

APPENDIX

Total Funding in Inactive Public Purpose Fund Accounts
As of June 30, 2010

Fund #	Agreement Date	Funding Source	# of Years	Unfulfilled Fund Purposes	Status During FY 2009 - 2010	Fund Balance as of 6/30/2010
12	9/22/1982	Sales Tax Savings	28	For the improvement of Building 13 Rehabilitation and surrounding area.	No activities	$344,659
18	12/1/1991	Bear Stearns's Job Training Contribution	19	Seek the Deputy Mayor's authority to allocate the fund balance for general employment training and development goals of the Job Training Program	No activities	64,834
36	4/20/2000	Sales Tax Savings	10	Unspecified in the agreement	No activities	55,081
				Total Inactive Funding		**$464,574**

As noted in our prior audit (FN09-104A), all these funds had been inactive during the scope period from July 1, 2005 through June 30, 2008.

RESPONSE TO COMPTROLLERS' OFFICE AUDIT REPORT PUBLIC PURPOSE FUND (PPF

FINDINGS:

EDC has not been able to disburse $9,362,895 in public purpose funds created from developer contributions and maintained by EDC as a trustee on behalf of the City or the project developers. Accordingly-and given the lengthy amount of time that has elapsed since these funds were created – EDC should reconsider whether the original purpose of the funds are still viable or whether the $9,362.895 million funding should be remitted to the City, given that the funds represent city tax savings and Other City benefits.

Of the retained funding, EDC has been unable to utilize $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yard Facility in the Bronx. Although project correspondence indicates that since 2002, EDC has been involved in attempts to find a use for these funds, these attempts have apparently been unsuccessful. In another case, EDC retained $464,574 in three funds, including funds that were established in 1982 and 1991 to rehabilitate the Astoria Studios in Queens and create job training programs.

Further, EDC failed to collect a total of $725,720 due from Keyspan that was to be used to fund local community interests. (On July 15th, 2011, EDC collected $250,000 – two years after all the funds was to have been obtained)

We also found that EDC did not properly administer total disbursements of $247,800 from Fund #39 and incurred unnecessary audit fees of $28,934 on certain funds that did not have financial activities or audit requirements.

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

NYCEDC RESPONSE:

Over the last few decades EDC has worked very hard to secure and disburse over 80% of the nearly $50 million in public purpose funds and fully expects to spend the remainder of the funds prudently and as soon as practical These funds are important sources of revenue for economic development at a time of scarce resources, but, as the steward of these funds. EDC has a duty to adhere strictly to the terms of each agreement As the Comptroller is likely aware after this audit, each fund is uniquely tailored to a specific set of terms and it is our goal to continue to administer these funds wisely and within the legal bounds of each agreement.

EDC disagrees with the Comptroller's general recommendation that EDC consider transferring these funds to the City's General Fund. The fact that funds in these accounts have not yet been spent is not an indicator that funds should have been spent. EDC believes that these funds remain viable. Furthermore, EDC strongly believes that that it would violate many of the stated terms of the public purpose funds to liquidate and transfer the funds to the City's General Fund.

COMPTROLLER'S AUDIT FINDING 1:

Retained $8.9 Million in Unused Public Purpose Fund

EDC has been unable to utilize the balance of $8,898,321 in a public purpose fund created under a 1992 restrictive declaration for the benefit of the Harlem River Rail Yard facility (Facility) located in the Bronx. The city and EDC established the fund with a contribution from a private developer in connection with a *residential building project in Manhattan. Improvements to benefit the Facility were intended to facilitate rail freight traffic to the City.*

Project correspondence indicates that since 2002, EDC has been involved in several attempts to oversee the use of the $8.9 million funding by the Harlem River Yard Ventures, Inc., a private company that obtained a lease at the Facility location. These attempts have apparently been unsuccessful. However, documentation indicates that efforts to make enhancements to the Facility have been fraught with difficulties, and have involved coordination with other government entities. The inactive status of this fund was also one of the issues discussed in our prior audit of EDC: Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts – # FN09-104A, dated April 27, 2010. Accordingly – and given the lengthy amount of time that has elapsed since the fund was created – EDC should reconsider whether the original purpose of the fund is still viable, or whether the $8.9 million funding should be remitted to the City.

NYCEDC RESPONSE: NYCEDC Partially Agrees

NYCEDC is appreciative that the Comptroller's Office acknowledges the significant effort EDC has put into previous attempts to use the Harlem River Yards public purpose fund, and the difficulties associated with multi-party negotiations. The Harlem River Rail Yards Fund ("Fund 31") may not be remitted to the City pursuant to the governing Restrictive Declaration. As the Comptroller acknowledges, the purpose of Fund 31 is specifically for development of rail freight at the Harlem River Rail Yards. As the Comptroller also should know, from the prior and current audit, the use of Fund 31 is further limited to the development of a very specific type of intermodal rail facility.

