

AUDIT REPORT

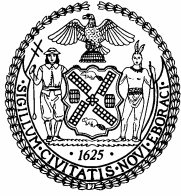


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Wollman Rink Operations LLC With Its License Agreement and Payment of License Fees Due

FM06-116A

July 5, 2007



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Wollman Rink Operations LLC, with its license agreement with the New York City Department of Parks and Recreation.

Under the provisions of the agreement, Wollman Rink Operations is required to pay the City fees based on reported gross receipts derived from the operation of two ice-skating facilities in Central Park, Wollman and Lasker rinks. We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with officials from Wollman Rink Operations and the Parks Department, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

Report: FM06-116A
Filed: July 5, 2007

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

**Audit Report on the Compliance of
Wollman Rink Operations LLC
With Its License Agreement and
Payment of License Fees Due**

FM06-116A

AUDIT REPORT IN BRIEF

The Department of Parks and Recreation (Parks) has a license agreement with Wollman Rink Operations LLC (WRO) to operate two ice-skating facilities in Central Park, Wollman and Lasker rinks, from November 1, 2001, to April 30, 2012. The agreement requires WRO to operate, maintain, and provide at each rink such services as ice skating, rink rentals, instruction, a pro shop, and food services. WRO is allowed to sublicense its food service operation, and to sublicense Wollman rink for the operation of a children's amusement park during non-skating seasons, from May through September. In addition, the agreement provides for WRO to turn over the operation of the Lasker rink to Parks for use as a municipal swimming pool during non-skating seasons.

The audit determined whether WRO accurately reported all gross receipts derived from the operation of the facilities, properly calculated license fees due the City, and paid its license fees on time; and complied with certain major non-revenue terms of its license agreement (i.e., completing the required capital improvements, repairs and maintenance; carrying the required insurance; maintaining the appropriate security deposit; and paying its utility charges).

Audit Findings and Conclusions

WRO paid its minimum annual fees on time, maintained the required property and liability insurance that named the City as an additional insured party, contributed the required \$456,803 as security deposit, paid required utility charges, and maintained the Wollman rink in accordance with specific terms of its license agreement. As part of the capital improvements completed, Parks issued a certificate of completion indicating that the Wollman rink improvements were completed in accordance with the agreement.

However, WRO does not have sufficient controls to ensure that all receipts are being recorded on its books and records and reported to the City. We found certain instances of

unrecorded income and problems within WRO's accounting records. Specifically, WRO does not maintain the daily sales and receipt records as required by the agreement and does not maintain sufficient records to support revenue derived from its ice-rental and ice-hockey activities.

WRO also made some errors on the revenue reports it submitted to Parks. WRO underreported revenue associated with rink rental, hockey leagues, and lessons by \$106,608; and did not report several December 2004 transactions totaling \$20,473 relating to skating operations and \$25,106 in miscellaneous revenue.¹ Moreover, although we did not detect any improprieties, we found that WRO underreported the amount of food-service receipts it receives from its food service operator by \$29,751, and that its method of accounting and reporting revenue from its food and beverage operator, children's amusement park sublicensee, and special events did not comply with the terms of the agreement. As a result of the audit exceptions noted, WRO owes \$146,396 in additional license fees and \$50,634 in late charges.

We also found that significant delays in WRO's submissions of plans and in Parks' approvals resulted in several postponements of the renovation of the entry pavilion, stairs, and parapet wall at Lasker rink. Also, WRO did not comply with two other provisions of its agreement. Specifically, beginning in the fourth year of operation, WRO did not spend \$58,923 of the required \$150,000 to maintain the Lasker facility, nor did it operate a pro shop at either facility.

Audit Recommendations

We make 17 recommendations—10 to WRO concerning the operation of Wollman and Lasker rinks and 7 to Parks concerning its oversight of this concession. Compliance with these recommendations will ensure that Parks collects all license fees due; that controls over the operation are adequate for the recording of all gross receipts on WRO books and records and the accurate reporting of gross receipts to Parks; and that Parks will more closely monitor WRO's compliance with the terms of the agreement.

¹ Skating operations include admissions, skate and locker rentals, lessons and registration fees, party revenue, ice rental, and hockey league and miscellaneous income.

INTRODUCTION

Background

On November 1, 2001, the City of New York, through its Department of Parks and Recreation, entered into a license agreement with Wollman Rink Operations LLC to operate two ice-skating facilities in Central Park, Wollman and Lasker rinks, from November 1, 2001, to April 30, 2012. The agreement requires WRO to operate, maintain, and provide at each rink such services as ice skating, rink rentals, instruction, a pro shop, and food services.

Under the agreement, WRO is allowed to sublicense its food service operation and to sublicense Wollman rink for the operation of a children's amusement park during non-skating seasons, from May through September. In addition, the agreement provides for WRO to turn over the operation of the Lasker rink to Parks for use as a municipal swimming pool during non-skating seasons.

WRO is required to pay the City the higher of the minimum annual fee of \$1.4 million or 28 percent of gross receipts plus 56 percent of food-service receipts in Year One, escalating to a minimum annual fee of \$1,827,213 or 28 percent of gross receipts plus 56 percent of food-service receipts in the final Ice Skating Season (April 2012).² During Year Four (period under review) the minimum annual fee due the City was \$1,485,691. In addition, WRO is required to:

- pay 50 percent of net income derived from special events;
- pay 21.25 percent of all funds it receives from its sublicensee for the operation of the children's amusement park; however, should the minimum annual fee be exceeded, WRO is to pay 42.5 percent of all funds it receives from the sublicensee;
- complete a schedule of capital improvements at a minimum cost of \$4 million for both Wollman and Lasker rinks;
- spend at least \$150,000 on each rink beginning November 1, 2004, (Year Four) and each succeeding year for restoration, repair, and maintenance of each rink;
- carry proper insurance coverage, including a \$2-million general liability policy;
- maintain a \$456,803 security deposit with the City; and
- pay all required utility charges (i.e., water, sewer, gas, and electric) only for Wollman rink.

For the operating year ending October 31, 2005, WRO reported approximately \$5.4 million in revenue, as shown in Table I, following, and paid approximately \$1.8 million in fees to the City.

² Food-service receipts are revenue received by WRO from the food service operator.

Table I

Schedule of Reported Gross Receipts
November 1, 2004, to October 31, 2005

Admissions, Skate and Locker Rental, Skate Repairs	\$3,240,030
Lessons and Registration Fees	1,017,312
Party Revenue	370,321
Ice Rental and Hockey League	235,625
Miscellaneous Income	167
Total Receipts from Skating Operations	\$4,863,455
Special-Event Revenue	122,532
Food Service Receipts	283,740
Amusement Park Receipts	176,475
Reported Gross Receipts	<u>\$5,446,202</u>

Objectives

The objectives of this audit were to determine whether WRO:

- accurately reported all gross receipts derived from the operation of the facilities, properly calculated license fees due the City and paid its license fees on time; and
- complied with certain major non-revenue terms of its license agreement (i.e., completing the required capital improvements, repairs and maintenance; carrying the required insurance; maintaining the appropriate security deposit; and paying its utility charges).

Scope and Methodology

The scope period of this audit was from November 1, 2004, to October 31, 2005 (operating year 2005). To achieve our audit objectives, we reviewed the license agreement between Parks and WRO and abstracted the pertinent terms and conditions. We reviewed correspondence, gross receipt statements, insurance certificates, and other relevant documents on file at Parks. We also analyzed Parks' Concessionaire Ledger for the amounts of license fees paid to the City and checked whether payments were paid on time.

We evaluated the adequacy of WRO's internal controls over its revenue-recording and reporting functions. To obtain an understanding of WRO operating procedures, we interviewed WRO officials, conducted a walk-through of the operations, observed operating activities, and familiarized ourselves with its accounting and record-keeping functions. We documented our understanding of WRO internal controls through written narratives and flowcharts.

To determine whether all revenue generated by WRO was properly reported to Parks, we traced for accuracy and consistency the revenue reported in the statements of gross receipts submitted to Parks to the WRO general ledger and trial balance. In addition, we reviewed WRO sales tax returns for calendar years 2004 and 2005 and reconciled the reported gross receipts to the amounts reported to Parks for operating year 2005. We also evaluated the reliability of the revenue data reported to Parks by performing tests of controls on transactions generated by the WRO Multi-Data System (computerized accounting program) and Aphelion System (computerized program that tracks skating lessons).

To determine whether total receipts from skating operations were accurately and appropriately recorded, we judgmentally selected the month of December 2004 (the month with the highest gross receipts) and reviewed all transactions, totaling \$1.71 million—35.3 percent of the \$4.86 million in reported receipts. We reviewed the “till sheets”—daily summaries of all sales entered into the cash registers—and cash register “Z” tapes—periodic summaries for each register used to prepare the till sheets—to determine whether the tapes were sequentially numbered and without gaps. (The till sheet amounts are transmitted to the Multi-Data System and recorded in the WRO cash receipts journal.) We then traced the revenue transactions from the cash register Z tapes and till sheets to the cash receipts journal, and compared the totals to the general ledger for accuracy and consistency. Since WRO does not maintain daily cash register tapes, we were unable to reconcile category totals listed on the Z tapes with the individual transactions.

To determine the completeness of the revenue generated from skating lessons, we judgmentally selected the “Basic Skills 1-3” group lesson (the lesson with the greatest number of students) and reviewed all 69 files, or 33 percent, of the 210 students registered in all group classes. We traced the student payment records from the student registration forms to the daily sales summary reports generated from the Aphelion System. For private lessons, we judgmentally selected the five coaches with the highest earnings and compared the payment information on each student’s registration form to the payment amounts reported on the sales summary reports generated from the Aphelion System.

For party revenue, we judgmentally selected the month of December 2004 (the month with the highest gross receipts) and reviewed the total of \$158,522, or 42.8 percent, of \$370,321 in reported party revenue receipts. We reviewed WRO’s calendars to identify scheduled parties and traced the amount of each party listed in the clients’ individual files to the cash receipts journals to identify any unreported activities.

With regard to ice-rental and hockey revenue, we reviewed all ice-rental contracts for operating year 2005, calculated the payment amounts based on the terms of the contracts, and reconciled the total with the revenue amount recorded in the general ledger. For hockey leagues revenue, we reviewed all registration records for youth leagues, adult leagues, and clinics, and reconciled the amounts with the registration forms and revenue schedule to identify any unrecorded revenue.

To determine whether WRO reported all special-event revenue, we reviewed WRO’s calendars of special events and traced the revenue amounts listed on the schedule of net income

from special events to the general ledger. We also analyzed supporting documentation for the itemized deductions to determine whether such deductions were appropriate.

To ascertain whether revenue received from WRO's food concession operator and children's amusement park sublicensee were accurately reported to the City, we reviewed each operator's agreement and compared the amounts stated on each operator's annual sales reports to the amounts reported on the WRO general ledger and then to the amounts reported to Parks.

To determine whether WRO complied with the capital improvement requirements of the agreement, we reviewed the provisions of the agreement and the capital expense records on file with Parks and WRO. In addition, we conducted observations of the Wollman and Lasker facilities to assess their physical condition, and interviewed Parks and WRO officials regarding the completion status of capital improvements. We also reviewed repairs and maintenance records maintained by WRO, beginning in Year Four (November 1, 2004, to October 31, 2005), to determine whether WRO expended the required \$150,000 for repairs and maintenance at each rink (an annual aggregate total of \$300,000).

The results of our tests, while not projectable to all of WRO's revenue and expenses, provided us a reasonable basis to evaluate the appropriateness of the amounts reported and the fees paid to the City.

Finally, we reviewed applicable documentation to determine WRO's compliance with certain non-revenue-related terms and conditions of its agreement (i.e., maintained the proper security deposit, carried the proper property and liability insurance, operated a pro shop, and paid all utility charges).

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

Discussion of Audit Results

The matters covered in this report were discussed with WRO and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to these officials and discussed at an exit conference held on May 30, 2007. After the exit conference, WRO provided additional documentation related to the issues discussed in this report. Upon reviewing the documentation, the report was revised where necessary. On June 18, 2007, we submitted a draft report to these officials with a request for comments. On June 25, 2007, we received written responses from WRO and Parks officials respectively.

Although WRO agreed with certain aspects of our findings, it took exception to several matters and disagreed with the amounts of our audit exceptions and assessments. In their response, WRO officials stated, "While WRO appreciates the modifications made to the Draft Audit Report which are reflected in the Revised Audit Report, the modifications are incomplete and do not take into account WRO's position on the certain matters, despite the fact that WRO

addressed each of the City's contentions by providing further documentation in support of WRO's position and explained its position verbally during the exit conference with the City on May 30, 2007."

In its response, Parks agreed with 14 of the 17 audit recommendations, and partially agreed with two recommendations. For the remaining recommendation, Parks has forwarded to the City's Law Department an issue concerning the payment of license fees derived from food service receipts.

Parks officials advised us that it has issued a Notice to Cure requiring WRO to pay \$100,329 in additional fees and interest and that it has required WRO to implement the report's recommendations. The balance of \$96,701 represents pending additional fees totaling \$71,850 (\$42,000 in additional food-service fees and \$29,850 in additional fees from unreported ice rental, hockey league and lessons) and related late charges of \$24,851.

Parks stated that, based on the Law Department's decision, it will take appropriate action to either bill the remaining balance or dismiss the finding relating to food-service fees. Parks officials also stated that it will compare audit data to available Parks documents to determine whether additional fees due against underreported revenue for ice rental, hockey leagues, and lessons should have been billed for days the rink was open or closed. After its review, Parks stated that it will either bill for the full assessment, \$29,850 plus late charges, or for an adjusted amount.

The specific issues raised by WRO and our rebuttals are included after each recommendation of this report. The full texts of the responses received from WRO and Parks are included as addenda to this report.

FINDINGS

WRO paid its minimum annual fees on time, maintained the required property and liability insurance that named the City as an additional insured party, contributed the required \$456,803 as security deposit, paid required utility charges, and maintained Wollman rink in accordance with specific terms of its license agreement. As part of the capital improvements completed, Parks issued a certificate of completion indicating that the Wollman rink improvements were completed in accordance with the agreement.

However, WRO does not have sufficient controls to ensure that all receipts are being recorded on its books and records and reported to the City. We found certain instances of unrecorded income and problems within WRO's accounting records. Specifically, WRO does not maintain the daily sales and receipt records as required by the agreement and does not maintain sufficient records to support revenue derived from its ice-rental and ice-hockey activities.

WRO also made some errors on the revenue reports it submitted to Parks. WRO underreported revenue associated with rink rental, hockey leagues, and lessons by \$106,608; and did not report several December 2004 transactions totaling \$20,473 relating to skating operations and \$25,106 in miscellaneous revenue. Moreover, although we did not detect any improprieties, we found that WRO underreported the amount of food-service receipts it received from its food service operator by \$29,751, and its method of accounting and reporting of revenue from its food and beverage operator, children's amusement park sublicensee, and special events did not comply with the terms of the agreement.

As a result of the audit exceptions noted, WRO owes \$146,396 in additional license fees and \$50,634 in late charges, as shown in Table II, following.

Table II

Schedule of Additional Fees and Late Charges Due

Inaccurate Calculation of Payments Due from Skating Operation and Food Receipts	\$94,244
Underpayment of Fees from Amusement Park Sublicensee	37,500
Underpayment of Fees from Special Events	14,652
Additional Fees Due	\$146,396
Late Charges	50,634
Total Amount Due	<u>\$197,030</u>

We also found that significant delays in WRO's submissions of plans and in Parks' approvals resulted in several postponements of the renovation of the entry pavilion, stairs, and parapet wall at Lasker rink. Also, WRO did not comply with two other provisions of its agreement. Specifically, beginning in the fourth year of operation, WRO did not spend \$58,923 of the required \$150,000 to maintain the Lasker facility, nor did it operate a pro shop at either facility.

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

Control Weaknesses Over Recording and Reporting Gross Receipts

WRO does not have sufficient control procedures to ensure that all gross receipts are properly recorded and reported to the City. Furthermore, WRO does not maintain documentation to support all of its transactions recorded in the general ledger. Taken as a whole, these weaknesses compromise the reliability of WRO's reported gross receipts. §4.6(a) of the agreement states that WRO is to:

“maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of the Licensee and shall include, but not be limited to . . . records of daily bank deposits . . . sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.”

Specifically, WRO uses nine non-integrated cash registers to record its revenue. The cash register tapes for these nine registers do not include an identifying reference that would indicate the register from which tapes were generated. Moreover, WRO does not maintain the daily sales and receipt records (i.e., cash register tapes that accumulate within each cash register), as required by the agreement. These tapes would have provided specific details of each sequentially numbered transaction. Consequently, we were unable to determine how many registers were in use on a given day and whether all transactions were properly recorded and reported to Parks.

An adequate system of controls would ensure that a paper trail be established from the point of sale to the recording of receipts in an organization's books and records. By maintaining sequentially numbered daily sales and receipt records, an organization is able to trace receipts beginning at the point of sale. However, WRO does not maintain any sequentially numbered daily register tapes (detailing each transaction) or sequentially numbered Z tapes (periodic summaries for each cash register). Our analysis of WRO's December 2004 cash register Z tapes and cash receipts journal transactions found that WRO provided only 235 of the 268 Z tapes for the month. Such information is necessary to assess the reasonableness of the reported revenue amounts.

