

January 3, 2025

Via USPS Certified Mail and E-mail

Ms. Carmen Maldonado  
Audit Director  
Office of the New York State Comptroller  
59 Maiden Lane, 21<sup>st</sup> Floor  
New York, NY 10038

Re: Audit Report 2021-N-06

Dear Ms. Maldonado:

Please accept this letter as the 180-day report from the New York City Industrial Development Agency (“NYCIDA” or “IDA”) to the New York State Comptroller regarding the audit report, New York City Industrial Development Agency – Administration and Monitoring of Financial Assistance to New York City Businesses (2021-N-6). As a supplement to our response, we have attached our March 2024 response to the final draft audit report as Exhibit A, which is referenced several times herein.

**Recommendation 1:** Develop a formal procedure for the intake process that includes but is not limited to: a) A tracking mechanism that retains detailed information, such as status change dates, documents received, and pending, and approaching deadlines and b) Instructing staff to obtain and retain intake documents.

*NYCIDA 180-day Response:* NYCIDA reiterates that we have a formalized intake process in place as described in our response to the final draft audit report. Since then, we conducted a competitive selection process to select the winning vendor. In November 2024, NYCIDA’s board of directors approved the selection of Crowe LLP provide a comprehensive software development service to create and develop a digital platform for the Agency’s benefits application process, including inquiry, submission, review and status tracking. The digital platform is expected to be operational before the end of 2025.

**Recommendation 2:** Document and retain application inquiry, intake, and approval decisions regardless of applicant status.

*NYCIDA 180-day Response:* As stated in our response to the final draft audit report, the winning vendor will provide a comprehensive software development service to create and develop a digital platform for the Agency’s benefits application process, including inquiry, submission, review and status tracking. The digital platform, once operational, will include a robust tracking mechanism that retains all recommended information.

**Recommendation 3:** Ensure employees have expertise in interpreting financial statements and conducting a financial feasibility analysis.

*NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

**Recommendation 4:** Revise the financial analysis template to ensure the template formulas are correct and capture all relevant information to determine a project's financial feasibility.

*NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

**Recommendation 5:** Develop controls and procedures to ensure sufficient financial information is collected prior to determining financial feasibility, such as, but not limited to, acquiring the income statement, balance sheet, cash flow statement, and financial statement notes with accounting assumptions.

**Recommendation 6:** Document the analyses and assumptions used in assessing the financial feasibility of projects.

*NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

**Recommendation 7:** Ensure each self-audit is conducted in accordance with the NYCIDA processes and procedures.

*NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

**Recommendation 8:** Review the DOF-prepared PILOT Notice of Calculation for accuracy.

*NYCIDANYCIDA 180-day Response:* NYCIDA continues to adhere to the previously-stated, multi-agency PILOT administration arrangement currently in place.

**Recommendation 9:** The OSC stated recommendation is that NYCIDA revise the lease agreement to include penalty clauses that would reduce benefits to projects that do not create the anticipated number of jobs.

*NYCIDA 180-day Response:* NYCIDA does not intend to accept the audit recommendation and respectfully disagrees with this recommendation for the reasons described in its response to the final draft audit report..

**Recommendation 10:** Require that program managers and other employees use the HireNYC program to increase employment in NYCIDA projects.

*NYCIDA 180-day Response:* While NYCEDC continues to utilize the HireNYC program to increase access to job openings on NYCIDA projects, NYCIDA notes that the HireNYC program is in the process of being phased out; however, a new local hiring program, Community Hiring, is in development and is anticipated to be implemented in 2025.

**Recommendation 11:** Require and document a cost-benefit analysis or other method for all projects to measure the benefit to the City.

*NYCIDA NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

**Recommendation 12:** Train employees on how to calculate recapture amounts, including but not limited to accurately prorating the last semi-annual PILOT period, ensuring all PILOT benefits are included, interpreting the Notice of Calculation correctly, and confirming the interest computation per the terms of the lease agreement.

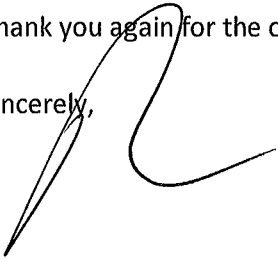
*NYCIDA 180-day Response:* NYCIDA reaffirms our response provided to the final draft audit report.