NYCEDC believes that the original purpose of Fund 31 remains difficult but viable and will continue to work with Harlem River Yard Ventures, Inc. to develop a capital improvement project or projects that are eligible for support from the public purpose fund. While NYCEDC remains committed to the original purpose of Fund 31, NYCEDC may, in the future, consider exploring other related purposes, with the approval of the City Council and City Planning Commission, as required by the Restrictive Declaration.

Additionally, NYCEDC wishes to correct a misstatement that could potentially be misunderstood by readers of the audit. Specifically, it is important to point out that although Fund 31 was legally established in 1992, payments into Fund 31 did not begin until 1997 and the fund was not fully capitalized (and thus unavailable for disbursement) until 2005. Accordingly, it is somewhat misleading of the audit to say that "EDC has been unable to utilize $8,898,321 in a public purpose fund created in 1992..."

COMPTROLLER'S AUDIT FINDING 2:

Has Not Been Able to Utilize the Balance of $464,574
For Funds that Were Created Decades Ago for General Public Benefits

EDC has not been able to utilize the balance of $464,574 from three public purpose funds that were established as long ago as 1982 to meet general public purposes (see Appendix). These inactive funds were also the subject of discussion in our prior audit of EDC, Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts – # FN09-104A, date April 27, 2010. Specifically, our review noted that EDC has not been able to expend the remaining fund balance as follows:

- *EDC still maintains a balance of #344,659 in a fund created in 1982 (28 years ago). According to Section 4.09 of the Lease Agreement related to the Astoria Studios in Queens, the Sales Tax Payments should be "for improvements to the Premises or to publicly owned property in the area surrounding the Premises."*

- *EDC still maintains a total of $64,384 in a fund that was designated as a job training contribution in 191. Although EDC has disbursed over $1 million from this fund, it has not been able to identify job training to utilize this fund balance.*

- *EDC has not been able to make use of a fund balance of $55,081 for a fund that was established in the past 10 years with no specified purpose.*

NYCEDC RESPONSE: NYCEDC Disagrees

NYCEDC strongly disagrees with this finding. The fact that funds in this account have not yet been spent is not an indicator that funds should have been spent. The purposes of the funds remain viable and will be spent when a project meets the highly bespoke criteria of each public purpose fund. Additionally, we believe the Comptroller's recommendation violates the Federal Deed associated with Astoria Studios. NYCEDC does not intend to violate the specific terms of a Federal Deed transfer in order to liquidate a public purpose fund. The Comptroller's report does not mention the tens of millions of dollars in funds that have been disbursed which, if disclosed, would put the unspent amounts into perspective. EDC plans to disburse the remaining $464,574 as soon as practical.

Fund #12 – Astoria Studios - $344,659

Kaufman Astoria Studios and the related parcels were deeded to the City by the United States Department of the Interior in 1982 for the development and historic preservation of the Premises. As required by the Federal deed, the City entered into a lease with NYCEDC ("Master Lease"), which entered into subleases for the development and expansion of the Premises.

Fund 12 was established as a trust by the Master Lease pursuant to a Federal Deed requirement that NYCEDC apply any sales tax savings in connection with improvement to the Premises "*only toward improvements to the [Premises] or to publicly owned property in the surrounding area*." Strict adherence to the trust terms precludes the transfer of Fund 12 to the City's general fund. Repurposing of Fund 12 for any other purpose other than those set forth in the Federal Deed and the Master Lease requires the approval of the United States Department of the Interior. NYCEDC neither intends to violate nor supports violating a Federal Deed to liquidate a public purpose fund

Fund #18 – Bears Stearns Job Training - $64,834

Fund #18 was established as a trust for the purpose of funding and supporting "*an employment training program for existing and prospective Bear Stearns employees, other persons designated by Bear Stearns, and students of the New York City Technical College...and other public institutions, particularly for disadvantaged and minority students.* Fund 18 was funded by contributions on or behalf of Bear Stearns for the Job Training Purposes.

Strict adherence to the terms of the trust precludes the Comptroller's recommendation that EDC consider transferring the funds remaining in Fund 18 to the City's general fund. Notwithstanding the foregoing, the "*Deputy Mayor shall have the sole authority to direct NYCEDC to disburse such remaining monies consistent with the general employment training and development goals of the [employment training program]*". Consistent with this, NYCEDC is currently exploring the use of Fund 18 for various job training initiatives for disadvantaged and/or minority City residents and will seek a Deputy Mayoral directive consistent with the job training purposes.

Fund #36 – Winking Group LLC Lease - $55,081

Fund #36 was created pursuant to a lease between the City and NYCEDC, which was subsequently assigned to Winking Group, LLC. The Lease provides for the development of 75/85 East Broadway located in Manhattan's Community Board 3 for the purposes of enhancing the overall quality of the community and providing new employment opportunities for its residents. While the Lease does not designate a specific purpose for Fund 36, NYCEDC proposes that Fund 36 be used for improvements to the Premises and within Community Board 3, in accordance with the intent of the Lease The Comptroller's recommendation that EDC consider transferring funds to the City's General Fund would not secure the use of the remaining funds for Community Board 3 and, therefore, would violate the terms of the original agreement. EDC has identified several projects for which these funds could be used and will deploy those funds at the most appropriate and prudent time. To reiterate, the fact that funds *have not yet* been spent, is not an indication that they *should* have been spent.