Also, WRO does not maintain sufficient records to support revenue derived from its ice rental and hockey activities. Documents that were lacking include several hockey league contracts, schedules, rosters, invoices, sales and receipt records, and cash register receipts.

Since WRO does not have sufficient controls in place, we could not be assured that all WRO revenue is being recorded and reported as gross receipts.

WRO Owes the City \$94,244
In Additional License Fees

Errors in Reported Revenue

In addition to the above-mentioned weaknesses in WRO record-keeping and controls that prevented us from verifying the accuracy of reported gross receipts from its operation, our review of WRO books and records for operating year 2005 disclosed the following errors:

- Revenue associated with rink rental, hockey leagues, and lessons was underreported by \$106,608. Our review of billing records, ice rental contracts, and the general ledger found that WRO did not bill its customers \$87,172 for rink rentals and did not report \$19,436 for hockey leagues and lessons. Since WRO is required to include both collected and uncollected sales in its reportable gross receipts, these items should have been included in reports to Parks.
- \$20,473 in skating-event receipts was recorded on WRO's records (cash register Z tapes, till sheets, or cash receipts journals), but was not included on the monthly gross receipts report submitted to Parks. Our analyses of WRO's December 2004 cash register Z tapes and cash receipts journal transactions found that WRO did not report transactions amounting to \$9,652 and \$10,821 respectively.
- \$25,106 in miscellaneous revenue (ATM commissions and gift sales) was recorded on WRO's records but not posted to the gross receipts report submitted to Parks.

**Underreporting of Food-Service Receipts and
Incorrect Calculation of Fees Due the City**

WRO underreported the amount of food-service receipts it received from its food service operator and did not correctly calculate the amount of license fees due the City in accordance with its agreement. During operating year 2005, WRO reported to the City that its food-service receipts totaled \$283,740; however, our review of WRO's books and records found that food-service receipts amounted to \$313,491, a difference of \$29,751.

Further, our review of WRO 2005 revenue reports submitted to Parks found that WRO inappropriately included \$150,000 in food-service receipts as part of its reported gross receipts derived from its skating operation, thus increasing reported gross receipts but not surpassing the threshold at which additional fees would be due. Thus, WRO's calculation of payment owed the City was not made in accordance with the agreement.

According to §4.1(a) of the agreement, "Licensee shall make payments to the City . . . consisting of the higher of the minimum annual fee or the sum of 28 percent of gross receipts plus 56 percent of the total food-service receipts." (Emphasis in the original.) To correctly calculate payment to the City, WRO should not have included a portion of its food-service receipts in its reporting of gross receipts to Parks. Instead, WRO should have separately calculated fees in accordance with the methodology stated in the agreement—which requires that if the payment due the City exceeds the minimum annual fee WRO is to pay 28 percent of gross

receipts plus 56 percent of the food service receipts to the City. The following section discusses our recalculation of fees due the City.

Recalculation of License Fees
Results in Additional License Fees

Since WRO did not report certain revenues and did not properly calculate license fees due the City as required by the agreement, we recalculated the amount of license fees owed by following the methodology in the agreement, using the figures reported in WRO books and records and including the audit adjustments (as discussed in the previous sections titled “Errors in Reported Revenue” and “Underreporting of Food-Service Receipts and Incorrect Calculation of Fees Due the City”).

Based on the exceptions noted, we recalculated the amount of license fees due and found that WRO owes the City \$94,244 in additional license fees, as shown in Table III, following.

Table III

Schedule of Additional License Fees Due
November 1, 2004, to October 31, 2005

Total Gross Receipts Reported*	\$5,446,202
Special-Event Revenue	(122,532)
Food-Service Receipts (Total reported receipts of \$283,740 less the \$150,000 included in gross receipts from skating operations)	(133,740)
Amusement Park Receipts	(176,475)
Reported Gross from Skating Operations**	\$5,013,455
Plus Unreported Revenue:	
Ice Rental, Hockey Leagues, Lessons	106,608
Skating-Event Receipts	20,473
Miscellaneous Income	25,106
Less Reported Food-Service Receipts (The amount that was incorrectly reported in gross receipts from skating operations)	(150,000)
Adjusted Gross	\$5,015,642
Applicable Percentage Fee	28%
Amount Based on Percentage of Adjusted Gross	\$1,404,380
Plus 56% of Food-Service Receipts (56% x \$313,491)	175,555
Total Fees Due (28% of adjusted gross plus 56% of food service receipts)	\$1,579,935
Less Minimum Fee Paid	\$1,485,691
Additional Fees Due (Based on the greater of 28% of gross receipts plus 56% of food service receipts or minimum annual fee)	<u>\$94,244</u>

*To calculate payment to the City as required by the agreement, we reduced total reported gross receipts of \$5,446,202 by \$432,747—the cumulative total of reported special events, food service, and amusement park receipts—to determine the amount of gross receipts from skating operations.

**The reported gross receipts from skating operations of \$5,013,455 includes \$4,863,455 earned from WRO’s skating operation plus \$150,000 (a portion of food-service receipts incorrectly included in reported gross receipts).

WRO Owes the City \$37,500 in Funds Received from Its Amusement Park Sublicensee

WRO owes the City a larger portion of revenue it received from the sublicensee of the children's amusement park—Central Park Victorian Garden. According to the 2005 revenue reports submitted to Parks, WRO reported that it received \$176,475 from its sublicensee and paid the City \$37,500, or 21.25 percent, of the receipts. According to the fee structure indicated in WRO's sublicense agreement with the City, WRO is required to pay the City 21.25 percent of all funds it received from the amusement park sublicensee. However, if its payment to the City exceeds the minimum annual fee, WRO is to pay 42.5 percent of all funds it receives from the sublicensee.

Since, as the previous finding section disclosed, WRO did not properly calculate license fees related to food-service receipts and underreported revenue, we concluded that WRO's adjusted payment to the City does in fact exceed the minimum fee paid; therefore, WRO would be required to pay the City 42.5 percent of the \$176,475 it received from its sublicensee. As a result WRO owes the City an additional \$37,500 in license fees.

Improper Deduction from Special-Event Income

In operating year 2005, WRO underpaid the City \$14,652 in fees generated from special events. §4.1 of the license agreement states that, "the Licensee shall pay the City 50% of net income generated from Special Events." Accordingly, WRO should have paid the City \$75,918 of the \$151,836 in special-event net income it attained in 2005.³ WRO, however, paid the City \$61,266—a \$14,652 underpayment. We attribute the underpayment to WRO's improperly treating as a special-events expense a per-diem portion of its annual City license fee for each special event; the per-diem portions totaled \$29,304. WRO then deducts those portions from its reported special-event income. While the agreement does permit deductions for special-event expenses, our review indicated that in this instance, the deduction was not associated with special events. Consequently, WRO should not have deducted the portion of the annual license fee from the special-event income it reports to Parks and should pay the corresponding license fee to the City.

Late Charges of \$50,634 Due the City

§4.3 of the agreement with the City requires that WRO pay the City late charges in accordance with the following:

"In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month on the

³ The adjusted special-event income of \$151,836 includes reported special-event net income of \$122,532 plus \$29,304—the per-diem portion of the annual City license fee deducted from the reported special-event income.

sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment."

Based on the \$146,396 in additional fees owed, we calculated that as of February 28, 2007, WRO owes the City an additional \$50,634 in late charges.⁴ (See Appendix A for the calculation of late charges.)

Capital Improvements at Lasker Rink Not Completed

Significant delays were encountered in the planning of certain improvements at Lasker rink. The agreement required WRO to remodel the entry gate pavilion, install new stair treads, and reconstruct a parapet wall at Lasker rink. These improvements were supposed to be completed by October 31, 2003. However, as of April 10, 2007, the improvements had not started. As a result, the public may be exposed to potentially unsafe conditions.

We attribute the lack of progress in completing the improvements to delays by WRO and Parks in submitting and approving improvement plans. WRO did not submit the initial plans to Parks until May 28, 2003—573 days after the contract was signed. On March 24, 2004—229 days later, Parks requested that WRO submit more detailed plans by May 3, 2004. WRO did not submit those plans until June 9, 2005—442 days later. Similarly, Parks did not notify WRO of its decision to disapprove the detailed plans until September 27, 2005—110 days later. Lastly, WRO submitted the final plans on December 5, 2005; however, Parks did not approve them until March 28, 2006—113 days later. (A chronology of these delays is provided in Appendix B.)

Comptroller's audit #EW03-136A (issued January 20, 2004) titled *Audit Report on the Department of Parks and Recreation Oversight of Capital Improvements by Concessionaires* also cited the Lasker facility for not having the required improvements completed by October 31, 2003. In their response to that audit, Parks officials stated that the new stair treads and repairs to the parapet walls were to have been completed by October 2003, whereas the entry gate was to be completed by October 2004. However, the work was still incomplete and conditions were still unsafe when we inspected the premises on March 31, 2006. We informed Parks officials of these problems in a letter dated May 3, 2006. (See Appendix C.) In their June 9, 2006 response, Parks officials stated, "We have taken measures to repair the parapet walls and the stairs to the entry gate pavilion. . . . After several redesigns of the entire terrace and entry pavilion at Parks'

⁴ Additional fees of \$146,396 consist of the following: \$94,244 for an underpayment of fees due to an inaccurate calculation of gross receipts and food service receipts; \$37,500 for an underpayment of fees due to an inaccurate calculation of children's amusement park receipts; and \$14,652 for an improper deduction from special-event income.

request, [the Parks commissioner] approved the design on December 5, 2005.” (See Appendix D for a copy of Parks’ June 9, 2006 response.) However, the work is still incomplete as of April 10, 2007, and conditions are still unsafe more than two years after the scheduled completion date. (See Appendix E for the conditions we observed at Lasker rink.)

**WRO Did Not Expend \$58,923
To Repair and Maintain Lasker Rink**

Our review indicated that WRO did not expend \$58,923 of the \$150,000 in repair and maintenance expenditures at the Lasker facility as required by license agreement §12.2:

“Licensee acknowledges and agrees that Licensee shall spend at least \$150,000 per year in year 4 and each succeeding year through the end of the Term of this Agreement for restoration, repair and maintenance of each rink.”

WRO provided us with documentation that showed repair and maintenance expenditures at the Wollman and Lasker facilities totaling \$512,346 for operating year 2005 (Year Four of the agreement). However, we disallowed \$261,989 of the \$512,346 after we reviewed the documentation and the associated annual maintenance requirements listed in Exhibit F of the agreement. (See Appendix F.) Moreover, of the remaining \$250,357 in expenses that we deemed allowable, only \$91,077 was expended at the Lasker facility—\$58,923 less than the required \$150,000 minimum expenditure. Table IV, below, provides a breakdown of expenses associated with both facilities.

Table IV

**Schedule of Disallowed Expenses and
Unexpended Repair and Maintenance Costs**

	Wollman Rink	Lasker Rink	Subtotal	Total
Submitted Repair and Maintenance Expenses	\$343,740	\$168,606		\$512,346
DISALLOWED EXPENSES:				
Previously classified as capital improvements	9,409	6,555	15,964	
Expenses related to a prior period	20,834	15,994	36,828	
Party and sanitary expenses	12,003	7,816	19,819	
Insufficient documentation	14,320	538	14,858	
Hockey league supplies		12,645	12,645	
Regular operating expenses	127,894	33,981	161,875	
Total Amount of Disallowed Expenses	\$184,460	\$77,529		\$261,989
Total Amount of Allowed Expenses	\$159,280	\$91,077		\$250,357
Total Amount Required by the Agreement	\$150,000	\$150,000		
Total Unexpended Amount	\$0	\$58,923		

Moreover, on February 16, 2007, we observed that the Lasker facility was in need of routine maintenance, such as painting and the repair or replacement of lighting fixtures. (See

Appendix G for the conditions we observed at Lasker rink.) We believe that had WRO fully expended the required repair and maintenance costs in accordance with Exhibit F of the agreement, the facility would be less prone to decay and deterioration, thereby reducing the need for capital improvements. Had WRO performed routine maintenance, the physical appearance of the facility would have been more appealing to those using the facility.

Since WRO did not spend \$58,923 on restoring, repairing, or maintaining the Lasker facility, Parks should seek to retain an amount equal to the unexpended cost for repairs and maintenance from WRO's security deposit, as allowed under the agreement. According to §4.4(c) of the agreement,

“If any fees or other charges payable by the Licensee to the city shall be overdue and unpaid . . . or should the Licensee fail to perform any of the terms of this license, then Parks may . . . after five days notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee.”

In view of the fact that WRO is required to spend \$150,000 at each facility annually, it is imperative that Parks consider this option and not allow WRO the opportunity to apply the unexpended amount to a later period.

WRO Does Not Operate a “Well Stocked” Pro Shop

WRO does not operate a “well stocked” pro shop at either Wollman or Lasker rinks, as required by the agreement. Further, when we toured the Wollman facility on February 2, February 15, and March 29, 2006, we found that WRO was instead operating a gift counter offering disposable cameras and head bands for sale.

According to §9.1(b) of the agreement, WRO is to “operate and maintain a well stocked pro shop at each rink.” Exhibit B of the agreement lists pro shop inventory that should be included at each rink:

- Skating and hockey boots and blades (all sizes);
- Sweatshirts sweaters, skating dresses, gloves, hats, scarves, headbands, and socks;
- Skate hooks and laces, boot and blade covers, skate bags and kneepads;
- Hockey sticks and equipment, helmets, rollerblade skates and protective gear;
- Film, batteries, disposable camera, sun screen, novelties, etc.

Since WRO does not operate a pro shop at either facility, we believe that the public was not provided with the needed services of fully stocked facilities. Moreover, by providing limited offerings in its facilities, WRO also limited the potential amount of its gross receipts that it could have earned, which is likely to have resulted in additional license fees payable to the City.

RECOMMENDATIONS

WRO should:

1. Pay the City \$197,030 in additional license fees and late charges.

WRO Response: “After reviewing the enclosed findings with Parks, all fees and late charges deemed appropriate will be promptly paid.”

Parks Response: “At this time WRO is required to pay \$100,329 (\$74,546 in additional fees and \$25,783 in Late Charges). The balance, \$96,701, represents pending additional fees totaling \$71,850 and related late charges, \$24,851. The pending fees consist of:

- \$42,000 in additional food-service fees that the report claims WRO owes because it did not correctly calculate the amount of license fees due the City in accordance with its agreement. Parks is referring this item to the City’s Law Department to determine whether the Comptroller’s interpretation of the contract applies, or if WRO’s calculation methodology is correct. Based on the Law Department’s ruling, Parks will take the appropriate action to either bill the remaining balance or dismiss the finding.
 - \$29,850 in additional fees due against unreported revenue for Ice Rental, Hockey Leagues and Lessons. Hereby, Parks requests that the Comptroller’s Office provide its worksheet details showing how the underreported revenue total of \$106,608 was calculated. Parks will compare the audit data to available Parks records to determine whether the rink was open, or closed due to inclement weather and therefore, no rink rental, hockey league, or lessons income should have been billed and collected for those dates that the rink was closed. After our review, we will bill WRO for either the full assessment, \$29,850 plus late charges, or an adjusted amount based on our findings.”
2. Implement the necessary internal controls to ensure that all receipts (i.e., admissions, ice rental, league, lessons, parties and miscellaneous income, etc.) are recorded on its books and records and on the gross receipt statements submitted to the City.
 3. Address the control weaknesses noted in this report pertaining to billing customers for ice rental, leagues, and lessons, and maintaining documentation to support billing and collection of revenue. Include in the reported gross receipts the total amount of rental and hockey league billings as stated in hockey league contracts.

WRO Response to Recommendations 2 and 3: “We believe our internal controls are satisfactory and deliver the results intended, although we are always looking to improve our operations. Thus we will seek to review and implement changes to our internal audit and reporting methods to continue to improve our internal controls.

“We feel very strongly that our current procedures ensure the proper recording of receipts. Information was obtained by and provided to the City Auditors which was not reflected in the report. For example: we provided documentation which indicated the underreporting of revenue associated with rink rental was not an underreporting. The schools and not-for-profit organizations were not billed for specific reasons. In some cases, the rink was closed because of bad weather (example: rain, snow), the schools/organizations were closed for holidays (example: Thanksgiving, Christmas), or the schools/organizations season was over. Although these billing exceptions to the contract may not have been clear in the year under audit, in subsequent years, and prior to the start of this audit, the contract has been modified to reflect these exceptions. Additionally, to further clarify when these schools/organizations are to be billed, an entirely new contract will be written for the 2007/2008 season and beyond.”

Parks Response: “WRO must take prompt action to implement procedural changes to remedy the noted internal control and record keeping deficiencies.”

Auditor Comment: WRO’s contention that its internal controls are satisfactory and deliver the results intended is inaccurate. §4.6 of the lease requires that WRO maintain systems of controls and records that are sufficiently adequate and accurate to reveal the correct and entire business conducted by the licensee. Therefore, the system of controls must be designed to provide the City, not WRO, with assurance that all sales are properly recorded and reported to the City.