*Updated NYCIDA 180-day Response:* NYCIDA continues to conduct periodic review of the template but has not discovered any errors since March 2024.

*NYCIDA 180-day Response:* NYCIDA continues to commit to carefully evaluating any collected recaptured (repayment) amounts. That said, NYCIDA cannot reopen matters that were settled in the course of litigation.

Thank you again for the opportunity to submit this follow-up response.

Sincerely,

A handwritten signature in black ink, appearing to be 'AK', written over the word 'Sincerely,'.

Andrew Kimball  
Chairperson  
New York City Industrial Development Agency

CC: Emily Marcus Falda, NYCIDA Executive Director

# **EXHIBIT A**

March 21, 2024

Via USPS Certified Mail and E-mail

Ms. Carmen Maldonado  
Audit Director  
Office of the New York State Comptroller  
59 Maiden Lane, 21<sup>st</sup> Floor  
New York, NY 10038

Re: Audit Report 2021-N-06

Dear Ms. Maldonado:

Please accept this letter as the formal response from the New York City Industrial Development Agency (“NYCIDA” or “IDA”) to the draft report, New York City Industrial Development Agency – Administration and Monitoring of Financial Assistance to New York City Businesses (2021-N-6) by the Office of the New York State Comptroller (“OSC”), received via email on February 21, 2024.

The stated purpose of the audit was to determine whether NYCIDA has policies and procedures in place to approve, monitor, and measure project performance and whether they were followed. We have reviewed the audit findings and recommendations as set forth in the draft report. We appreciate the lessons learned from this engagement. Since July 30, 2021, when NYCIDA first received a letter from OSC requesting 15 sets of documents and information, we have duly cooperated by diligently making available over 2,500 pieces of both digital and paper documents for review by OSC auditors. We provided meetings with OSC auditors three dozen times to help them better understand our activities and practices. With that said, after nearly three years of engaging with OSC, we are left perplexed as to the purpose and intent of this audit after reviewing the final draft report.

Before providing responses to specific areas identified by the audit team in the draft report, there were some inaccuracies and clarifications needed on various findings. Furthermore, we have a serious reservation about the method of sampling projects selected by the audit team. We strongly believe that the audit team did not select a representative sample which reflects how NYCIDA operates presently. The audit team’s selection consisted of many outdated projects for which enforcement actions took place prior to July 1, 2013, the beginning date of the scope of this audit quoted by the audit team. For that reason, OSC’s findings are skewed toward outdated processes that have already been improved. NYCIDA has shared a significant amount of information and procedural materials to explain how NYCIDA has progressively improved its compliance enforcement process since 2013. The audit team’s focus on the enforcement activities on outdated projects seems to be counterproductive in assessing the accuracy, effectiveness, and efficacy of NYCIDA’s current operating practices. The progressive improvements made to all facets of our processes, including the application, project approval, and post-execution monitoring of projects have helped NYCIDA to uphold the highest standards as an exemplary public authority as the largest IDA in the State of New York.

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NYCIDA has the following main concerns with the findings of the audit:

- The audit team's sample selection and resulting findings do not reflect NYCIDA's current operating practices and procedures. Critical findings presented by the audit team were heavily skewed to outdated events, failing to recognize improvements implemented in recent years or current practices. Examples discussed in our response include (1) the OSC's observations related to outdated practices involving intake and application practices, which have since been revised and improved; (2) an observation about construction completion monitoring practices for activities that occurred in the early 2000's and does not reflect current practices; and (3) an alleged error in recapture calculation for a recapture settlement that occurred in 2014.
- Perfunctory descriptions of observations and findings may mislead readers about the impact and outcomes of NYCIDA's programs and activities and the nature of our operations. Examples discussed in our response here include but are not limited to (1) incorrect observations and/or inferences that NYCIDA did not collect required financial statements and insurance certificates for certain projects and a misleading statement that "it is possible the Board [of Directors] approved projects without having all the necessary information;" (2) observations involving our intake and application process that do not recognize the extraordinarily vigorous vetting process that every benefits application goes through and the continuing improvements in our document tracking and retention procedures; (3) statements about missing construction completion dates and maturity dates in transaction documents that OSC never discussed with us during the course of the audit that we may have rebutted if given the chance; (4) an incorrect observation about a underpayment of PILOT for one project because we "chose not to take action" in regard to a carve-out from PILOT of a separate business at the project site; (5) a wholly inadequate assessment of NYCIDA's job retention and creation results, based on a small sample of only 23 projects, that fails to recognize NYCIDA's tremendous success in supporting the retention and creation of jobs, often exceeding Initial job creation expectations, across the full portfolio of NYCIDA projects.
- The OSC makes a claim that NYCIDA does not collect all supplemental documents required by its application checklist during the application process. As we explained to the OSC before, all documents on the checklist are not applicable to every application and therefore not every applicant is expected or required to submit every item on the checklist. NYCIDA also notes and further elaborates herein that the OSC does not accurately describe our application checklist, as the report states that only seven supplemental documents are included in the checklist, while our current checklist includes 19 potential supplemental documents. As noted above, the OSC also states that financial statements and certificates of insurance liability are missing for certain projects, a claim that we dispute in our response herein.