COMPTROLLER'S AUDIT FINDING 3:

Did Not Collect In a Timely Manner Contributions of $725,720 from Keyspan for Fund #39

EDC did not collect contributions of $725,720 from Keyspan in accordance with the Topic Agreement for Fund #39. Under the Topic Agreement, Keyspan was required to create a fund of $1,950,000 with EDC. The fund was to be used for the public interest in the local community where its major generating facility was put into commercial operation in May 2004. EDC was required to use $1 million to fund the installation of photovoltaic panels and/or fuels cells at or in the vicinity of the facility, and $950,000 to fund community and environmental improvement projects. According to the agreement, Keyspan was required to provide the funding over a period of no more than five years, beginning no later than the date of its facility's commercial operation. However, as of June 30, 2010, EDC only collected $1,224,280 with an outstanding balance of $725,720. This outstanding balance should have been collected by May 2009.

In response to our discussion with EDC officials on June 27, 2011, EDC met with TC Ravenswood, LLC officials on June 28, 2011, and requested immediate funding of $250,000, which transmitted to EDC on July 15, 2011. This $250,000 was collected two years after all the funding was supposed to have been obtained. A balance of $475,720 also remains unpaid.

NYCEDC RESPONSE: *NYCEDC Disagrees*

Pursuant to an order from the New York State Board on Electric Generation Siting and the Environment, in connection with the 250-megawatt expansion of the KeySpan Ravenswood power plant in Long Island City ("Ravenswood Plant"), KeySpan agreed to provide $1,950,000 (the "Original Funds") to NYCEDC for public projects to compensate the local community within Queens Community Board No. 1's district for the inconvenience and disruption caused by the Ravenswood Plant.

The agreement was memorialized in an Amended Public Interest Topic Agreement amended by the Revised Amendment to the Public Interest Topic Agreement, dated April 25, 2003 among KeySpan Ravenswood, Inc., NYCEDC and the City in accordance with a settlement agreement in Public Service Commission Docket No. 99-F-1625.

In 2008, the Ravenswood Plant was acquired by TransCanada Corporation ("TransCanada"). Due to the acquisition, and a dispute over the continuing obligation, the identification of future public interest project was delayed. TransCanada has agreed to pay the remainder of the Original Funds, $725,720, for future public interest projects. Since agreeing to pay out such remaining funds, TransCanada has paid NYCEDC $250,000 for additional projects, leaving a remainder balance of $475,720 for future public interest projects. By letter dated July 19, 2011, TransCanada has agreed to fund the remainder balance. NYCEDC and TransCanada are actively seeking projects for the use of remaining funds. It should be noted for perspective that EDC has been responsible for the deployment of over $1,500,000 in funds to benefit the area and is responsible for the preservation of the remaining balances throughout the merger process.

COMPTROLLER'S AUDIT FINDING 4:

Did Not Properly Administer Total Disbursements of $247,800 from Fund #39

EDC did not properly review the supporting documentation submitted by the Queens Independent Living Center, Inc. (QILC) that was disbursed from Fund #39. Under the funding agreement, EDC agreed to fund all the project costs related to the purchase and the installation of approximately 224 units of energy efficient air conditioners for the Queens community up to $252,000. The funding agreement specified that EDC was not obligated to disburse the funding unless QILC received Vendex clearance and the required number of units of air conditioning was installed. Upon completion of the work performed, QILC was required to submit a final project report detailing all activities funded to date and the number of air conditioning units purchased and installed, and provide copies of invoices and contracts related to the project (1) for the final payment of $4,200, or (2) to refund any excess disbursements made by EDC.

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COMPTROLLER'S AUDIT FINDING 5:

Incurred Unnecessary Audit Fees of $28,934 for Funds #12, #28, #34 and #35

EDC incurred unnecessary audit fees of $28,934 for Funds #12, #28, #34 and #35 for Fiscal Years 2009 and 2010 even though none of these public purpose fund agreements requires and independent audit.

In addition, our review of EDC's records found that Fund #12 had no activities other than interest income and bank fees. Although Funds #28, #34, and #35 had either consultant fee expenses or developer contributions received during our scope period, the Report of the Independent Auditors did not render an opinion citing that "The Fund does not have access to sufficient evidence supporting the developer's contributions received and receivable from the Fund's inception. We were not able to perform other auditing procedures to verify the developer's contributions."

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NYCEDC RESPONSE: NYCEDC Partially Disagrees

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Termination of the voluntary audits will save the City approximately $3,500 annually per audit.