As discussed throughout this report, WRO does not have sufficient controls in place that would provide the City with the assurance that all gross receipts are properly recorded and reported to the City. In fact, our observations revealed that WRO uses seven cash registers to transact business. However, our review of December 2004 cash register Z-tapes found that WRO used nine non-integrated cash registers interchangeably to record its revenue. Since the cash register tapes for any of the nine registers do not include an identifying reference, which would indicate the register from which tapes were generated, the City cannot be assured that all the revenue processed through any register is being recorded on WRO books and records and eventually reported to the City.

WRO also claimed that the auditors did not consider information provided to support WRO’s position that it did not underreport revenue associated with rink rental. That statement is not accurate. WRO is responsible for billing its licensee in accordance with the terms of the ice-rental agreements. According to the wording in WRO’s ice-rental agreements, “Licensees (schools and not-for-profits) shall pay WRO the rink fee listed above. If for any reason Licensee desires to cancel the event, he shall be responsible to pay the full rink fee.” The license further states, “In the event of adverse weather conditions, force majeure, cancellation of the Event by the City of New York or Licensor, or in the event the Rink is unusable, Licensor shall cooperate with Licensee to reschedule the Event to a date agreed upon by Licensee and Licensor.” Therefore, since WRO did not maintain adequate documentation to support its decision not to bill, cancel, or reschedule events, we were compelled to conclude that either the events were rescheduled or that WRO billed its licensees in accordance with the terms of the agreements.

Additionally, we reviewed each piece of the third-party documentation provided, but we could not reasonably conclude that WRO's failure to bill was due to the closure of the rink because of bad weather, to the closure of schools and organizations for holidays, or to the end of a school year or a season for an organization.

Had WRO maintained sufficient documentation (i.e., calendars) indicating the reason organizations were not billed, or had it worded agreements specifying that organizations would not be billed for rink closings or for early-ending seasons, we most likely would have accepted this documentation.

Nonetheless, we believe that once WRO modifies its contract to reflect these exceptions, prepares bills in accordance with contract terms, and maintains documentation to support its transactions, then the City could be assured that revenue associated with rink rental, hockey leagues, and lessons is being properly billed, collected, and reported to the City.

4. Institute reconciliation and control procedures to ensure that all transactions are properly recorded and supported. All Z tapes, till sheets, and computerized batch numbers should correspond to the cash receipts journal and daily bank deposits.

WRO Response: "The current cash registers in use are in compliance with the License Agreement with Parks. These cash registers contain an internal tape which records all of the transactions that are rung up in the cash register, along with any X or Z Reports that are run. During the 2006/2007 season we started to retain these tapes which allows us to ensure that all revenue can be tied out and matched with the statements submitted to Parks."

Parks Response: "WRO should take prompt action to implement procedural changes to remedy the noted internal control and record keeping deficiencies. Consideration should be given to the installation of a point-of-sale register system linking all registers to a centralized system and ensure that all revenue is processed through this system."

Auditor Comment: Until WRO takes corrective action and modifies its cash register system (e.g., installing a point-of-sale-register system) to include an identifying reference, which would indicate the register from which tapes were generated, the City cannot be assured that all revenue processed through any register is being recorded on WRO books and records. Simply maintaining all daily register tapes would not satisfy the exceptions noted.

5. Accurately account for all food service receipts and calculate license fees in accordance with the terms of the license agreement.

WRO Response: "WRO's position . . . is that the definition of Food Service Receipts in the License Agreement is limited to receipts from the sales of food and beverages only and that it specifically does not include Gross Receipts (this specific exclusion was a result of discussions between the City and WRO during the negotiation of the License

Agreement, which is detailed further in the Letter). Gross Receipts is defined to include WRO's income from rental and sublicense fees and commissions. The \$150,000 fee cited in the audit represents a base sublicense fee (the 'Base Fee') paid to WRO by its sublicensee, Relish Concessions & Events Catering L.L.C. ('Relish') and does not represent any income from the sale of food or beverages. Relish is obligated to pay the Base Fee to Licensee even if Relish sells no food or beverages at the sublicensed premises; thus, it is clear that the Base Fee is not derived from the sale of food and beverages and that the Base Fee was therefore properly included in WRO's calculation of Gross Receipts. . . .

"Additionally, the Audit Report states we underreported Food Service Receipts by \$29,751. Paragraph 2.1 (m)(i) of the License Agreement with Parks defines Gross Receipts and states 'Gross Receipts shall exclude . . . (4) Food Service Receipts.' Paragraph 2.1 (m)(iv) states 'Gross Receipts shall include . . . all sums due to be received by Licensee. . . .' Paragraph 2.1 (q) of the same agreement states 'Food Service Receipts' shall mean all funds received by Licensee. . . .' (Emphasis added.) It appears there is a difference between how Gross Receipts (accrual basis) and Food Service Receipts (cash basis) are reported to Parks.

"We have consistently reported Food Service Receipts to Parks on a cash basis. In fact, the \$29,751 of Food Service Receipts mentioned in the Audit Report was reported to Parks during the 2005/2006 season."

Parks Response: "WRO must implement procedures to ensure the proper recording and reporting of food-service receipts. . . . Parks will refer the issue of whether WRO correctly calculated the amount of food-service license fees due the City in accordance with its agreement, to the City's Law Department for resolution."

Auditor Comment: We believe the language in the agreement is simple and clear. The agreement requires that the Licensee shall make payments to the City consisting of the *higher of* the minimum annual fee *or* the sum of 28 percent of gross receipts plus 56 percent of the total food-service receipts. Thus, we stand by our position.

Moreover, WRO's contention that it has consistently reported food-service receipts to Parks on a cash basis is misleading. Although WRO claims that it records payments on a cash basis, we found that WRO offset some receivables and payables with its food service operator at the end of the operating year. For example, during operating year 2005, WRO owed money to the food service operator for parties charged on behalf of WRO, and the food service operator owed WRO for a portion of the water and sewer charges incurred by the food service operator. The offsetting of these payments between the food service operator and WRO resulted in a difference of approximately \$29,491, which should have been reported to the City.

6. Discontinue reducing special-event income by claiming a portion of the license fee as a special-event expense.

WRO Response: “We will discontinue claiming a portion of the license fee when we compute our Special Events Income.”

7. Present Parks with a written plan to renovate the entry gate pavilion, stairs, and the parapet wall at Lasker rink. The plan should include project start and completion dates and critical construction milestones (i.e., excavation, foundation, construction, etc.). Then WRO should contact Parks and coordinate a date to begin the remaining capital improvements at Lasker rink.

WRO Response: WRO provided details on the status of the renovations currently underway at Lasker rink. The work completed to date includes the removal and installation of several stairways; painting the existing concrete pavilion; removing the existing chain link fence, metal turn-styles and gates enclosing the pavilion; and installing new lighting on the upper plaza. Between September and the end of October 2007 (after swimming season ends and before skating season begins) WRO plans to replace the parapet wall on the north side of the upper plaza including the addition of a new metal railing and to reconfigure the interior partitions of the existing bathrooms and storage rooms into new single stall unisex bathrooms.

Parks Response: “Plans have already been approved and a schedule submitted. . . . All required work is scheduled for completion by November 2007.”

8. Pay the City \$58,923 for unexpended maintenance costs at the Lasker facility.

WRO Response: “While the expenditures for Wollman Rink exceeded the \$150,000 requirement, the auditors disallowed expenses which brought the expenditures for Lasker Rink below the \$150,000 requirement. One of the items disallowed was the salaries of our porters who not only ‘. . . keep the Licensed Premises clean, litter free, neat . . .’ (Paragraph 12.1 of the License Agreement with Parks) but also perform routine maintenance tasks as required per Exhibit F of the License Agreement. WRO would like Parks to review the work being performed by the porters.”

Parks Response: In its response, Parks agreed with the audit’s assessment and stated that it issued a Notice to Cure requiring WRO to remit payment in the amount of \$58,923.

Auditor Comment: Porter duties are related to performing regular cleaning and maintenance services and are not to be included as annual maintenance requirements (mortar work, repairing refrigeration, heating and ventilation systems) detailed in Exhibit F of the agreement. Since a porter is mainly responsible for cleaning the premises (as disclosed in WRO tasks and standards), WRO should not have included porter salaries as a repair and maintenance expense. Moreover, Parks’ request that WRO remit the \$58,923 for unexpended maintenance costs to the City clearly indicates that Parks agrees with our position.

9. Spend a minimum of \$150,000 each year to maintain each facility. Specific maintenance should be in accordance with the specific items detailed in Exhibit F of the agreement. If WRO spends less than the required amount, it should submit the difference to Parks as additional fees.

WRO Response: “We intend to spend the required \$150,000 per year, per rink.”

Parks Response: “WRO must comply with Recommendation 9 by spending the minimum requirement of \$150,000 each year to maintain each rink. The maintenance expenditures must be in accordance with the specified items detailed in Exhibit F of the agreement. Any shortfall below the required amount must be remitted to Parks as additional fees.”

10. Operate a well stocked pro shop at each rink. The pro shop inventory should include, but not be limited to, those items listed in Exhibit B of the agreement.

WRO Response: “Prior to the 2004/2005 season, we operated a pro shop but there was little to no interest in the items we were selling. As the Audit Report indicates, we do sell some items of interest (cameras and headbands) that are required in the License Agreement. Additionally, if a customer wishes to purchase ice skates or hockey equipment, we can provide those items on a case by case basis. We will contact Parks to modify the requirements of this provision of the license.”

Parks Response: “WRO must take the appropriate action to implement Recommendation 10. If the inventory listed on Exhibit B of the agreement is not deemed to be suitable for either facility, WRO must submit to Parks for consideration and approval a proposed list of replacement merchandise to be sold at the pro shops. In any event, WRO must comply with Article 9.1 (b) of its license that deals with this subject.”

Parks should:

11. Ensure that WRO pays the \$197,030 in additional license fees and late charges.
12. Ensure that WRO implements the proper controls necessary so that all receipts are recorded on WRO’s books and records and on the gross receipt statements submitted to Parks.
13. Coordinate with WRO and develop a written plan to complete the refurbishment of the Lasker rink gateway (remodel the entry gate pavilion, install new stair treads, and reconstruct the parapet wall). The plan should include project start dates, completion dates, and critical construction milestones.
14. Closely monitor the progress of completing the required improvements at Lasker. If the project is not completed by the agreed upon date, Parks should assess liquidated damages as prescribed in the agreement.

15. Send WRO a five-day notice seeking payment of \$58,923 for the unexpended Lasker facility maintenance costs due in Year Four of the agreement. If WRO fails to make payment, use the security deposit to pay for the unexpended maintenance costs.
16. Ensure that WRO submits complete documentation needed to determine whether claimed maintenance costs adhere to Exhibit F of the agreement. Parks should carefully review the documentation to ensure that claimed maintenance costs conform to the requirements of the agreement.
17. Ensure that WRO complies with the report's other recommendations.

Parks Response: In its response, Parks stated that it issued a Notice to Cure requiring WRO to comply with the above recommendations and concluded that “WRO should remit a check for \$159,252 within five days from the date of this letter to resolve the balance presently owed under Recommendation 1, \$100,329, and for Recommendation 8, \$58,923.”

Calculation of Late Charges

Due Date	License Fees Due	Accumulated Balance Due	Period		Rate	Late Charge	Calculated Accumulated Bal.
			From	To			
12/1/2005	\$ 146,396.00	\$146,396.00	12/1/2005	12/31/2005	2.00%	\$2,927.92	\$149,323.92
		149,323.92	1/1/2006	1/31/2006	2.00%	2,986.48	152,310.40
		152,310.40	2/1/2006	2/28/2006	2.00%	3,046.21	155,356.61
		155,356.61	3/1/2006	3/31/2006	2.00%	3,107.13	158,463.74
		158,463.74	4/1/2006	4/30/2006	2.00%	3,169.27	161,633.01
		161,633.01	5/1/2006	5/31/2006	2.00%	3,232.66	164,865.67
		164,865.67	6/1/2006	6/30/2006	2.00%	3,297.31	168,162.99
		168,162.99	7/1/2006	7/31/2006	2.00%	3,363.26	171,526.25
		171,526.25	8/1/2006	8/31/2006	2.00%	3,430.52	174,956.77
		174,956.77	9/1/2006	9/30/2006	2.00%	3,499.14	178,455.91
		178,455.91	10/1/2006	10/31/2006	2.00%	3,569.12	182,025.03
		182,025.03	11/1/2006	11/30/2006	2.00%	3,640.50	185,665.53
		185,665.53	12/1/2006	12/31/2006	2.00%	3,713.31	189,378.84
		189,378.84	1/1/2007	1/31/2007	2.00%	3,787.58	193,166.41
		193,166.41	2/1/2007	2/28/2007	2.00%	3,863.33	197,029.74

Total Late Charges Due

\$50,633.74

Lasker Rink Capital Improvements
Chronology of Events
WRO's Agreement Signed November 1, 2001
Expected Completion Date October 2003

Description	Date	Number of Days	Number of Days Attributable to	
			WRO	Parks
Date Agreement Signed	11/1/2001			
WRO submitted first plan	5/28/2003	573	573	
Parks did not approve the first plan, suggested revision and Landmarks submission	6/16/2003	19		19
WRO submitted second plan	8/8/2003	53	53	
On 9/16/03 Parks granted first extension to 10/31/05 for completion of capital improvements				
On 3/24/04 Parks requested a more detailed plan to be submitted no later than 5/3/04	3/24/2004	229		229
WRO submitted third plan	6/9/2005	442	442	
Parks did not approve the third plan and requested revised plans be submitted no later than 10/26/05	9/27/2005	110		110
WRO submitted final plan	12/5/2005	69	69	
Parks approved the final plan	3/28/2006	113		113
WRO submitted the final plan to Landmarks	3/31/2006	3	3	
Total Days		1611	1140	471



John Graham
DEPUTY COMPTROLLER
AUDITS, ACCOUNTANCY & CONTRACTS

THE CITY OF NEW YORK
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EXECUTIVE OFFICES
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APPENDIX C

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May 3, 2006

The Honorable Adrian Benepe, Commissioner
New York City Department of Parks and Recreation
The Arsenal Central Park
830 Fifth Avenue
New York, NY 10021

Re: Wollman Rink Operations, LLC at Lasker Rink

Dear Commissioner Benepe:

I am writing to alert you to unsafe conditions at the Lasker ice skating facility in Central Park. These conditions were discovered by my auditors on March 31, 2006, and require your agency to take corrective action before the facility reopens for summer activities.

As you are aware, we have started an audit of the license agreement between the Department of Parks and Recreation and Wollman Rink Operations, LLC. Although the main objective of our audit is to review the payment of license fees by Wollman Rink Operations, my auditors observed deteriorated stairs and damaged parapet walls that pose a potential hazard to the users of the facility. (See attached photographs.) It is of particular concern since the Comptroller's Office identified these same hazardous conditions in an audit that was issued to the Department in January 2004.¹ Our current observations reveal that the conditions have worsened since that time.

I understand that the Department is currently undertaking its annual conversion of the Lasker facility from ice skating to swimming. Prior to completing the conversion, the Department should take immediate steps to cordon off the unsafe sections of the facility and commence repairs. Please inform me of the specific actions you will take to remedy the situation. Thank you for your attention to this matter.

Very truly yours,


John Graham

cc: Jeffrey McConney, Vice President/Controller, The Trump Organization
Liam Kavanaugh, First Deputy Commissioner/Operations, Dept. of Parks and Recreation
Joanne G. Imohiosen, Assistant Commissioner for Revenue, Dept. of Parks and Recreation
Jeffrey Kay, Director, Mayor's Office of Operations
George Davis III, Mayor's Office of Operations
Faige Hornung, Director of Financial Audit, New York City Comptroller's Office

¹Audit Report on the Department of Parks and Recreation Oversight of Capital Improvements by Concessionaires (No. EW03-136A, dated January 20, 2004).



Lasker Rink. Picture # 1: Deteriorated stairs at entry gate pavilion.



Lasker Rink. Picture # 2: Deteriorated stairs at entry gate pavilion.



Lasker Rink. Picture # 3: Deteriorated stairs at entry gate pavilion.



Lasker Rink. Picture # 4: Damaged parapet wall.



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Adrian Benepe
Commissioner

June 9, 2006

Mr. John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
Office of the City Comptroller
Executive Office
1 Centre Street
New York, NY 10007-2341

Dear Mr. Graham:

Thank you for your letter regarding the conditions at the Lasker ice skating facility in Central Park.

We have taken measures to repair the parapet walls and the stairs leading to the entry gate pavilion. We included repair of the parapet in the RFP and subsequent license agreement with Wollman Rink Operations, LLC. The concessionaire's architect has designed a new parapet wall, which includes a railing that is attached to the wall from the side. After several redesigns of the entire terrace and entry pavilion at Parks' request, I approved the design on December 5, 2005.

The concessionaire sent an engineer to revisit the site and reported that the wall is stable and does not pose an immediate risk to the public. Some remedial repairs were recommended and have been addressed. The stair repairs are complete and the remedial wall repairs (cleaning out loose mortar, etc) will be completed by Friday, June 9th. The stairs and parapet will be completely repaired immediately after the pool season.

If you have any further questions regarding the repairs, please contact Anthony Macari, our Revenue Division Architect at (212) 360-3420.