In addition to the main concerns noted above, NYCIDA's detailed response to the OSC's audit findings and recommendations are set forth in the Attachment, responses are categorized under the various headings in the Audit Findings and Recommendations section of the draft report.

1. Compliance with the General Municipal Law
2. Intake Process
3. Monitoring of Project Compliance
4. Recapture of Financial Assistance

NYCIDA remains committed to providing unwavering support to preserve New York's industrial and manufacturing bases. We also play a critical role in New York City's ongoing effort to make strategic investments to encourage private investments in projects to grow innovative sectors. NYCIDA is an integral component in the City's commitment to investing in the life sciences industry by encouraging private investments in creating new business infrastructures to drive innovation in this multi-disciplinary sector that can unlock modern therapeutics and life-saving medicines, vaccines, diagnostics, and devices, all for the advancement of humanity.

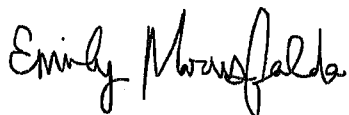
While outside the scope of the audit, NYCIDA recently launched the Manhattan Commercial Revitalization program to provide tax incentives for owners who are making substantial investments to modernize and make energy-efficient buildings that will attract world-class tenants and decrease vacancies. The program is expected to transform up to 10 million square feet of Manhattan commercial office space, generate around \$2.3 billion in construction and employment activity, increase City tax revenues, and boost street activity and small business opportunities.

NYCIDA is a key player in catalyzing investments to deliver the green economy, enabling the public and private sectors to deliver on ambitious climate and decarbonization goals. Our battery energy storage projects are helping to facilitate the City's goal of reducing greenhouse gas emissions. Our assistance is leveraging federal, state, and private investments to activate the South Brooklyn Marine terminal into a world-class offshore wind port. Our participation in the construction of a converter station in Astoria, Queens will be an integral part of the Champlain Hudson Power Express to deliver 1,250 MW of Canadian hydroelectric power to the NYC electricity grid – enough to power more than one million homes, contributing to fulfill the monumental clean energy mandate to make New York State's electricity grid 100% zero-emission by 2040.

We are very proud of NYCIDA's significant contributions to the economy and people of New York, as empowered and intended pursuant to the General Municipal Law. NYCIDA's accomplishments are evident. Since January 2002 the Agency has closed on 482 projects, leveraging discretionary incentives to induce approximately \$33.7 billion in private investment to retain and create nearly 176,287 jobs. (Results are as of June 30, 2023).

Thank you again for the opportunity to submit this response.

Sincerely,



Emily Marcus Falda  
Executive Director  
New York City Industrial Development Agency

CC: Andrew Kimball, NYCIDA Chairperson

## ATTACHMENT

### 1. Compliance with General Municipal Law

In response to the OSC's finding under this section, that "of the 21 businesses required to submit an application, none provided all the supplementary documentation", we note that while all applicants are required to submit a standard form of application plus numerous supplemental forms, NYCIDA staff work closely with each applicant to identify which documents are required for submission and to ensure that they are submitted. NYCIDA has robust project management processes in place to ensure that all required documentation is submitted.

For each application, NYCIDA typically collects dozens of documents and supplemental forms, which are each carefully reviewed. The OSC specifically mentions seven supplementary forms in their report, but the full, current version of the NYCIDA checklist includes 19. Agency staff have explained to the OSC that not every document on the checklist is relevant to every application, and thus not every applicant is expected or required to submit every item on the checklist. For example, if an applicant is a new venture and has no financial operating history, it is unable to provide 3 years of financial statements. Agency staff would review the 3-year operating pro forma statement in lieu of the retrospective financial statements.