Sincerely,

Adrian Benepe

**Lasker Rink – Entry Gate Pavilion
Conditions Observed on 4/10/07**



Lasker Rink – Picture # 1: Damaged Parapet Wall



Lasker Rink – Picture # 2: Damaged Parapet Wall

**Lasker Rink – Entry Gate Pavilion
Conditions Observed on 4/10/07**



Lasker Rink – Picture # 3: Missing Flooring Tiles on the Upper Deck



Lasker Rink – Picture # 4: Deteriorated Floor on the Upper Deck

**Lasker Rink – Entry Gate Pavilion
Conditions Observed on 4/10/07**



Lasker Rink – Picture # 5: Chipping/Separation of the Concrete Surface on the Upper Deck



Lasker Rink – Picture # 6: Damaged Treads on Staircase

**Lasker Rink – Entry Gate Pavilion
Conditions Observed on 4/10/07**



Lasker Rink – Picture # 7: Concrete Separation Below Stair Case Treads



Lasker Rink – Picture # 8: Damaged Treads and Risers on Stair Case

**Lasker Rink – Entry Gate Pavilion
Conditions Observed on 4/10/07**



Lasker Rink – Picture # 9: Peeling Paint on the Ceiling Below Upper Deck



Lasker Rink – Picture # 10: Peeling Paint on the Interior Wall

EXHIBIT F -

ANNUAL MAINTENANCE REQUIREMENTS

WOLLMAN RINK:

Licensee shall maintain Wollman Rink at a cost not to exceed \$150,000 annually (beginning in year 4), pursuant to Section 12.2. This shall include, but not be limited to: roof leaks, waterproofing, resurfacing of the roller rink slab, flooring, utilities (as required), landscaping, food counters, maintenance of the ice pit, elevator, painting, mortar work, repairs to all fixtures (including faucets, lamps, and fuses), core equipment repairs-(including controls, boilers, motors, pumps), skates, bobcat, signage, guard rails, fencing, Zamboni, materials to maintain all systems in operating condition, and other routine maintenance (as stated below) throughout the entire Wollman facility, including the surrounding grounds. Licensee shall operate, maintain, repair or replace the following throughout the Term of this License:

- Flooring
- Roof leaks, waterproofing
- Resurfacing of the roller rink slab
- Landscaping
- Food Counters
- Elevator operation
- Painting (as needed)
- Patio pavers
- Interior lighting system
- Bathroom fixtures
- Entrance/exit doors
- Dasher Board system
- Lockers
- Bobcat front end loader for snow removal
- Mortar work
- Faucets, lamps and fuses
- Core equipment (including controls, boilers, motors, pumps)
- Skates
- Bobcat, Zamboni, Zamboni snow removal pit
- Signage, guard rails, fencing materials
- Maintaining flood lighting and exterior fencing
- Operation and maintenance of the sound systems. This includes replacing any lost, stolen or vandalized parts.
- All repairs to heating units.
- Operation and maintenance of ventilation equipment (to maintain proper operating temperature in the compressor at the Rink).
- Maintain deck catch basin and gutters

LASKER RINK:

The concessionaire will be required to maintain the facility at a cost not to exceed \$150,000 annually (beginning in year 4), pursuant to Section 12.2. This shall include, but not be limited to: deck lighting, deck coating, skates, paint, mortar work, guard rails, repair or replacement of lamps, fuses, core equipment repairs (including electrical and plumbing), new matting, fencing, signage, partitions, ramps, carpentry, and other routine maintenance (as stated below) throughout the entire Lasker facility, including the surrounding grounds. Licensee shall operate, maintain, repair or replace the following throughout the Term of this License:

- Hook Rings
- Mortar Work
- Guard rails
- New fencing
- Deck lighting, deck coating
- Mechanical lift for Zamboni
- Maintaining dasher boards and replacing as needed.
- Maintaining flood lighting and exterior fencing.
- Operation and maintenance of the sound systems. This includes replacing any lost, stolen or vandalized parts.
- All repairs to heating, ventilating, air conditioning and boiler units.
- All repairs to ice-making refrigeration system, including chillers and cooling towers
- Painting as needed
- Maintain zamboni
- Maintain deck catch basin and gutters

Conditions Observed at Lasker Rink on 2/16/07

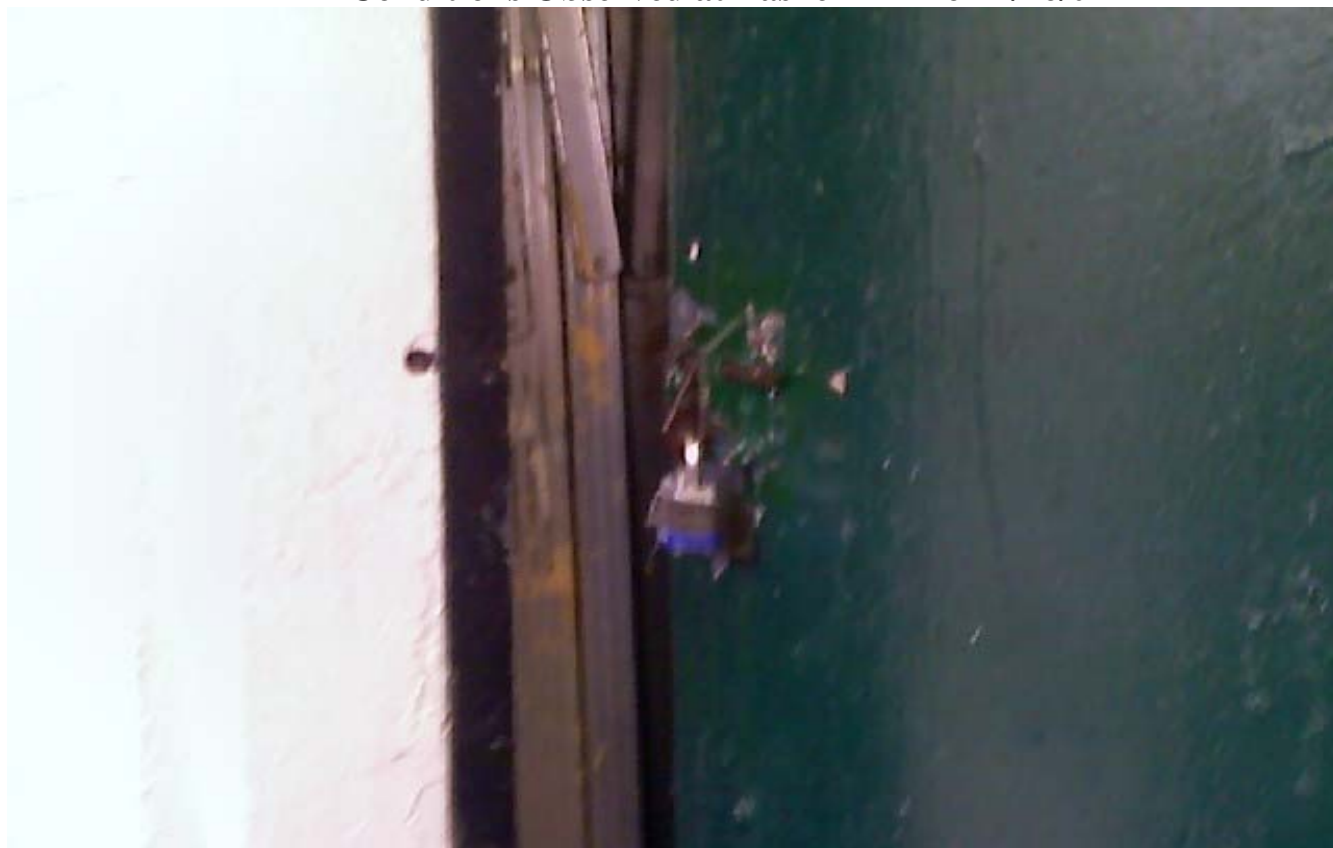


Lasker Rink – Picture # 1: Inoperable Ceiling Fixture and Peeling Paint



Lasker Rink – Picture # 2: Cracked Restroom Wall

Conditions Observed at Lasker Rink on 2/16/07



Lasker Rink – Picture # 3: Lopsided Door



Lasker Rink – Picture # 4: Inoperable Restroom Facilities

WOLLMAN RINK OPERATIONS LLC
725 Fifth Avenue
New York, NY 10022
(212) 832-2000

June 25, 2007

The City of New York
Office of the Controller
Executive Offices
1 Centre Street
New York, NY 10007-2341

Attn: Mr. John Graham
Deputy Controller – Audits, Accountancy & Contracts

Re: Wollman Rink Operations LLC (WRO)

Dear Mr. Graham:

Thank you for providing WRO with a copy of the Draft Report and for the professionalism and courtesies extended to us during the audit process. Prior to responding to the Draft Audit Report it is important to point out the following:

Since reopening Wollman and Lasker Skating Rinks six years ago in the Fall of 2001 under Trump management, the facilities have experienced unprecedented success in generating revenue, admissions, special events, and rent for the City of New York and Department of Parks. This success was achieved through strong, experienced operational and management skills and maintaining a close working relationship with the New York City Department of Parks and other key City departments. The end result is that each facility has become an internationally recognized and integral component of Central Park.

For the first time in the history of operating each facility, the combined rent paid to the City of New York has exceeded \$10.5 million, which includes base rent, percentage rent, fee increases, special event fees, and rent from Victorian Gardens during the summer season.

Over the course of the last six years, the facilities have also experienced over 1.9 million visitors, both locally and from around the world. This includes admissions during the summer season to Victorian Gardens – the only amusement park for children in Manhattan. In addition to an active and family-oriented summer program, Wollman Rink has also hosted numerous high-profile corporate and Special Events, including among many others, such notable organizations as the CBS *Survivor* season finale, the *Amazing Race* viewing party, Fox Upfronts, Starwood Hotels, Microsoft, as well as numerous movie sets, a Classic Car Show, Singapore Day and events for the Parks Department and related agencies. These events have provided the City and Parks

Department with substantial revenue. Additionally, Lasker Rink has served numerous ice hockey leagues and figure skating classes for adolescents and adults, as well as skating events for the community. In particular, the non-profit group *Ice Hockey in Harlem* uses the facilities at least four times per week with groups ranging from 6 to 14 year olds.

In addition to greatly improved financial and operational programs created over the last six years, the Capital Improvements made to date have also exceeded expectations both architecturally and monetarily. Wollman Rink has once again become the showcase it deserves to be for the City of New York, with over \$2.6 million spent to date on upgrades, refurbishments and maintaining a clean and modern facility. Likewise on Lasker Rink, over \$1,500,000 will be spent, which includes the remaining improvements currently being carried out with a final completion scheduled for the Fall of 2007.

Overall, Wollman and Lasker Skating Rinks are considered a safe and well-run asset for Central Park, the City of New York and its residents. The facilities have received praise and recognition from the media, business community, schools and most importantly, repeat visitors who return year after year. Through the commitment of Donald J. Trump and The Trump Organization, each skating rink has provided each visitor with a quality experience unlike any other in New York City.

So as not to be duplicative and respond to the audit report and then respond to the audit recommendations, our responses will address each recommendation.

Response to Recommendations

1. After reviewing the enclosed findings with Parks, all fees and late charges deemed appropriate will be promptly paid.

2. & 3. We believe our internal controls are satisfactory and deliver the results intended, although we are always looking to improve our operations. Thus we will seek to review and implement changes to our internal audit and reporting methods to continue to improve our internal controls.

We feel very strongly that our current procedures ensure the proper recording of receipts. Information was obtained by and provided to the City Auditors which was not reflected in the report. For example: we provided documentation which indicated the underreporting of revenue associated with rink rental was not an underreporting. The schools and not-for-profit organizations were not billed for specific reasons. In some cases, the rink was closed because of bad weather (example: rain, snow), the schools/organizations were closed for holidays (example: Thanksgiving, Christmas), or the schools/organizations season was over. Although these billing exceptions to the contract may not have been clear in the year under audit, in subsequent years, and prior to the start of this audit, the contract has been modified to reflect these exceptions. Additionally, to further clarify when these schools/organizations are to be billed, an entirely new contract will be written for the 2007/2008 season and beyond.

4. The current cash registers in use are in compliance with the License Agreement with Parks. These cash registers contain an internal tape which records all of the transactions that are

rung up in the cash register, along with any X or Z Reports that are run. During the 2006/2007 season we started to retain these tapes which allows us to ensure that all revenue can be tied out and matched with the statements submitted to Parks.

5. The City again asserts that "WRO inappropriately included \$150,000 in food-service receipts as part of its reported gross receipts" and does not address or refute any of the contentions raised in Jason D. Greenblatt's letter to Michael M. Morgese dated May 25, 2007 which explained why the City's contention was incorrect (the "Letter"). WRO's position, which was expressed in the Letter, is that the definition of Food Service Receipts in the License Agreement is limited to receipts from the sales of food and beverages only and that it specifically does not include Gross Receipts (this specific exclusion was a result of discussions between the City and WRO during the negotiation of the License Agreement, which is detailed further in the Letter). Gross Receipts is defined to include WRO's income from rental and sublicense fees and commissions. The \$150,000 fee cited in the audit represents a base sublicense fee (the "Base Fee") paid to WRO by its sublicensee, Relish Concessions & Events Catering L.L.C. ("Relish") and does not represent any income from the sale of food or beverages. Relish is obligated to pay the Base Fee to Licensee even if Relish sells no food or beverages at the sublicensed premises; thus, it is clear that the Base Fee is not derived from the sale of food and beverages and that the Base Fee was therefore properly included in WRO's calculation of Gross Receipts. Since the Revised Audit Report continues to include language indicating, incorrectly, that Licensee "inappropriately included \$150,000 in food-service receipts as part of its reported gross receipts," despite the arguments in the Letter, it may be useful to obtain the assistance of the City's Corporate Counsel to review the language of the License Agreement, as Licensee is certain that Corporate Counsel will reach the same conclusion as Licensee. Licensee is happy to assist Corporate Counsel with any such review.

Additionally, the Audit Report states we underreported Food Service Receipts by \$29,751. Paragraph 2.1 (m)(i) of the License Agreement with Parks defines Gross Receipts and states "Gross Receipts shall exclude... (4) Food Service Receipts". Paragraph 2.1 (m)(iv) states "Gross Receipts shall include... all sums due to be received by Licensee...". Paragraph 2.1 (q) of the same agreement states "'Food Service Receipts' shall mean all funds received by Licensee...". (Emphasis added.) It appears there is a difference between how Gross Receipts (accrual basis) and Food Service Receipts (cash basis) are reported to Parks.

We have consistently reported Food Service Receipts to Parks on a cash basis. In fact, the \$29,751 of Food Service Receipts mentioned in the Audit Report was reported to Parks during the 2005/2006 season.

6. We will discontinue claiming a portion of the license fee when we compute our Special Events Income.

7. Lasker Skating Rink
RENOVATION PLAN

The following renovation plans are pursuant to the architectural drawings that have been approved by the Department of Parks, the Landmarks Preservation Commission and Department of Buildings:

Work completed between April 26th and June 28th, 2007:

1. Removed the two (2) existing stairways on the east and west sides of the upper plaza, and installed two new stair entrances with security gates leading from the upper level plaza to the lower level.
2. Retained and painted the existing concrete pavilion structure.
3. Removed the existing two (2) stairways under the pavilion and filled-in openings with concrete flooring and hexagonal pavers to match existing.
4. Removed the existing chain link fence, metal turn-styles and gates enclosing the pavilion.
5. Installed new lighting on the upper plaza.

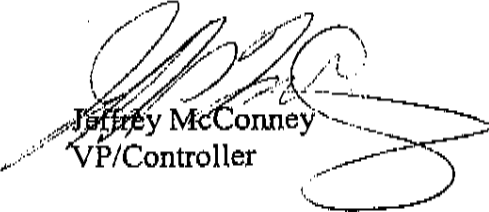
Work to be carried out from September to October 2007 (after swimming season ends and before skating season begins):

6. Replace the masonry parapet wall on the north side of the upper plaza and add a new metal railing on top.
7. Reconfigure the interior partitions of the existing bathrooms and storage rooms into new single stall unisex bathrooms.
8. During the audit period in question, WRO expended well over the \$300,000 for the maintenance and repairs for both rinks. While the expenditures for Wollman Rink exceeded the \$150,000 requirement, the auditors disallowed expenses which brought the expenditures for Lasker Rink below the \$150,000 requirement. One of the items disallowed was the salaries of our porters who not only "...keep the Licensed Premises clean, litter free, neat..." (Paragraph 12.1 of the License Agreement with Parks) but also perform routine maintenance tasks as required per Exhibit F of the License Agreement. WRO would like Parks to review the work being performed by the porters.
9. We intend to spend the required \$150,000 per year, per rink.
10. Prior to the 2004/2005 season, we operated a pro shop but there was little to no interest in the items we were selling. As the Audit Report indicates, we do sell some items of interest

(cameras and headbands) that are required in the License Agreement. Additionally, if a customer wishes to purchase ice skates or hockey equipment, we can provide those items on a case by case basis. We will contact Parks to modify the requirements of this provision of the license.

While WRO appreciates the modifications made to the Draft Audit Report which are reflected in the Revised Audit Report, the modifications are incomplete and do not take into account WRO's position on the foregoing matters, despite the fact that WRO addressed each of the City's contentions by providing further documentation in support of WRO's position and explained its position verbally during the exit conference with the City on May 30, 2007. Therefore, it is vital that this letter be included in the Final Audit Report as the Final Audit Report will be a publicly available document and WRO's position must be fairly and accurately reflected.