The application checklist has been continuously updated and improved over the years. The OSC states that copies of certificates of liability insurance were missing for ten applicants, but this document was only added to the checklist after 2015. Older projects in the audit sample would not have been asked to submit a copy of their certificate of liability insurance at the time of application submission, though they would have to submit as a condition precedent prior to closing.

Of the 21 sample projects that were required to submit an application, 16 were approved by the NYCIDA Board of Directors prior to 2018. This means that most submitted applications were more than six years ago, during the period where applicants were required to fill out a paper application and to submit the original copy to NYCIDA. The sample selection of projects fails to represent our current practice, as many of the sampled projects predate the full digitization of our file system. NYCIDA fully digitized its application process and document storage system in 2018 and no longer requires or collects physical documents. This ensures robust file retention, organization, and retrieval capabilities.

Additionally, the OSC states that copies of financial statements were missing for 13 applicants. NYCIDA staff verified NYCIDA had received required financial information from these projects because their financial information was provided in the corresponding Executive Summaries when the NYCIDA Board of Directors approved their Inducement and/or authorizing resolution. NYCIDA strongly objects to the characterization that "the Board of [Directors] approved projects without having all the necessary information". The Executive Summaries for these applications, which have been provided to OSC staff, clearly demonstrate that the required information was received and reviewed by NYCIDA staff and Board members had access to a comprehensive set of information on each project presented for approval.

Further, NYCIDA staff requests that the statement about a "0% rejection rate" be removed entirely from this audit report. The OSC audit team may have misconstrued NYCIDA staff's comment. This anecdotal reference was meant to illustrate that: a) NYCIDA staff performed thorough diligence on every application prior to presentation to the NYCIDA Board of Directors for approval and b) that there are clear program parameters and requirements, as outlined by the UTEP, that allow NYCIDA staff to scrupulously accept and process eligible and viable applications. As presented



in this draft audit report, the statement lacks the appropriate context and reads like a definitive fact. Every member of the NYCIDA Board of Directors is fully empowered to make an independent decision to cast a vote on any project proposal, including objections and motions to defer a vote.

In response to OSC's recommendation under this section regarding NYCIDA developing a formal procedure for the intake process, NYCIDA staff would like to reiterate that NYCIDA has a formalized intake process in place, and that the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. NYCIDA staff are instructed to retain all documentation submitted with an application, in addition to any key communications. NYCIDA staff also notes that in October 2023, a Request for Proposals was issued to solicit software development and technology firms to submit proposals for an application software for the intake and management of prospective applications. It is our hope to select the winning vendor later this spring, and we anticipate that the software will include a robust tracking mechanism that retains all recommended information, including status change dates, documents received and pending, and approaching deadlines.

*Recommendation 1:* Develop a formal procedure for the intake process that includes but is not limited to: a) A tracking mechanism that retains detailed information, such as status change dates, documents received and pending, and approaching deadlines and b) Instructing staff to obtain and retain intake documents.

*NYCIDA Response:* NYCIDA has a formalized intake process in place, and the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. We are in the process of selecting a new online platform for the intake and management of prospective applications.

## 2. Intake Process

In managing the intake of prospective applicants, NYCIDA retains and maintains information about any outreach and inquiries received related to potential projects. Since August 2021, all inquiry emails have been archived and saved. Additionally, the spreadsheet provided to the OSC dated October 2021 has two tabs titled "Pipeline" and "Inquiries" which document the name and available details of any inquiries received via email or phone. This spreadsheet is regularly updated, especially on any leads with eligible and viable prospects. The spreadsheet also includes non-project specific information and general inquiries that do not require extensive notes. With those general inquiries, we do not initiate follow-ups.

Further, under the direction of the current Executive Director, NYCIDA took corrective action to address the findings of its in-house audit team in August 2021. Since then, NYCIDA has adopted a policy of creating internal memos to document when something unusual occurs with a project application. Such a memo can document certain instances, including but not limited to: a) a project withdrawing or delaying its application in advance of a public hearing or board of directors meeting; b) a project withdrawing from closing after obtaining Board of Directors authorization; or: c) a project encountering significant obstacles to proceeding with the application process. Additionally, a list of key communications and materials outside of the standard application package submissions was examined by the in-house audit team. The in-house audit team eventually closed out the examination of the in-take processes after NYCIDA Executive Director addressed the steps to implement recommendations from the in-house audit team.

As previously mentioned, in October 2023, a Request for Proposals was issued to solicit software development and technology firms to submit proposals for application software for the intake and management of prospective applications. It is our hope to select the winning vendor later this spring, and we anticipate that the software will

include a robust tracking mechanism that retains all recommended information, including information about inquiries and status change dates of potential applications. We plan to incorporate OSC's recommendations to "document and retain application inquiry, intake, and approval decisions regardless of applicant status" through the use of this software. The adoption of new software and technological platform will fully address Recommendation 2.

Regarding OSC's findings related to the Financial Feasibility analysis, NYCIDA would like to clarify that the OSC's audit findings are based on the review of project applications conducted between four and twelve years ago. One particular example highlighted findings in this section occurred during the spring of 2013. The NYCIDA appreciates OSC's recommendations related to the Financial Feasibility analysis, and notes that many improvements have been implemented over the years to its internal procedures for review and analysis of financial statements and information provided by applicants. Those improvements include, but are not limited to:

- A department manager's review and sign-off of the financial analysis performed by a project manager.
- The financial analysis template has been revised to appropriately capture the relevant and applicable information from materials submitted by applicants, along with the clearly noted non-standard assumptions used. Further, NYCIDA has further supplemented the revised template to appropriately incorporate additional information to reflect applicants' unique industry and/or business models.
- NYCIDA has stopped accepting tax returns from applicants, and will only accept certified or CPA prepared financial statements.
- NYCIDA is committed to testing the validity of the financial analysis template each year. NYCIDA will make periodic updates and improvements as appropriate.

We, however, respectfully disagree with OSC's conclusion that there is a causal relationship between NYCIDA's financial analysis done before presenting this specific project to its board of directors for inducement and authorization and the project's post-closing failure to meet its obligations under its agreements with NYCIDA, which ultimately led to the termination of the NYCIDA project agreements. There are many market factors that affect the company's business operations in the years following closing that cannot be attributed to a pre-approval financial review of a project company's application for financial assistance.

In concluding our response in this section, NYCIDA would like to further clarify that, immediately after the declaration of the project default, NYCIDA promptly took enforcement actions against the project company cited in this draft audit report. NYCIDA revoked and terminated the project's PILOT benefits, and its property was placed back on the tax rolls. The project company filed for bankruptcy and was promptly referred to the NYC Law Department for investigation and further legal action.

*Recommendation 2:* Document and retain application inquiry, intake, and approval decisions regardless of applicant status.

*NYCIDA Response:* As previously stated, NYCIDA has a formalized intake process in place, and the recent digitization of the application process has greatly improved document retention, organization, and retrieval capabilities. We are in the process of selecting a new online platform for the intake and management of prospective applications.

*Recommendation 3:* Ensure employees have expertise in interpreting financial statements and conducting a financial feasibility analysis.

*NYCIDA Response:* NYCIDA confirms that we have current employees who have expertise in analyzing financial documents and conducting necessary financial due diligence.

*Recommendation 4:* Revise the financial analysis template to ensure the template formulas are correct and capture all relevant information to determine a project's financial feasibility.

*NYCIDA Response:* NYCIDA confirms that necessary revisions to the financial analysis template have been implemented.

*Recommendation 5:* Develop controls and procedures to ensure sufficient financial information is collected prior to determining financial feasibility, such as, but not limited to, acquiring the income statement, balance sheet, cash flow statement, and financial statement notes with accounting assumptions.

*Recommendation 6:* Document the analyses and assumptions used in assessing the financial feasibility of projects.

*NYCIDA Response (to Recommendations 5 and 6):* One particular example the audit team cited in this draft report occurred during the spring of 2013. Since then, a series of improvements have been made and implemented to our internal procedures for review and analysis of financial statements and information provided by applicants.