Very truly yours,



Jeffrey McConney
VP/Controller

Enclosures

Wollman Rink Operations LLC
c/o the Trump Organization
725 Fifth Avenue
New York, NY 10022

Jason D. Greenblatt
Executive Vice President and
General Counsel
Direct Dial (212) 715-7212
Fax (212) 980-3821
jgreenblatt@trumporg.com

May 25, 2007

VIA FEDERAL EXPRESS AND FACSIMILE

City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341
Attention: Michael M. Morgese, Assistant Director

Re: Preliminary Draft of Audit Report FM06-116A from the City of New York Office of the Comptroller (the "City") dated April 24, 2007 (the "Draft Audit Report"), regarding the compliance of Wollman Rink Operations LLC ("Licensee") with that certain License Agreement between Licensee and the New York City Department of Parks & Recreation ("Licensor") dated as of November 1, 2001 (the "License Agreement")

Dear Mr. Morgese,

I look forward to meeting with you at the exit conference on May 30, 2007 to discuss our comments to the Draft Audit Report. The purpose of this letter is to highlight, in advance of the exit conference, our comments to one particular section of the Draft Audit Report regarding the calculation of License Fees due to Licensor.

Pursuant to Section 4.1(a) of the License Agreement, Licensee is required to pay License Fees to Licensor in an amount equal to the higher of (i) the minimum annual fee or (ii) the sum of 28% of Gross Receipts plus 56% of Food Service Receipts derived from the operation of the Licensed Premises. On page 9 of the Draft Audit Report, the City contends that Licensee "mistakenly included \$150,000 of the \$313,491 in food-service receipts as part of its reported gross receipts derived from its skating operation, thus increasing reported gross receipts but not surpassing the threshold at which additional fees would be due." The \$150,000 to which the City refers represents a base license fee (the "Relish Base Fee") paid to Licensee by Relish Concessions & Events Catering, L.L.C. ("Sublicensee").

As an initial matter, we are unsure as to where the figure \$313,491 in food-service receipts comes from, as Licensee reported \$283,740 in food-service receipts to the City in its report for operating

year 2004-2005 which is the subject of the Draft Audit Report. Please clarify this point. Furthermore, the City's position is at odds with the clear language of the License Agreement. The definition of Food Service Receipts is expressly limited to any sublicensee's sale of "food and beverage" and does not include any other item. The Relish Base Fee is a flat fee for the rental of Sublicensee's premises within the Licensed Premises and does not include any fees for the sale of food and beverage. In fact, the definition of "Gross Receipts" clearly expressly excludes "Food Service Receipts" and expressly includes "Licensee's income from rental and sublicense fees and commissions... received by Licensee in connection with all services provided by Licensee's sublicensees..." (such rental and sublicense fees and commissions, "Rental Fees").

The example used to demonstrate the calculation of Food Service Receipts contained in the definition of Food Service Receipts further supports the plain language of the License Agreement. The example is based upon sales of a certain number of cups of soda and provides that:

"...if a sublicensee of Licensee shall sell 100 cups of soda for \$1.00 per cup, and the sublicensee shall be obligated to pay Licensee 12% of sublicensee's gross receipts from the sale of food and beverage, the Food Service Receipts that Licensee shall have received on the sale of such soda shall be \$12.00 (i.e., 12% of \$100). In the event Licensee shall be required to pay the License Fee based on a percentage of Gross Receipts and Food Service Receipts (in lieu of the Minimum Annual Fee) in accordance with the provisions of Section 4.1(a) hereof, then in connection with such 100 cups of soda, Licensee shall pay Parks \$6.72 (i.e., 56% of \$12.00)."

Note that the phrase "the Food Service Receipts that Licensee shall have received on the sale of such soda" is limited to a percentage of the receipts obtained only from the sale of soda. It does not include any other items paid to Licensor, such as Rental Fees. If the parties had intended to include Rental Fees (e.g., the Relish Base Fee) in the calculation of Food Service Receipts, the above would without question have read "the Food Service Receipts that Licensee shall have received on the sale of such soda shall be \$12.00...plus 56% of Rental Fees paid by any Sublicensee to Licensee."

A review of the history of the negotiations of the License Agreement further evidences that the definition of Gross Receipts was intended specifically to include all fees generated by sublicense arrangements and that, as a result of negotiations between the parties, it was intended specifically to exclude all fees for the sale of food and beverage generated by sublicense arrangements.

Early drafts of the License Agreement provided that Gross Receipts would include, in addition to Rental Fees, food receipts from the sale of food and beverage at the Licensed Premises. However, Licensee argued that Licensee would actually lose money if it had to pay Licensor 28% of food receipts from the sales made by any sub-licensee, as Licensee would itself not be entitled to 28% of food receipts from its sub-licensees. (See Exhibit A hereto, which contains a copy of my correspondence and comments to a draft License Agreement sent to Mr. Jeffrey Shatz on September 21, 2001 in which I indicated that the phrase "Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises" would mean that Licensee would lose money.) I note that Licensee is entitled to a fee equal to 20% of Sublicensee's gross sales of food and beverage, which fee, while higher than other such percentage fees for similar concessions in New York City, illustrates Licensee's point that it itself would not have been, and is not, entitled to 28% of the sales of food and beverage of any sublicensees. By contrast, Licensee never disputed the inclusion of Rental Fees in the definition of Gross Receipts. Rental Fees are flat fees, 100% of which would be paid to Licensee, as

opposed to fees equal to a limited percentage of sales for food service receipts, which limited percentage would be determined by reference to customary market practice and would certainly have been less than 28%. Therefore, Licensee was willing to agree to pay Licensor 28% of Rental Fees, but not of food service receipts.

As a result of the above negotiations, in late October/early November 2001, Nancy Harvey, counsel to Licensor, circulated a draft of the License Agreement which (i) added a definition of "Food Service Receipts" which is limited to "all funds received by Licensee from the actual sale by any sublicensee of Licensee of food and beverage at any portion of the Licensed Premises" (emphasis added), (ii) excluded "Food Service Receipts" from the definition of Gross Receipts and (iii) added language in Section 4.1(a) reflecting the eventual compromise reached by Licensor and Licensee, pursuant to which Licensor is entitled to the greater of the minimum annual fee or the sum of 28% of Gross Receipts (which by definition includes the Rental Fees) plus 56% of Food Service Receipts (see Exhibit B attached hereto for the draft, the relevant sections of which are marked).

In sum, it is clear that Licensee properly included the Relish Base Fee in Gross Receipts since (i) Gross Receipts is defined to include rental fees such as the Relish Base Fee and (ii) the Relish Base Fee is a rental fee, and therefore should not be included in the calculation of Food Service Receipts as that term is limited to the receipts obtained from the sale of food and beverage. In addition, a review of the history of the negotiation of the License Agreement indicates that the parties purposely excluded the definition of "Food Service Receipts" from the definition of "Gross Receipts" because to do otherwise would have represented a losing proposition for Licensee.

If you have any questions regarding the above, please feel free to contact me. Otherwise, we look forward to meeting with you in person to rectify this error in the Draft Audit Report and to discuss our other comments.

Defined terms used but not defined herein shall have the meanings ascribed to them in the License Agreement.

This letter is without prejudice to any of Licensee's rights at law or in equity, all of which are expressly reserved.

Sincerely,



Jason D. Greenblatt

cc:

Joanne Imohiosen, Assistant Commissioner of Revenue
City of New York Parks & Recreation
The Arsenal, Central Park
New York, NY 10021

Alessandro G. Olivieri, Esq.
Counsel, City of New York Parks and Recreation
The Arsenal, Central Park
New York, New York 10021

The Trump Organization (via e-mail only):

Allen Weisselberg, Chief Financial Officer
Matthew Calamari, Executive Vice President and Chief Operating Officer
Jeff McConney, Vice President and Controller
Nan Wilcke, Esq., Assistant General Counsel

Exhibit A
September 21, 2001 Correspondence

See attached.



THE TRUMP
ORGANIZATION
725 FIFTH AVENUE
NEW YORK, N.Y. 10022
(212) 832-2000

Jason D. Greenblatt
Assistant General Counsel
Direct dial (212) 715-7212
Facsimile (212) 935-0141
jgreenblatt@trumporg.com

September 21, 2001

BY HAND

Mr. Jeffrey Shatz
New York City Department of Parks &
Recreation
The Arsenal Building/Central Park
830 Fifth Avenue
New York, NY 10021

Re: License Agreement for the Operation and Management of The Wollman
and Lasker Skating Rinks in Central Park

Dear Mr. Shatz:

Enclosed please find our comments to the above referenced agreement. Please call me with any questions or comments you may have. When you send a revised draft of the agreement to me, I would greatly appreciate that the revised draft be marked to show the changes from this draft (i.e., "blacklined"). Thank you and I look forward to working on this transaction with you.

This document remains subject to my client's review and comment, is submitted for discussion purposes only and is subject to the express understanding that it does not constitute an offer, an acceptance or create any legally enforceable obligations upon any party identified therein or associated therewith.

Very truly yours,


Jason D. Greenblatt

JDG/m

Enclosure

Mr. Jeffrey Shatz
September 21, 2001
Page 2

bcc: Bernard R. Diamond (w/enc.)
Allen Weisselberg (w/enc.)
Matthew Calamari (w/enc.)
Charlie Reiss (w/enc.)
Nathan Nelson (w/enc.)
Dino Bradlee (w/enc.)
Jill Cremer (w/enc.)

JPG
9/20/01

DRAFT

DRAFT

LICENSE AGREEMENT

BETWEEN

WOLLMAN RINK OPERATIONS LLC
~~THE TRUMP CORPORATION~~

DRAFT

AND

CITY OF NEW YORK
PARKS & RECREATION

for

DRAFT

OPERATION AND MANAGEMENT OF
THE WOLLMAN AND LASKER SKATING RINKS IN CENTRAL PARK,

MANHATTAN, NEW YORK

M10-(5)-A-IS

DATED: _____, 2001

and ice skates to be purchased by Licensee for use at Wollman and Lasker Rinks shall be considered Fixed Equipment.

- (i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to Licensed Premises subsequent to the date of execution of this License.
- (ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(f) "Parks" shall mean the New York City Department of Parks & Recreation.

(g) "Substantial Completion" or "Substantially Complete" shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for in Section 11.19 and that the improvement may be utilized by the public.

(h) "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.

(i) "Year" or "Operating Year" shall mean the period between the anniversary of the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following year.

(j) "Ice Skating Season" shall mean the period each year during which the Licensee shall open the rinks to the public for ice skating. Normally each Ice Skating Season for Wollman Rink will begin no later than November 1 of each year and end no earlier than March 20 of the following year, and normally each Ice Skating Season for Lasker Rink will begin no later than November 15 of each year and end no earlier than March 20 the following year. "Non-Ice Skating Season" shall mean the period between the end of any Ice Skating Season and the beginning of the next subsequent Ice Skating Season. The exact dates are subject to Parks' approval.

(k) "Licensed Premises" shall mean the area so denoted on Exhibit C, and shall include the Recreation Facility, and any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and

Need to
allow for
force
Major
delays
will not
be Nov. 1
this
year -
we
reasonably
anticipate
Nov. 1
for this
year,
but
under
the
circumstances, it may not be.
Certainly no later than Thanksgiving

③ weather conditions may impact the opening date - please provide for this

landscaping and other areas extending to and including the perimeter line indicated on said Exhibit C.

(l) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises, including architectural and design fees necessary to implement the Capital Improvements. Capital Improvements shall also include installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Premises.

(m) (i) "Gross Receipts" shall include ~~without limitation~~ all funds received by Licensee, without deduction or set-off of any kind, from the sale of food and beverages, wares, fees for use of the ice rink and ice skates, merchandise or services of any kind, provided that Gross Receipts shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. ~~Gross Receipts shall include all funds received for orders placed with Licensee or made at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof.~~ ^{the} All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 18 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees, or instructors functioning as independent contractors at the Licensed Premises.

* Gross Receipts should exclude cash or credit refunds and sales not in the ordinary course of business. Should also exclude income generated from Special Events, since that income is already covered by us paying 50% of such net income.

This concept won't work, because we will lose money. Parks should get 20% of what we get. We will call to discuss this issue.

how is this relevant?

repetitive with previous sentences

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts.

(n) "Special Events" shall mean any private function (e.g. rental of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Commissioner for his prior approval plans for any such Events at the Licensed Premises which are reasonably expected to attract more than thirty attendees, or which will result in the closing of the Licensed Premises to the public during regular hours of operation.

(o) "Recreation Facilities" shall include all existing buildings and structures at Wollman and Lasker Rinks and any and all interior or exterior improvements to said structures or new structures constructed during the Term of this License upon the Licensed Premises.

TERM OF LICENSE

3.1 This License shall become effective upon full execution by the parties and shall be for a Term of ten years and seven months beginning October 1, 2001 ("Commencement Date") and ending April 30, 2012.

3.2 Notwithstanding any language contained herein or in Section 4.11, this License is terminable at will by the Commissioner in his sole and absolute discretion, at any time. Such termination shall be effective after thirty days written notice to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given, this License shall terminate as described in Section 3.1 of this agreement.

Which shall not be arbitrary or capricious,

please make clear that if License is terminated early, License fee will be appropriately pro-rated

3.3 (a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice within thirty days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate. ~~If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in~~

(or if such breach or non-compliance shall not be of a nature that can be cured or remedied within such 30 day period, if Licensee shall not in good faith have commenced the curing or remedying of same within such 30 day

Exhibit B
Late October/Early November 2001 Correspondence

See attached.

Lizabeth Kyprislidis

From: Nancy Harvey [Nancy.Harvey@parks.nyc.gov]
Sent: Thursday, November 01, 2001 11:58 AM
To: Jason Greenblatt
Subject: Wollman and Lasker Rinks Agreement



Central Park - Ice
Rinks.Lc r...

Hi Jason-

Attached the latest draft as sent to the Law Dept.

LICENSE AGREEMENT

BETWEEN

WOLLMAN RINK OPERATIONS LLC

AND

CITY OF NEW YORK
PARKS & RECREATION

for

OPERATION AND MANAGEMENT OF
THE WOLLMAN AND LASKER SKATING RINKS IN CENTRAL PARK,

MANHATTAN, NEW YORK

M10-(5)-A-IS

DATED: _____, 2001

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LICENSE AGREEMENT ("License" or "License Agreement") made this day of , 2001, between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10021, and Wollman Rink Operations LLC (the "Licensee"), a limited liability company organized under the laws of the State of New York whose address is c/o The Trump Organization, 725 Fifth Avenue, New York 10022.

WHEREAS, Parks, pursuant to the City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

WHEREAS, the Wollman and Lasker Rinks, (the "Licensed Premises") located in Central Park, in the Borough of Manhattan, Block #1111, Lot #1, are facilities under the jurisdiction and control of Parks; and

WHEREAS, the Commissioner of Parks (the "Commissioner") desires to provide for the continued operation of two skating facilities, including ice skating rinks, rental of skates, skating instructions, pro shop and food service operations ("Recreation Facilities") at the Licensed Premises for the accommodation, enjoyment and convenience of the public; and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee ("FCRC") in selecting Licensee, including the issuance of a request for proposal ("RFP") for the operation and maintenance of the Licensed Premises and the conduct of a public hearing concerning the intent to award a License Agreement upon the terms and conditions contained herein; and

WHEREAS, Licensee desires to operate and manage the Licensed Premises in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into a license agreement specifying rights and obligations with respect to the operation and maintenance of the Licensed Premises.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereby do agree as follows:

GRANT OF LICENSE

1.1 Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to operate and manage the Licensed Premises

as public recreational ice skating facilities in accordance with the terms herein and to the reasonable satisfaction of the Commissioner, provided no standard is otherwise specified herein. Parks shall not permit other vendors to operate on the Licensed Premises.

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License, however, it shall be the responsibility of Parks to obtain Certificates of Occupancy and Public Assembly permits should they be required. Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall not be unreasonably withheld or delayed and shall be valid only if it is, in each instance, in writing and signed by the Commissioner or his duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner, the Licensee or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative and the Licensee.

1.3 It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purpose herein provided. Except as herein provided, Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly complied with and so long as this License is not terminated by the Commissioner, in accordance with the terms of this License Agreement.

1.4 Licensee shall provide, at all times, free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes.

DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

(a) "City" shall mean the City of New York, its departments and political subdivisions.

(b) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.

(c) "Comptroller" shall mean the Comptroller of the City of New York.

(d) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Fixed Equipment, provided by Licensee.

(e) "Fixed Equipment" shall mean any property affixed in any way to Licensed Premises, whether or not removal of said equipment would damage Licensed Premises. For the purposes of this License, the Zamboni machines and ice skates to be purchased by Licensee for use at Wollman and Lasker Rinks shall be considered Fixed Equipment.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to Licensed Premises subsequent to the date of execution of this License.

(ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(f) "Parks" shall mean the New York City Department of Parks & Recreation.

(g) "Substantial Completion" or "Substantially Complete" shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for in Section 11.19 and that the improvement may be utilized by the public.

(h) "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.

(i) "Year" or "Operating Year" shall mean the period between the anniversary of the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following year.