### 3. Monitoring of Project Compliance

NYCIDA's current practice of monitoring and verifying project completion and operations commencement is both robust and thorough. We find various omissions of facts in this report to be arbitrary. Over two years, NYCIDA staff reviewed three rounds of OSC's preliminary findings and provided exhaustive, contemplative responses to address points previously raised by OSC. Without the clarification provided by NYCIDA during the protracted audit engagement period, a reader of this report would have the impression based on the OSC's cursory descriptions that NYCIDA engaged in only limited monitoring and verification activities with respect to these projects, which is highly inaccurate.

The self-audit review process is complementary to many other control mechanisms in place for post-closing project review. The self-audit review is an internal self-directed procedure and not a legal or statutory requirement. The practice and implementation of the process reflects NYCIDA's efforts to go beyond the requirements in both project documents and applicable statutory and regulatory requirements to evaluate and monitor project compliance. NYCIDA's Compliance team had to suspend all self-audit work at the onset of the COVID-19 pandemic in February 2020. NYCIDA staff extensively engaged in communicating with the portfolio of project companies and other small businesses to help them access emergency financial assistance programs made available through the federal Small Business Administration. Upon the reimplementation of the self-audit review process in the second half of calendar year 2021, NYCIDA gradually reinstated its practice of auditing a sample of its active portfolio.

The OSC makes three specific claims that NYCIDA cannot verify but will address each of them in turn:

- The OSC claims that "two projects had no project construction completion date." NYCIDA does not recall this being brought to its attention during the audit. NYCIDA is unaware what projects the OSC is referring to

in this claim, but one possible reason why there would not be a construction completion deadline is because the projects involved may not have had construction requirements because the benefit recipient was acquiring or refinancing (such as in the case of an NYCIDA bond transaction) a building that was already fully constructed and outfitted for project operations, with a pre-existing valid certificate of occupancy from the Department of Buildings. If the OSC would provide NYCIDA with the names of these two projects, NYCIDA can investigate further and provide any clarity needed.

- The OSC claims “[o]ne project had an agreement without a stated maturity date, meaning the project seemingly could go on in perpetuity.” While NYCIDA also does not recall this ever being brought to its attention during the course of the audit and is unaware what project the OSC is referring to, NYCIDA finds this claim highly unlikely. Even in the event a project did not have a defined “maturity date” in the relevant transaction documents, there likely would be an end date stipulated for any benefits, such as PILOT benefits (or a phase out of PILOT benefits described in the transaction documents and implemented by DOF) and sales tax benefits received, and as a result, those could not be utilized in perpetuity. NYCIDA can investigate further and provide any clarity needed, if the name of this project is provided to us.
- The OSC also claims that for “two projects, the amounts in the Executive Summary, lease agreement, and closing information statement for the mortgage recording tax, sales tax saving (exemption), project cost, and project fee did not always match. For example, one project’s maximum sales tax savings amount differed in each of the three documents – the Executive Summary stated \$2,250, the closing information statement listed a \$5,000 benefit, and the lease agreement did not state an amount.” First, it should be noted that the closing information statement is an internal document with no legal effect. Second, it is not uncommon that there are certain changes in project costs and benefit values due to the nature of these transactions in between board authorization and closing, for example as a result in changes in estimated construction costs, and therefore the amounts in an executive summary and a lease agreement may have some expected differences. Third, prior to 2013, NYCIDA was not including maximum sales tax savings amounts in its lease agreements, as it was not legally required to. Currently, NYCIDA includes maximum sales tax savings amounts in its lease agreements, so this finding does not reflect NYCIDA’s current practices. Once again, if the OSC would provide NYCIDA with the names of these two projects, NYCIDA can investigate further and provide any clarity needed.

The OSC claims that one project had been underpaying PILOT for nine years because there was no subtenant carve out for 2.5% of the facility space that was occupied by a subtenant. OSC states “The error was brought to NYCIDA’s attention, but NYCIDA did not take any action because DOF has responsibility for the PILOT calculation.” NYCIDA strongly disputes this characterization. During the second phase of this audit, DOF reached out to NYCIDA to review its PILOT calculation for this project. NYCIDA provided additional details to DOF to properly calculate PILOT accounting for the subleased space. DOF subsequently issued an accurate bill to the benefit recipient with additional PILOT owed for the subleased space, which was paid in full.

The OSC’s claim regarding the failure to verify the operations commencement date resulting in NYCIDA being precluded in a judicial proceeding from stating the date the project was completed happened in the early 2000’s, well before the scope of the audit period and further this dispute arose in part because of contradictory filings by the project company as to when the operations commencement date occurred.

### Job Retention and Creation

As stated in NYCIDA's response to its response to the OSC's second preliminary audit findings ("Phase 2 PAF"), NYCIDA notes that the OSC's findings regarding job creation rely on a sample of 23 projects out of hundreds of projects that received benefits during the scope of the audit. As NYCIDA previously pointed out, our publicly available annual investments project reports show that there has been significant job growth amongst projects receiving financial assistance with NYCIDA. The annual investments project report for the period ending June 30, 2021, the end date of the audit scope, shows that in the largest of NYCIDA's programs, the Industrial Incentive program, as of June 30, 2021, project companies cumulatively employed 44.5% higher than the number of jobs these companies employed at the time of application at locations receiving financial assistance from NYCIDA. NYCIDA takes pride in the tremendous success of our programs in retaining and creating jobs when looked at holistically, rather than assessing job creation and retention efforts through a narrow look at only 23 projects. In fact, a great many of our projects exceed initial job creation estimates. NYCIDA has seen great success in keeping businesses from relocating operations out of the City, providing crucial support to capital investments that improve facilities that otherwise would not happen without NYCIDA's assistance, and in generating tax revenue for the City through the creation and retention of jobs. NYCIDA cannot allow the OSC's narrow observations to mislead readers into believing that NYCIDA's programs do not as a whole result in net benefits for the City and its residents.

Regarding the OSC's claim that the City lost out on tax revenue as a result of construction delays that resulted in delayed operations commencement, NYCIDA notes that depending on which projects the OSC is referring to, these companies may still be generating tax revenue through income taxes paid by employees at existing premises in the City. We strongly believe the construction completion extensions granted are warranted by a variety of circumstances. These may include delays from regulatory bodies in issuing permits and approvals, unforeseen construction difficulties, and other justifiable reasons for extending construction completion deadlines. We also believe that ultimately after projects that receive extensions to complete construction, the long-term results include better equipped facilities in the City (after significant capital improvements are made by benefit recipients) and tax generating job retention and creation that otherwise would not exist without NYCIDA's assistance.

The OSC claims that HireNYC requirements are in seven agreements, yet IDA could not provide documentation that those projects were being monitored for compliance with the requirements. NYCIDA strongly disagrees with this claim. At the meeting to discuss NYCIDA's response to the Phase 2 PAF, the OSC said they might sample some projects for HireNYC compliance after we stated that we collect HireNYC employment reports. However, the OSC never requested any samples. The OSC also claims that "NYCIDA officials stated that NYCEDC collects employment data for HireNYC projects, but there was no documentation in NYCIDA's in-house application, DASH, to support this statement." This is also untrue. There is a reporting and tracking functionality in DASH for HireNYC reporting, which includes the collection of reports dating back to 2018.

The OSC also states that "NYCIDA claims that HireNYC projects have created more than 3,000 jobs in the City with little evidence to support the claim." This was not precisely what we claimed. Rather, we claimed that over 3,000 positions were filled through HireNYC, which is different than job creation, and NYCIDA can support this with data from a combination of reports from recruitment partners who refer candidates to employers with HireNYC requirements and HireNYC data submitted by employers.

Following please find NYCIDA's response to a group of recommendations by OSC under this section of the draft report:

*Recommendation 7:* Ensure each self-audit is conducted in accordance with the NYCIDA processes and procedures.

*NYCIDA Response:* NYCIDA generally agrees with the recommendation and that is what we always strive to do, but it completely disregards certain extraordinary circumstances such as the protracted global pandemic that forced us to adapt our practices.

*Recommendation 8:* Review the DOF-prepared PILOT Notice of Calculation for accuracy.

*NYCIDA Response:* As we previously explained to OSC, the establishment of the existing PILOT administration arrangement with the delineation of responsibility was promulgated during the 1990s through a series of agreements, between DOF, the New York City Office of Management and Budget, and NYCIDA, setting forth the procedures for PILOT billing as first conceived in 1990, renewed in 1992, and again renewed in 1996. This recommendation will cause confusion for all parties involved, including project companies. The purpose of the PILOT billing arrangement was to consolidate billing and collections. By reviewing the DOF's calculations NYCIDA would unduly insert itself into the DOF's process. In our view, this recommendation would result in delays in PILOT billing, calculations, and overall administration of PILOT accounts, to the detriment of projects that "promote the economic welfare" of the State. This is not to say we will take a hands-off approach with PILOT billing. To the contrary, we have and will always provide clarity and guidance on the interpretation of any section of a NYCIDA Agency Lease Agreement as requested by DOF but NYCIDA should not and will not overstep DOF's responsibility or role, in contravention of the series of agreements in place today and as were first promulgated in 1990.