(j) "Ice Skating Season" shall mean the period each year during which the Licensee shall open the rinks to the public for ice skating. In the first year, the Ice Skating Season shall begin no later than November 10, 2001 unless approved in writing by the Commissioner. Thereafter, weather permitting, the normal Ice Skating Season for Wollman Rink will begin no later than November 1 of each year and end no earlier than March 20 of the following year, and weather permitting, the normal Ice Skating Season for Lasker Rink will begin no later than November 15 of each year and end no earlier than March 20 the

following year. "Non-Ice Skating Season" shall mean the period between the end of any Ice Skating Season and the beginning of the next subsequent Ice Skating Season. The exact dates are subject to Parks' approval unless Licensee is unable to commence the Ice Skating Season in accordance with this Section 2 due to circumstances beyond the control of Licensee as reasonably determined by the Commissioner, including but not limited to acts of God, war, or enemies, or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, lockouts, governmental restrictions, terrorism, fire or other casualty. In such situations, the Licensee shall propose new Ice Skating Season dates for the Commissioner's approval and if approved, Licensee shall commence the Ice Skating Season in accordance with the approved dates.

(k) "Licensed Premises" shall mean the area so denoted on Exhibit C, and shall include the Recreation Facility, and any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping and other areas extending to and including the perimeter line indicated on said Exhibit C.

(l) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises, including architectural and design fees necessary to implement the Capital Improvements. Capital Improvements shall also include installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Premises.

(m) (i) "Gross Receipts" shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from the sale of wares, fees for use of the ice rink and ice skates, merchandise or services of any kind, provided that Gross Receipts shall exclude (1) the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales, (2) income generated from Special Events (including income from all food service connected to said Special Events) as defined in Sections 2 and 16 herein, (3) cash and credit refunds of refundable deposits for events that do not take place and (4) Food Service Receipts (hereinafter defined). Gross Receipts shall include all funds received for orders placed with Licensee or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other

Deleted: food and beverages,

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place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 18 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees, or instructors functioning as independent contractors at the Licensed Premises. Gross Receipts shall exclude Food Service Receipts (hereinafter defined).

Deleted: In addition, in the case of food services,

Deleted: Licensee's income from subcontracting or sublicense fees associated therewith.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts.

(n) "Special Events" shall mean any private function (e.g. rental of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Commissioner for his prior approval (not to be unreasonably withheld) plans for any such Special Events at the Licensed Premises which are reasonably expected to attract more than thirty attendees, or which will result in the closing of the Licensed Premises to the public during regular hours of operation. Parks shall respond to such request within ten (10) business days of receipt of such request or such request shall be deemed approved.

(o) "Recreation Facilities" shall include all existing buildings and structures at Wollman and Lasker Rinks and any and all interior or exterior improvements to said structures or new structures constructed during the Term of this License upon the Licensed Premises.

(p) "Consumer Price Index" ("C.P.I.") shall mean the Consumer Price Index for all urban consumers; all items indexed (C.P.I.-U.) for the New York, New York/Northeastern New Jersey area (1982-4=100), by the United States Department of Labor, Bureau of Labor Statistics. In the event the index shall hereafter be converted to a different standard reference base or otherwise

revised, the determination of the increase shall be made with the use of conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics. In the event the index shall cease to be published, then for the purpose of this License Agreement there shall be substituted for the index such other index as the Parks and Licensee shall agree upon.

(g) "Food Service Receipts" shall mean all funds received by Licensee from the actual sale by any sublicensee or subcontractor of Licensee of food and beverage at any portion of the Licensed Premises, excluding food and beverage sales connected with Special Events. For example, if a sublicensee of Licensee shall sell 100 cups of soda for \$1.00 per cup, and the sublicensee shall be obligated to pay Licensee 12% of sublicensee's gross receipts from the sale of food and beverages, the Food Service Receipts that Licensee shall have received on the sale of such soda shall be \$12.00 (i.e., 12% of \$100).

TERM OF LICENSE

3.1 This License shall become effective upon full execution by the parties and shall be for a Term of ten years and six months beginning November 1, 2001 ("Commencement Date") and ending April 30, 2012. Upon full execution, this License shall supercede in all respects the terms and conditions of the temporary permit with an effective date of October 1, 2001 and such temporary permit shall be terminated and of no further force or effect.

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3.2 Notwithstanding any language contained herein or in Section 4.11, this License is terminable at will by the Commissioner in his sole and absolute discretion, which shall not be arbitrary or capricious, at any time. Such termination shall be effective after thirty days written notice to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given, this License shall terminate as described in Section 3.1 of this agreement.

3.3 (a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence in good faith and with due diligence, efforts to comply with such order within fifteen days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate. If said breach or failure to comply is material, and a repeated violation of the same

provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one day notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

3.4 Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City.

3.5 In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 (a) or (b) above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Premises.

3.7 Licensee shall, on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Premises. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee

fail to remove all possessions from the premises on or before the expiration or termination date.

PAYMENT TO CITY

4.1 (a) Licensee shall make payments to the City, in installments on the dates specified in Section 4.2 herein, License Fees for each Operating Year, consisting of the higher of the minimum annual fee or the sum of 28% of Gross Receipts plus 56% of Food Service Receipts, in each case, derived from the operation of the Licensed Premises calculated on an annual basis (see Section 4.5 below) according to the schedule below:

Deleted: an annual percentage

Deleted: (plus 56%

Deleted: subcontracting or sublicense fees received by Licensee for the operation of food services)

Deleted: OPERATING YEAR (CITY)

<u>OPERATING YEAR</u>	<u>MINIMUM ANNUAL FEE</u>	<u>Vs. 28% OF GROSS RECEIPTS plus 56% of Food Service Receipts</u>
2001	\$1,400,000	28%*
2002	\$1,428,000	28%*
2003	\$1,456,560	28%*
2004	\$1,485,691	28%*
2005	\$1,530,262	28%*
2006	\$1,576,170	28%*
2007	\$1,623,455	28%*
2008	\$1,672,159	28%*
2009	\$1,722,323	28%*
2010	\$1,773,993	28%*
2011	\$1,827,213	28%*

* Plus 56% of Food Service Receipts, subject to Section 4.1(b).

Deleted: income received by Licensee from operation of food services.

Additionally, Licensee shall pay the City, 50% of net income generated from Special Events as defined in Sections 2 and 16 herein. Such payments shall be made no later than 60 days after each Special Event.

(b) If at any time during the term of this License, Licensee shall elect to not utilize a sublicensee to provide food and beverage service for the Licensed Premises (or any portion thereof), and Licensee shall itself provide food and

beverage service for the Licensed Premises (or any portion thereof), then for such period of time as Licensee shall so provide such food and beverage service, the term "Food Service Receipts" shall not be applicable for purposes of this Agreement and all funds received by Licensee from food and beverage sales shall be included in the category of "Gross Receipts" and in the event Licensee shall be obligated to pay an annual percentage of sales in accordance with the terms of Section 4.1(a), then same shall be paid at the 28% level, instead of the 56% level.

Deleted: Event.

4.2 The minimum annual fee shall be paid to the City in equal monthly installments on or before the first days of October, November, December, January, February, March and April of each Operating Year in accordance with the schedule of payments set forth in the Schedule of Minimum Fee Payments annexed hereto as Exhibit A. Any additional amount resulting from the applicable percentage of Gross Receipts shall become due and payable thirty days after the end of each Operating Year.

4.3 Late charges shall be assessed on any payment that is overdue for more than ten days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Upon affixing its signature to this License, Licensee shall provide the City with a certified check in the amount of \$456,803.25 payable to the City of

New York, as its security deposit ("Security Deposit"). The Security Deposit shall remain with the City throughout the Term of this License.

(b) Security Deposit shall consist of cash, a certified check payable to the City of New York, an irrevocable letter of credit naming the City of New York as beneficiary or other negotiable instrument payable to bearer or the City of New York which the Comptroller shall approve as being of equal market value with the sum so required. The Security Deposit shall be held by the City without liability for interest thereon, as security for the full and faithful performance by the Licensee of each and every term and condition of this license on the part of the Licensee to be observed and performed, PROVIDED HOWEVER that Licensee may submit to the City an interest-bearing bond (with a minimum market value sufficient to cover the amount of the required Security Deposit) to serve as said Security Deposit. In that event the Licensee may collect or receive annually any interest or income earned on such bonds less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after five days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee in accordance with the Terms of this License or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums, including utilities, payable by Licensee to the City, the Security Deposit shall be returned to Licensee following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

4.5 (a) On or before the thirtieth day following each month of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts and Food Service Receipts, signed and verified by an officer of Licensee as follows:

(i) reporting any Gross Receipts and Food Service Receipts generated at Wollman Rink during the preceding month;

(ii) reporting any Gross Receipts and Food Service Receipts generated at Lasker Rink during the preceding month;

Licensee shall also submit a summary report of Gross Receipts and Food Service Receipts for each Operating and non-Operating Season for each rink within thirty days of the end of each such season and within thirty days of the end of each Operating Year of this License. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises including, without limitation, the following categories:

Rink Admissions	Receipts from charges made at point of admission of patrons to the Licensed Premises;
Skate Rental	Receipts from charges made at point of rental for use of ice and/or roller skates provided by Licensee;
Ice Rental	Receipts from charges made at point of rental for use of the ice rink for hockey and figure skating;
Skate Repair	Receipts from charges made at point of sale for the repair of skates;
Pro Shop Sales	Receipts from charges made at point of sale of merchandise sold at pro shop;
Lessons	Receipts from charges for skating lessons provided by Licensee at the Licensed Premises, fees from all customers and from any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement;
Food Services	Notwithstanding the definition of Gross Receipts in Section 2 above, <u>Licensee shall require any food and beverage sublicensee or subcontractor to report its gross income from the sale of food products and beverages to Licensee and Licensee shall report the same to Parks upon receipt from sublicensee or subcontractor. In</u>

Deleted: receipts from charges made at point of sale for

addition, if pursuant to Section 4.1(b), Licensee chooses to itself provide food and beverage services to the Licensed Premises, Licensee shall report receipts from such services to Parks;

Deleted; excluding such charges during Special Events;

Vending Machines

Net income received by Licensee from placement and operation of vending machines on Licensed Premises;

Miscellaneous

All other sources of income realized by the Licensee from the Licensee's operation of the Licensed Premises, including rental of the Licensed Premises for Special Events.

(b) These statements shall also include a daily report of patron attendance at each of the Recreation Facilities for the preceding month; patron attendance shall be reported in the categories for which admission fees are charged.

(c) Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(d) On or before the thirtieth day following each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee.

4.6 (a) Licensee, during the term of this License and any renewal thereof, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be prescribed by Parks or the Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

June 25, 2007

BY FAX AND MAIL

Mr. John Graham
Deputy Comptroller
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007

**Re: Comptroller's Draft Audit Report on Wollman Rink Operations, LLC
November 1, 2004 through October 31, 2005 No. FM06-116A,
Dated June 18, 2007**

Dear Mr. Graham:

This letter represents the Parks Department's ("Parks"), response to the recommendations contained in the subject draft audit report ("the report") on Wollman Rink Operations, LLC ("WRO").

Parks has issued the attached "Notice To Cure" ("NTC") to WRO covering the following recommendations:

- **Recommendation 1** -- At this time WRO is required to pay \$100,329 (\$74,546 in additional fees and \$25,783 in Late Charges). The balance, \$96,701, represents pending additional fees totaling \$71,850 and related late charges, \$24,851. The pending fees consist of:
 - \$42,000 in additional food-service fees that the report claims WRO owes because it did not correctly calculate the amount of license fees due the City in accordance with its agreement. Parks is referring this item to the City's Law Department to determine whether the Comptroller's interpretation of the contract applies, or if WRO's calculation methodology is correct. Based on the Law Department's ruling, Parks will take the appropriate action to either bill the remaining balance or dismiss the finding.

John Graham
June 25, 2007
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- \$29,850 in additional fees due against unreported revenue for Ice Rental, Hockey Leagues and Lessons. Hereby, Parks requests that the Comptroller's Office provide its worksheet details showing how the underreported revenue total of \$106,608 was calculated. Parks will compare the audit data to available Parks records to determine whether the rink was open, or closed due to inclement weather and therefore, no rink rental, hockey league, or lessons income should have been billed and collected for those dates that the rink was closed. After our review, we will bill WRO for either the full assessment, \$29,850 plus late charges, or an adjusted amount based on our findings.
- **Recommendations 2,3, and 4** – WRO must take prompt action to implement procedural changes to remedy the noted internal control and record keeping deficiencies.
- **Recommendation 5** - WRO must implement procedures to ensure the proper recording and reporting of food-service receipts. As indicated above, Parks will refer the issue of whether WRO correctly calculated the amount of food-service license fees due the City in accordance with its agreement, to the City's Law Department for resolution.
- **Recommendation 6** - WRO must comply with this recommendation by not including this deduction in any of its future special event net income calculations.
- **Recommendation 7** – Requires that WRO present Parks with a written plan to renovate the entry gate, pavilion, stairs, and the parapet wall at Lasker rink. Plans have already been approved and a schedule submitted. Furthermore, construction already is in progress. Two new sets of stairs have been constructed, the pavilion stairs have been removed and decking has been installed over the previous stair opening. Additional work to install new railings along the parapet will occur after the pool season concludes in the fall. All required work is scheduled for completion by November 2007.

Also, included in this section of the report are allegations that due to the delays in starting the improvements at Lasker Rink the public may be exposed to potentially unsafe conditions. Furthermore, the report attributes the lack of progress in completing the improvements to delays by WRO and Parks in submitting and approving improvement plans. The report concluded this topic by stating that as of April 10, 2007, the work was still incomplete, and conditions are still unsafe more than two years after the scheduled completion date.

Although Parks acknowledges that the work to renovate the entry pavilion at Lasker Rink was delayed beyond the initial due date due to unforeseen circumstances, none of the delays resulted in the public being exposed to unsafe conditions. Parks

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Architects and Engineers regularly inspected the facility and first identified a crack along a mortar joint in the parapet prior to the 2001 RFP.

Consequently, the parapet repair became a required item in the list of capital improvements. In 2003, WRO requested a delay in the required deadline to make the parapet repair. WRO wanted to be able to submit the parapet and entry pavilion designs at the same time to Landmarks. Prior to agreeing to the delay, Parks requested that the concessionaire submit an independent Engineer's report on the stability of the parapet. WRO commissioned Goldstein Associates PLLC to inspect and report upon the condition of the parapet. In the letter dated 10/27/03 John Whelan, P.E. determined that the parapet wall was stable and not in need of any immediate repair. A follow up inspection was conducted on 5/12/06 and again the wall was determined to be stable. Some minor remedial repairs were suggested and carried out.

Additionally, twice a year between the pool and rink seasons Parks and WRO personnel inspect the facility. Minor remedial patching is performed to the stairs and parapet wall as needed but the overall stability of the stairs and parapet was never deemed unsafe.

Since the facility is located within Central Park, a full Landmark's review was required. Landmarks required approval from all eight (8) effected community boards. Additionally, the facility is jointly operated, by Parks in the Summer as a pool and by WRO as an ice skating Rink in the Fall/Winter. All work must be coordinated with "Parks' Five Borough" operations unit, the Central Park Conservancy and Parks Manhattan Borough Operations unit to make sure the proposed changes would work for both the pool and the rink. Landmarks West was also consulted prior to submission to the Landmarks Commission and they spoke out in favor of the project at the public hearing. Finally, upon Parks and Landmark's approval the plans were submitted to the Department of Buildings for approval and permitting. Each group that reviewed the project, despite their unique set of concerns and priorities, universally approved the design currently in construction. In the end the community will have a facility that preserves the historic fabric and enhances the quality of the space in the most desirable way.

Attached as Exhibit A is a lengthy and detailed timeline that outlines the many meetings, notices, reviews and design revisions that took place between 2002 and June 2007 to achieve these approvals.

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- **Recommendations 8 and 9** – For Recommendation 8, WRO is required to remit payment in the amount of \$58,923. Also, WRO must comply with Recommendation 9 by spending the minimum requirement of \$150,000 each year to maintain each rink. The maintenance expenditures must be in accordance with the specified items detailed in Exhibit F of the agreement. Any shortfall below the required amount must be remitted to Parks as additional fees.
- **Recommendation 10** - WRO must take the appropriate action to implement Recommendation 10. If the inventory listed on Exhibit B of the agreement is not deemed to be suitable for either facility, WRO must submit to Parks for consideration and approval a proposed list of replacement merchandise to be sold at the pro shops. In any event, WRO must comply with Article 9.1 (b) of its license that deals with this subject.

The following recommendations have been addressed by Parks' issuance of the attached NTC, the subject of which has been discussed above.

Parks should:

- **Recommendation 11** - Ensure that WRO pays the \$197,030 in additional license fees and late charges.
- **Recommendation 12** - Ensure that WRO implements the proper controls necessary so that all receipts are recorded on WRO's books and records and on the gross receipt statements submitted to Parks.
- **Recommendation 15** - Send WRO a five-day notice seeking payment of \$58,923 for the unexpended Lasker facility maintenance costs due in Year Four of the agreement. If WRO fails to make payment, use the security deposit to pay for the unexpended maintenance costs.
- **Recommendation 16** - Ensure that WRO submits complete documentation needed to determine whether claimed maintenance costs adhere to Exhibit F of the agreement. Parks should carefully review the documentation to ensure that claimed maintenance costs conform to the requirements of the agreement.
- **Recommendation 17** – Ensure that WRO complies with the report's other recommendations.

Recommendation 13 states that Parks should coordinate with WRO and develop a written plan to complete the refurbishment of the Lasker rink gateway (remodel the entry gate pavilion, install new stair treads, and reconstruct the parapet wall). The plan should include project start dates, completion dates, and critical construction milestones.

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Recommendation 14 states that Parks should closely monitor the progress of completing the required improvements at Lasker. If the project is not completed by the agreed upon date, parks should assess liquidated damages as prescribed in the agreement.

Recommendation 13 has been addressed under Parks' comments for Recommendation 7. In response to Recommendation 14, Parks will continue to closely monitor work at Lasker Rink. The Revenue Division Architect makes regular inspections and reports. The stair construction and new decking are substantially complete. WRO will commence with construction activity after the pool season concludes. All work is scheduled to be completed by November 2007.

Finally, we wish to thank the Comptroller's audit staff for their work and efforts in performing this review.

Sincerely,



Joanne Imohiosen

cc: Comm. Adrian Benepe
Laura Goebel
Alessandro Olivieri
Walter Roberts
David Stark
Jeffrey Kay, Mayor's Office of Operations

EXHIBIT A
Comptroller's Draft Audit Report on Wollman Rink Operations, LLC
Timeline on Lasker Rink Capital Improvements
2002 - 2007

- February 7, 2002 - A letter requesting documentation of expenditures to date was sent from Parks to WRO.
- March 12, 2002 - A meeting was held between Parks and WRO at the Arsenal to discuss the progress and schedule for capital improvements. (See the attached sign in sheet).
- April 2002 - WRO submits a letter with a revised schedule for Lasker Rink along with a list of completed items.
- May 8, 2002 - Parks sent a letter agreeing to delay certain work at Wollman in exchange for submission of the design for the entry pavilion and fencing at Lasker
- June 2002 - A follow up meeting was held at Lasker on with Lasker Rink Manager Dino Bradley, WRO's Landscape Architect Thomas Balsley, Parks Revenue Division Architect Anthony Macari and Parks A/C Joanne Imohiosen regarding the pavilion, terrace, parapet and fence design.
- April 25, 2003 - Parks sent a letter requesting schedules and plans for the completion of phase 1 and design of phase 2 of the capital commitment.
- May 5, 2003 a letter was sent by Parks to WRO requesting a schedule for all remaining items at Wollman and Lasker.
- May 30, 2003 - A proposal to completely remove the entry pavilion and replace the railings on the parapet is presented to Commissioner Benepe. Commissioner Benepe approves of the concept but requests additional trellis work to "green up" the sides of the existing rink.
- June 16, 2003 - A letter is sent to WRO informing them that the plan will require a full Landmarks review and may face strong opposition from preservation groups including Landmark's West. WRO is also informed of the Commissioner's design comments and asked to resubmit the design. A revised schedule is requested to add in extra time for Parks and Landmark's review.
- June - August 2003 - The design is reworked by Vincent Czajka Architect to incorporate the Commissioner's comments.
- September 16, 2003 - A letter is issued by Parks requesting submission of revised plans and schedules.
- September 24, 2003 - A revised plan for the entry pavilion is presented to Parks in-house design review and rejected due to the suggested vine species and concerns about the scope of the project from the Chief of Design.
- September 2003 Parks issues a letter extending the deadline for the completion of several items at Lasker to October 2005.
- October 2, 2003 - A letter is issued by Parks notifying them of the outstanding required capital improvements.
- October 23, 2003 - Parks receives a request from WRO to extend the deadline at Lasker. Parks accepts the extension for the completion of all work at Lasker until October 2005

Exhibit A
June 25, 2007
Page 2

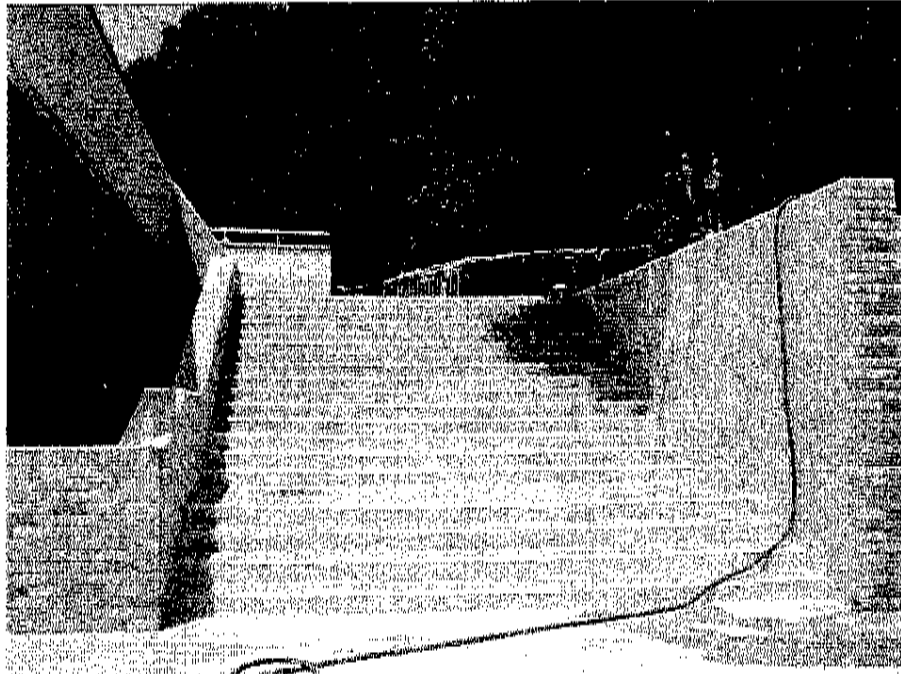
- October 2003 – RDA Anthony Macari meets with WRO Construction Manager Mike Calamari on site to discuss the pavilion renovation and necessary repairs to the pool deck. The parapet wall was inspected by Parks RDA and determined to be stable.
- November 2003 – An alternate, simpler plan for the roof top entry pavilion is discussed between WRO and Parks. It is decided that since the approval process will require a full Landmarks review and that indications from preservation groups suggest they would strongly oppose a plan to demolish the existing roof top canopy that a simplified plan would be better.
- March 24, 2004 – Parks issues a letter listing outstanding capital improvements and there deadlines for completion.
- March 2004 – A revised scope is submitted for the roof top renovation and the Architect is completing revised plans.
- April – June 2004 – Substantial repairs to the pool surface and deck are made by WRO. A meeting with the Central Park Conservancy is held to discuss the proposed new iron fence that is to be installed to replace the existing chain link fence and discuss the proposed renovation of the entry pavilion.
- May 26, 2004 – A meeting was held with the RDA and Central Park Conservancy to discuss the stair relocation and impact on trees and pedestrian access. Parks RDA inspected the parapet and determined there was no further deterioration.
- June 2004 – Revised plans are submitted and presented to Park in-house design review.
- July 19, 2004 – The revised plans are presented to Commissioner Benepe. Commissioner Benepe requested a meeting with the Manhattan Chief of Operations to discuss the proposed changes to assure that it will not be problematic for pool operations. Plans were immediately sent a meeting was scheduled.
- August 2004 – Manhattan Operations met with Parks RDA at Lasker to discuss the proposed renovations. A second set of stairs was requested to be included in the plan to separate the boys and girls entryways.
- September 2004 – A meeting with Mike Calamari and the Parks RDA is held to discuss requested changes from Parks Operations. They agreed to make the suggested changes. The parapet wall was inspected and determined to be stable by the RDA.
- September 2004 – October 2004 – The new Iron fence is installed around the entire perimeter of the rink.
- October 2004 – A notice was sent requesting revised plans, documentation and a revised schedule.
- September 26, 2005 – Parks RDA meets with Mike Calamari on site to discuss the pavilion renovation and all other outstanding work. The parapet is inspected and determined to be stable.
- September 27, 2005 – A notice is sent to WRO requesting revised plans by October 26, 2005. The deadline to complete all work was extended to October 1, 2006.

Exhibit A
June 25, 2007
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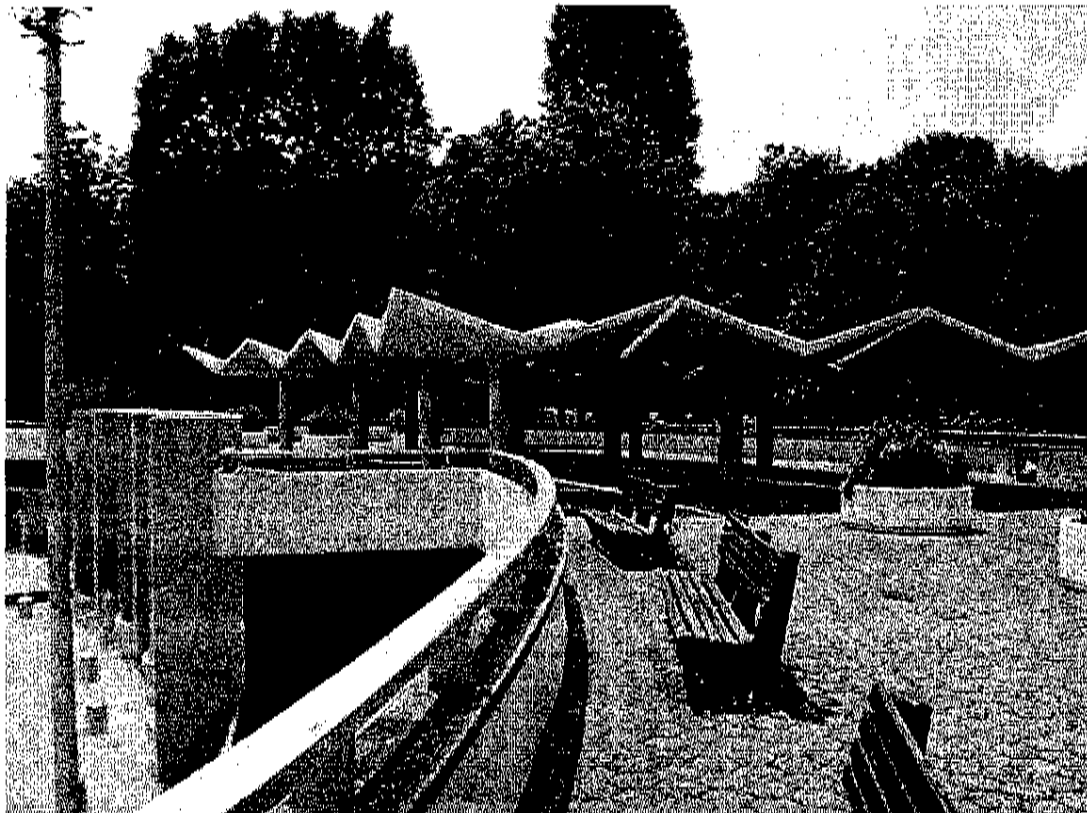
- December 2005 – A meeting was held with Parks RDA, Jill Cremer and Michael Calamari to discuss the revised plans, which were submitted to Parks at the meeting. A copy of the plans was sent over to Parks operations for review.
- December 15, 2005 – A letter was issued to WRO acknowledging receipt of plans and agreeing to extend the completion deadline until October 1, 2006.
- January 2006 – Manhattan Chief of Operations approves the revised plan. The plans were then presented at the January in-house design review and approved.
- February 2006 – Commissioner Benepe approves the revised plan to renovate the entry pavilion.
- April 2006 – The deadline for completion was extended to October 2007.
- March 28, 2006 – Parks issues a notice that the Commissioner had reviewed and approved their plans to renovate the entry pavilion, stairs and parapet railing at Lasker. The signed Landmarks applications were included and WRO was to have their Architect submit the plans and applications to Landmarks.
- May 2006 – Parks RDA inspected the stairs and parapet wall to determine if there were any changes to the condition. The parapet appeared stable and the stairs were stable but in need of patching to eliminate potential trip hazards. A follow up engineer's report on the condition of the parapet was requested.
- May 15, 2006 – A follow up Engineer's report is submitted to Park from Goldstein Associates. The parapet is determined to be stable but some minor patching is suggested.
- May 2006 – Plans and applications are submitted to Landmarks. It is hoped that Landmarks will only require a staff level review since the existing canopy was not to be demolished.
- June 2006 – Landmarks informs Parks that a full review will be required and the plans must be submitted and presented upon request to all 8 affected community boards.
- September 15, 2006 – Landmarks conditional approval. Color and railing samples must be submitted and approved before final approval is given
- October 24, 2006 – Landmarks gives final approval
- November, 2006 – Department of Buildings (DOB) applications prepared. Parks assists WRO to get DOB approval. Parks agrees to extend the deadline for all remaining work until November 1, 2007 due to difficulty in obtaining permits from DOB.
- March 7, 2007 – DOB issues permits
- April 26, 2007 – Work to construct the new stairs, demolish the existing stairs, patch and paint the parapet and canopy, close the deck over the former stair openings, reinstate pavilion lighting, enclose the area of the former stairs and install new iron fencing and gates at new stair locations.

Exhibit A
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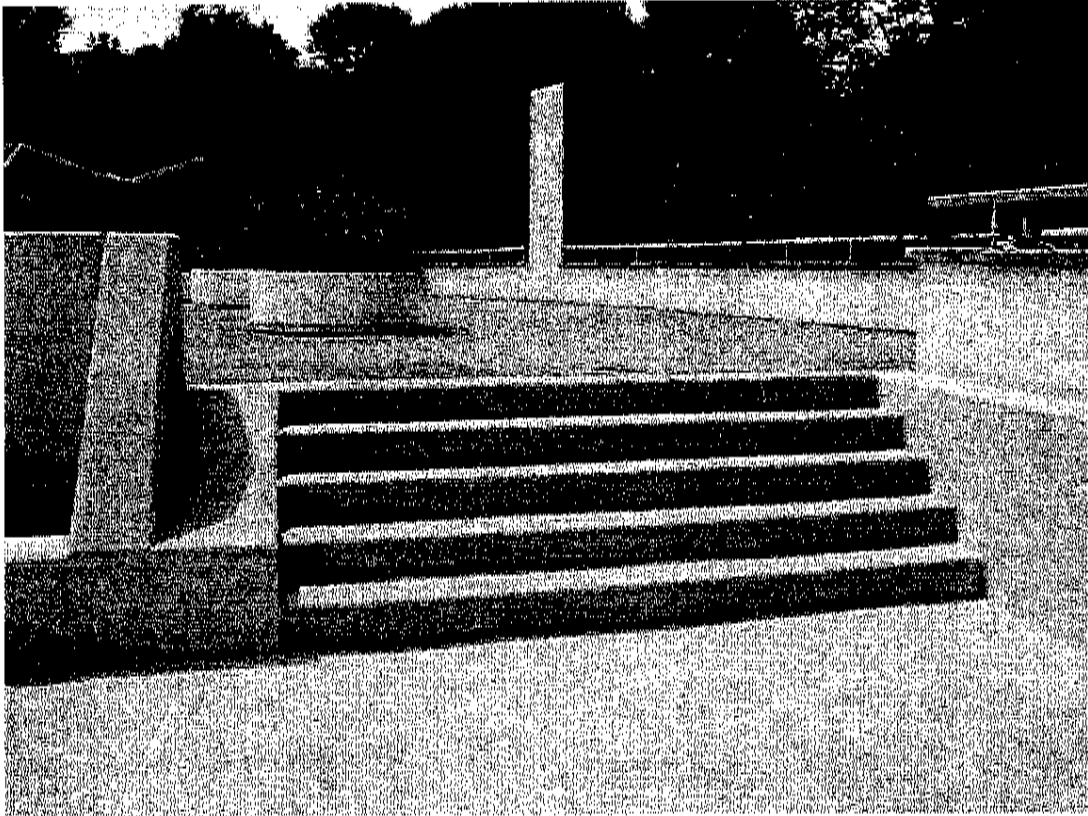
- June 25, 2007 – Parks RDA inspects the work. The stairs were completed and the railings and fencing was being installed. The deck was covered over and patched temporarily with black top and concrete. In the fall after the pool season the hex block pavers will be installed to replace the concrete and black top patching. The crack in the parapet was sealed and painted. The parapet was stable with no loose sections. The new railing will be installed in the fall. Electric work for the pavilion lighting and new enclosed spaces in the area of the former stairs was ongoing. The two old sets of stairs were demolished. All chain link fencing around the pavilion has been removed. (See photos attached).



New Stairway



Restored open pavilion and repaired parapet wall.



New Stair to Terrace



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

June 25, 2007

BY FAX AND MAIL

Mr. Jeffrey McConney
Vice President/Controller
Wollman Rink Operations, LLC
c/o The Trump Corporation
725 Fifth Avenue
New York, NY 10022

Re: NOTICE TO CURE

**Comptroller's Draft Audit Report on Wollman Rink Operations, LLC
November 1, 2004 through October 31, 2005 No. FM06-116A,
Dated June 18, 2007**

Dear Mr. McConney:

This letter addresses the findings and recommendations contained in the subject draft audit report ("the report") on Wollman Rink Operations, LLC ("WRO"). The report indicated that WRO paid its minimum annual fees on time, maintained the required property and liability insurance, posted the required security deposit, paid required utility charges, and maintained Wollman rink in accordance with the terms of its license agreement. Furthermore, based on its examination of WRO's capital investment requirements, the report stated that Parks has issued a certificate of completion indicating that the Wollman rink improvements were completed in accordance with the agreement.