*Recommendation 9:* The OSC stated recommendation is that NYCIDA revise the lease agreement to include penalty clauses that would reduce benefits to projects that do not create the anticipated number of jobs.

*NYCIDA Response:* Reiterating what we previously responded in the Phase 2 PAF, NYCIDA believes it would be too shortsighted to apply this change in its agreements across the board. NYCIDA cannot unilaterally impose a new penalty for missing job creation projections after contracts were executed. Including imposing penalties in all NYCIDA's projects merely for not meeting job projections could have detrimental and unintended consequences. Many industrial businesses tend to be cyclical. Such a penalty for a temporary setback could conceivably cause an undue financial burden that threatens their operations. Had NYCIDA penalized our projects during the COVID-19 pandemic, for instance, it could have had terrible consequences for the goal in General Municipal Law Article 18-A of preventing unemployment and economic deterioration. NYCIDA welcomes carefully considered and practical recommendations to assist us. However, considering the lack of mandatory job creation requirements under the General Municipal Law, taking the "one size fits all" approach would be irresponsible and indifferent to possible consequences that threaten not only job retention, but also the ability of certain businesses to continue generating tax revenue for the people of both the City and State of New York.

*Recommendation 10:* Require that program managers and other employees use the HireNYC program to increase employment in NYCIDA projects.

*NYCIDA Response:* NYCIDA is pleased to participate in New York City's workforce development programs to connect employers with job-ready, qualified New Yorkers. NYCIDA reiterates that utilizing the HireNYC program is a method to increase access to existing jobs openings for lower-income local candidates, not to increase the level of employment in NYCIDA projects.

**Recommendation 11:** Require and document a cost-benefit analysis or other method for all projects to measure the benefit to the City.

**NYCIDA Response:** A Cost Benefit Analysis is performed for every project application prior to being presented to the Board of Directors. Agency staff provided OSC with Cost Benefit Analysis workbooks for all requested projects. The Cost Benefit Analysis is one of the most important elements for the Board of Directors review, as it shows that the return to the City will be greater than the cost to the City for a specific project. The Cost Benefit Analysis template is routinely updated and improved to ensure accuracy.

#### 4. Recapture of Financial Assistance

The OSC further alleges the incorrect calculations result in a net under collection of \$674,894. NYCIDA does not dispute that over time, certain errors have occurred in recapture calculations. However, NYCIDA believes the OSC provides an incomplete picture of these recapture errors' scope. Since the beginning of FY 2013, NYCIDA has recovered approximately \$45 million. NYCIDA is proud of its efforts to recover a large amount of money for the City and State. In tandem with the tax revenue generated by NYCIDA's projects, the total amount recaptured speaks to NYCIDA's ability to investigate and pursue enforcement actions for amounts that otherwise may not be realized or recovered.

Please find NYCIDA's response to a group of recommendations by OSC under this section of the draft report:

**Recommendation 12:** Train employees on how to calculate recapture amounts, including but not limited to accurately prorating the last semi-annual PILOT period, ensuring all PILOT benefits are included, interpreting the Notice of Calculation correctly, and confirming the interest computation per the terms of the lease agreement.

**NYCIDA Response:** NYCIDA has and will train employees to accurately calculate recapture. NYCIDA ensures proper administration of the recapture calculation not only by training employees, but NYCIDA closely coordinates with DOF to provide further verification of accurate calculation and distribution before finalizing the calculation.

**Recommendation 13:** Ensure the recapture percentage formula in the recapture template is correct.

**NYCIDA Response:** NYCIDA agrees to this recommendation and currently conducts periodic review of the template.

**Recommendation 14:** Review the under collected recapture amounts or refund over collected recapture (repayment) amounts to projects where the time for such actions has not expired, as appropriate.

**NYCIDA Response:** NYCIDA will verify that an under collection occurred to the extent alleged by the OSC, unless such under collected case was escalated to litigation.