However, the report disclosed that WRO:

- Does not have sufficient internal controls to ensure that all receipts are being recorded on its books and records and reported to the City.
- Made some errors on the revenue reports it submitted to Parks. WRO underreported revenue associated with rink rental, hockey leagues, and lessons by \$106,608; and did not report several December transactions totaling \$20,473 relating to skating operations and \$25,106 in miscellaneous revenue.

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- Underreported the amount of food-service receipts it receives from its food service operator by \$29,751 and that its method of accounting and reporting revenue from its food and beverage operator, children's amusement park sublicensee, and special events did not comply with the terms of the agreement. As a result the report concluded that WRO owes \$146,396 in additional license fees and \$50,634 in late charges.
- Significantly delayed the submission of plans that together with delays in Parks' approvals resulted in several postponements of the renovation of the entry pavilion, stairs, and parapet wall at Lasker rink.
- Did not comply with two other provisions of its agreement. Specifically, beginning in the fourth year of operation, WRO did not spend \$58,923 of the required \$150,000 to maintain the Lasker facility, nor did it operate a pro shop at either facility.

Specifically, the report requires that WRO should:

Recommendation 1. Pay the City \$197,030 in additional license fees and late charges.

The auditors found that:

- Revenue associated with rink rental, hockey leagues, and lessons was underreported by \$106,608.
- \$20,473 in skating-event receipts was recorded on WRO's records, but was not included on the monthly gross receipts report submitted to Parks.
- \$25,106 in miscellaneous revenue (ATM commissions and gift sales) was recorded on WRO's records but not posted to the gross receipts report submitted to Parks.
- WRO underreported the amount of food-service receipts it received from its food service operator and did not correctly calculate the amount of license fees due the City in accordance with its agreement. For operating year 2005, WRO reported to the City \$283,740 in food-service receipts; however, the audit review calculated that food service receipts amounted to \$313,491, an underreported difference of \$29,751.
- WRO inappropriately included \$150,000 of food-service receipts as part of its reported gross receipts derived from its skating operation and included this sum as part of the percentage rent calculated at 28%. The Comptroller's position is that food-service fees should be calculated based on total food-service receipts, including the \$150,000 base amount paid by the food-service sublicensee, at the rate of 56% as required by the license agreement.

Based on the above findings, Table III of the report calculates additional fees due in the total amount of \$94,244. At this time Parks agrees with \$22,394 of the assessed total.

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The difference of \$71,850 represents the additional 28%, \$42,000, that is due against the \$150,000 of food-service receipts as stated in the report, and 28%, \$29,850, in additional fees owed against unbilled and unreported revenue for Ice Rental, Hockey Leagues and Lessons that totaled \$106,608.

Parks is referring the food-service item to the City's Law Department to determine whether the Comptroller's interpretation of the contract applies, or if WRO's calculation methodology is correct. Based on the Law Department's ruling, Parks will take the appropriate action to either bill the remaining balance or dismiss the finding. Also, Parks will request the Comptroller's worksheet details showing how the underreported revenue total of \$106,608 was calculated. To confirm the correctness of the Comptroller's information we will compare it to available Parks records that reflect whether the rink was open, or closed due to inclement weather and therefore, no rink rental, hockey league, or lessons income was billed and collected for those days. After our review, we will bill WRO for either the full assessment, \$29,850 plus late charges, or an adjusted amount based on our findings.

Also, WRO owes the City a larger portion of revenue it received from the sublicensee of the children's amusement park—Central Park Victorian Garden. WRO reported that it received \$176,475 from its sublicensee and paid the City \$37,500, or 21.25 percent of the receipts. However, since WRO's adjusted fee payment calculation due the City exceeds the minimum annual fee, WRO is required to pay the City 42.5 percent of the \$176,475 it received from its sublicensee. As a result WRO owes the City an additional \$37,500 in license fees.

Furthermore, the report indicated that WRO underpaid the City \$14,652 in fees generated from special events. The amount is attributable to an improper deduction of \$29,304, representing a per-diem portion of WRO's annual City License fee applied to each special event. Since the per-diem expense deduction had no direct relationship to the events it is not allowable. Parks is due 50 percent of the net income generated from Special Events and therefore was underpaid 50 percent of the \$29,304 expense deduction.

Based on the current and pending additional fees owed, the report calculated late charges totaling \$50,634 (Appendix A of the report). The late charges on the current amount due now, \$74,546, total \$25,783 (See attached Exhibit I). Billing for the remaining late charge balance, \$24,851 (See attached Exhibit II), is pending a determination on the items discussed above in the total amount of \$71,850.

Jeffrey McConney
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To summarize, for Recommendation 1 WRO presently owes \$100,329 as follows:

• Inaccurate Calculation of Payments Due from Skating Operations and Food Receipts	\$ 22,394
• Underpayment of Fees from Amusement Park Sublicensee	37,500
• Underpayment of Fees from Special Events	<u>14,652</u>
Additional Fees Due	\$ 74,546
Late Charges	<u>25,783</u>
TOTAL AMOUNT DUE	<u>\$100,329</u>

The following balances under Recommendation 1 totaling \$96,701 are pending resolution as discussed above:

• Inaccurate Calculation of Payment Due from Food-Receipts	\$42,000
• Underreported revenue for Ice Rental, Hockey Leagues and Lessons	<u>29,850</u>
Total Amount Pending	\$71,850
Late Charges	<u>24,851</u>
TOTAL AMOUNT PENDING	<u>\$96,701</u>

Recommendation 2. Implement the necessary internal controls to ensure that all receipts (i.e., admissions, ice rental, league, lessons, parties and miscellaneous income, etc.) are recorded on its books and records and on the gross receipt statements submitted to the City.

Recommendation 3. Address the control weaknesses noted in this report pertaining to billing customers for ice rental, leagues, and lessons, and maintaining documentation to support billing and collection of revenue. Include in the reported gross receipts the total amount of rental and hockey league billings as stated in hockey league contracts.

Recommendation 4. Institute reconciliation and control procedures to ensure that all transactions are properly recorded and supported. All Z tapes, till sheets, and computerized batch numbers should correspond to the cash receipts journal and daily bank deposits.

The report claims that WRO does not have sufficient internal control procedures to ensure that all gross receipts are properly recorded and reported to the City. Also, it states that WRO does not maintain documentation to support all of its transactions recorded in the general ledger. As a result, these cited weaknesses compromise the reliability of WRO's reported gross receipts.

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Specifically, the auditors found that:

- WRO uses nine non-integrated cash registers to record its revenue. The cash register tapes for these nine registers do not include an identifying reference that would indicate the register from which tapes were generated. Also, WRO did not maintain the daily sales and receipt records (i.e. cash register tapes that accumulate within each cash register). Consequently, the auditors were unable to determine how many registers were in use on a given day and whether all transactions were properly recorded and reported to Parks.
- WRO does not maintain any sequentially numbered daily register tapes (detailing each transaction) or sequentially numbered Z tapes (periodic summaries for each register).
- WRO does not maintain sufficient records to support revenue derived from its ice rental and hockey activities.

The report concluded that based on the above internal control deficiencies, the auditors could not be assured that all WRO revenue is being recorded and reported as gross receipts.

WRO should take prompt action to implement procedural changes to remedy the noted internal control and record keeping deficiencies. Consideration should be given to the installation of a point-of-sale register system linking all registers to a centralized system and ensure that all revenue is processed through this system. By copy of this letter to Walter Roberts, Director, Concessions Audit for Parks, I am requesting that in three months he schedule a follow up review of WRO's operation to ensure it has complied with these recommendations.

Recommendation 5. Accurately account for all food service receipts and calculate license fees in accordance with the terms of the license agreement.

The audit review disclosed that WRO underreported the amount of food-service receipts it received from its food service operator by \$29,751, and the report claims that WRO did not correctly calculate the amount of license fees due the City in accordance with its agreement.

WRO should implement procedures to ensure the proper recording and reporting of food-service receipts. As indicated above, Parks has referred the issue of whether WRO correctly calculated the amount of food-service license fees due the City in accordance with its agreement, to the City's Law Department for resolution. Parks will advise WRO of the legal determination on this item.

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Recommendation 6. Discontinue reducing special-event income by claiming a portion of the license fee as a special-event expense.

The report disclosed that WRO improperly applied an expense deduction to each special event that represented a per-diem portion of its annual City license fee. WRO should comply with this recommendation by not including this deduction in any of its future special event net income calculations.

Recommendation 7. Present Parks with a written plan to renovate the entry gate pavilion, stairs, and the parapet wall at Lasker rink. The plan should include project start and completion dates and critical construction milestones (i.e., excavation, foundation, construction, etc.). Then, WRO should contact Parks and coordinate a date to begin the remaining capital improvements at Lasker rink.

The report commented on the delays that were encountered in the planning of certain capital improvements at Lasker Rink. Due to the delays in starting the improvements the report alleges that the public may be exposed to potentially unsafe conditions. Also, the auditors attributed the lack of progress in completing the improvements to delays by WRO and Parks in submitting and approving improvement plans. The report concludes this subject by stating that as of April 10, 2007, the work was still incomplete, and conditions are still unsafe more than two years after the scheduled completion date.

Parks disagrees with the audit conclusion that because of the delay in starting work the public is being exposed to unsafe conditions that still persist long after the scheduled project completion date. Although Parks acknowledges that the work to renovate the entry pavilion at Lasker Rink was delayed beyond the initial due date due to unforeseen circumstances, none of the delays resulted in the public being exposed to unsafe conditions. In fact, two independent engineering inspections conducted in 2003 and 2006, determined that the parapet wall was stable and not in need of any immediate repair.

Furthermore, Plans have already been approved and a schedule submitted for completion of the project. Construction is in progress and is scheduled to be finished by June 25, 2007. Additional work to install new railings along the parapet will occur after the pool season concludes in the fall. All required work should be completed by November 2007.

We will address this subject in more detail in Parks' response to the report, including a lengthy timeline showing the meetings, notices and reviews that were held

Jeffrey McConney
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between 2002 and June 2007 to document WRO's and Parks' ongoing efforts to accomplish the completion of the Lasker capital improvements.

Recommendation 8. Pay the City \$58,923 for unexpended maintenance costs at the Lasker facility.

Recommendation 9. Spend a minimum of \$150,000 each year to maintain each facility. Specific maintenance should be in accordance with the specific items detailed in Exhibit F of the agreement. If WRO spends less than the required amount, it should submit the difference to Parks as additional fees.

The report indicated that WRO did not expend \$58,923 of the \$150,000 in repair and maintenance expenditures at the Lasker facility as required by license agreement Article 12.2. WRO provided the Comptroller's Office with documentation that showed repair and maintenance expenditures at the Wollman and Lasker facilities totaling \$512,346 for operating year 2005. Based on their review of the documentation and the associated annual maintenance requirements listed in Exhibit F of the agreement, the auditors disallowed \$261,989 of the \$512,346. Furthermore, of the remaining \$250,357 of allowable expenses, only \$91,077 was applicable to the Lasker facility, \$58,923 less than the required \$150,000 minimum expenditure.

To clear the repair and maintenance deficit noted above and resolve Recommendation 8, WRO is required to remit payment in the amount of \$58,923. Also, WRO should comply with Recommendation 9 by spending the minimum requirement of \$150,000 each year to maintain each rink. The maintenance expenditures should be in accordance with the specified items detailed in Exhibit F of the agreement. Any shortfall below the required amount should be remitted to Parks as additional fees.


Recommendation 10. Operate a well stocked pro shop at each rink. The pro shop inventory should include, but not be limited to, those items listed in Exhibit B of the agreement.

The report found that WRO does not operate a "well stocked" pro shop at either Wollman or Lasker rinks, as required by the agreement. WRO should take the appropriate action to implement Recommendation 10. If the inventory listed on Exhibit B is not deemed to be suitable for either facility, WRO should submit to Parks for consideration and approval a proposed list of replacement merchandise to be sold at the pro shops. In any event, WRO must comply with Article 9.1 (b) of its license that deals with this subject.

Jeffrey McConney
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In conclusion, WRO should remit a check for \$159,252 within five days from the date of this letter to resolve the balance presently owed under Recommendation 1, \$100,329, and for Recommendation 8, \$58,923. We wish to thank WRO for its cooperation during the audit review and anticipate its remittance of the full amount payable and compliance regarding implementation of the other recommendations discussed above.

Sincerely,


Joanne Imohiosen

cc: Ron Lieberman
Alessandro Olivieri
Laura Goebel
David Stark
Walter Roberts
Allen Weisselberg (Vice President/CFO, Wollman Rink Operations, LLC)

EXHIBIT I

WOLLMAN RINK OPERATIONS, LLC
CALCULATION OF LATE CHARGES
ON AUDIT ASSESSMENT

FOR INACCURATE CALCULATION OF PAYMENTS DUE FROM SKATING OPERATIONS AND FOOD RECEIPTS
FOR UNDERPAYMENT OF FEES FROM AMUSEMENT PARK SUBLICENSEE AND
FOR UNDERPAYMENT OF FEES FROM SPECIAL EVENTS

DUE DATE	LICENSE FEES DUE	ACCUMULATED BALANCE DUE	PERIOD		RATE	LATE CHARGE	CALCULATED ACCUMULATED BALANCE
			FROM	TO			
12/1/2005	\$74,546.00	\$74,546.00	12/1/2005	12/31/2005	2%	\$1,490.92	\$76,036.92
		\$76,036.92	1/1/2006	1/31/2006	2%	1,520.74	\$77,557.66
		\$77,557.66	2/1/2006	2/28/2006	2%	1,551.15	\$79,108.81
		\$79,108.81	3/1/2006	3/31/2006	2%	1,582.18	\$80,690.99
		\$80,690.99	4/1/2006	4/30/2006	2%	1,613.82	\$82,304.81
		\$82,304.81	5/1/2006	5/31/2006	2%	1,646.10	\$83,950.90
		\$83,950.90	6/1/2006	6/30/2006	2%	1,679.02	\$85,629.92
		\$85,629.92	7/1/2006	7/31/2006	2%	1,712.60	\$87,342.52
		\$87,342.52	8/1/2006	8/31/2006	2%	1,746.85	\$89,089.37
		\$89,089.37	9/1/2006	9/30/2006	2%	1,781.79	\$90,871.16
		\$90,871.16	10/1/2006	10/31/2006	2%	1,817.42	\$92,688.58
		\$92,688.58	11/1/2006	11/30/2006	2%	1,853.77	\$94,542.35
		\$94,542.35	12/1/2006	12/31/2006	2%	1,890.85	\$96,433.20
		\$96,433.20	1/1/2007	1/31/2007	2%	1,928.66	\$98,361.86
		\$98,361.86	2/1/2007	2/28/2007	2%	1,967.24	\$100,329.10

TOTAL LATE CHARGE DUE

\$25,783.10

EXHIBIT II

WOLLMAN RINK OPERATIONS, LLC
CALCULATION OF PENDING LATE CHARGES
ON AUDIT ASSESSMENT
FOR INACCURATE CALCULATION OF PAYMENTS DUE FROM SKATING OPERATIONS AND FOOD RECEIPTS

DUE DATE	LICENSE FEES DUE	ACCUMULATED BALANCE DUE	PERIOD		RATE	LATE CHARGE	CALCULATED ACCUMULATED BALANCE
			FROM	TO			
12/1/2005	\$71,850.00	\$71,850.00	12/1/2005	12/31/2005	2%	\$1,437.00	\$73,287.00
		\$73,287.00	1/1/2006	1/31/2006	2%	1,465.74	\$74,752.74
		\$74,752.74	2/1/2006	2/28/2006	2%	1,495.05	\$76,247.79
		\$76,247.79	3/1/2006	3/31/2006	2%	1,524.96	\$77,772.75
		\$77,772.75	4/1/2006	4/30/2006	2%	1,555.46	\$79,328.21
		\$79,328.21	5/1/2006	5/31/2006	2%	1,586.56	\$80,914.77
		\$80,914.77	6/1/2006	6/30/2006	2%	1,618.30	\$82,533.07
		\$82,533.07	7/1/2006	7/31/2006	2%	1,650.66	\$84,183.73
		\$84,183.73	8/1/2006	8/31/2006	2%	1,683.67	\$85,867.40
		\$85,867.40	9/1/2006	9/30/2006	2%	1,717.35	\$87,584.75
		\$87,584.75	10/1/2006	10/31/2006	2%	1,751.69	\$89,336.44
		\$89,336.44	11/1/2006	11/30/2006	2%	1,786.73	\$91,123.17
		\$91,123.17	12/1/2006	12/31/2006	2%	1,822.46	\$92,945.64
		\$92,945.64	1/1/2007	1/31/2007	2%	1,858.91	\$94,804.55
		\$94,804.55	2/1/2007	2/28/2007	2%	1,896.09	\$96,700.64

TOTAL LATE CHARGE DUE

\$24,850.64