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

Report on the Monitoring of Franchise, Concession, License, and Lease Agreements by City Agencies

FS07-107A

June 18, 2007

THE CITY OF NEW YORK
DEPARTMENT 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 contained in Chapter 5, § 93, of the New York City Charter, my office conducts audits of concession, franchise and lease agreements granted by various City agencies. Between January 1, 2002 and June 30, 2006 we conducted 41 such audits. This report is a compilation of these audits.

Audits such as these provide a means of determining whether City properties used by concessionaires under agreement with the City are operated effectively, efficiently and in full compliance with the agreements.

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,

William C. Thompson

William C. Thompson, Jr.

WCT/fh

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REPORT IN BRIEF

The Comptroller's Office conducts audits of concession and franchise agreements granted by City agencies pursuant to its authority under the City Charter. These audits provide a snap shot to evaluate the performance of the entity over the scope period of the audit. The results of these audits do not ensure that the conditions found and the resulting findings were not present before the audits started or did not continue after the audit reports were issued to the public.

The audits of these agreements evaluate the payments made by such entities as cable television franchises, sports teams with leases to operate in public stadiums, and agreements between the City and concessionaires licensed to operate on parkland and other City property. The audits determined whether these private entities paid the City the fees they owed in accordance with their agreements. The audits cover a given time period within the term of the agreement. Between January 1, 2002, and June 30, 2006, the Audit Bureaus have completed 41 audits of entities with City franchise, concession, license, and lease agreements. This compilation report provides an anthology of the findings of the 41 audits and also makes an overall conclusion based on the results of these audits.

Findings and Conclusions

Between January 1, 2002 and June 30, 2006, the Audit Bureaus have completed 41 audits of entities with City franchise, concession, license, and lease agreements. These audits resulted in the assessment of $23,804,840 million in additional revenue due the City. The City has collected $16,627,231 in revenue as a result of the audit findings, and has the potential to realize an additional $7,177,609 in outstanding revenue. The additional revenue can be collected if all recommendations identified in the audit reports are followed. Table I, below, shows the amount of revenue assessed, by agency, from the franchise, concession, license, and lease audits completed by the Comptroller's Office between January 1, 2002 and June 30, 2006.

In general, based on the results of the 41 audits of concession, franchise and lease

agreements overseen by a number of City agencies, it is apparent that the agencies do not adequately monitor the parties granted these agreements, as required by the City Charter. Moreover, the results of the majority of the audits raise the question as to the attitude of the agencies in their role as the City's oversight body charged with monitoring the activities of the entities granted these agreements. It appears that as long as these agreements provided revenue to the City, lax or no monitoring occurred from the oversight agency.

Table I
Revenue Assessed by Agency
Franchise, Lease, License, and Concession Audits
January 1, 2002–June 30, 2006

Agency	Total Revenue Assessed	Total Revenue Collected	Potential Revenue
Parks	$8,990,700	$7,909,967	$1,080,733
Information Tech and Telecom	$13,006,965	$7,772,630	$5,234,335
Citywide Admin. Services	$444,554	$152,215	$292,339
Economic Development Corp.	$943,719	$373,517	$570,202
Sanitation	$0	$0	$0
Transportation	$418,902	$418,902	$0
Total	**$23,804,840**	**$16,627,231**	**$7,177,609**

Recommendations

The Mayor's Office must institute uniform policies and procedures that all agencies must follow to ensure that entities granted concession, franchise and lease agreements are adequately monitored by each respective oversight agency. These policies and procedures should include steps that each agency should perform to ensure that the private entity granted the concession, franchise, or lease agreement is complying with the provisions of the agreement. These steps could include periodic reviews of revenue collections and internal controls, to help ensure that the entity had accounted for and reported all its revenue to the City and paid all the fees owed. Monitoring agencies should also review when capital improvements are required in the agreements and periodically inspect properties to ensure the adequate completion of improvements.

The City Of New York
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Report on the Monitoring of Franchise, Concession, License, and Lease Agreements by City Agencies

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BACKGROUND

Franchise, concession, and lease agreements between various City agencies and private organizations result in revenues to the City based on formulas defined in the agreements. The City Charter (the Charter) defines a concession of City property as a "grant made by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents and leases."[1] The Charter defines a franchise of City property as a "grant by an agency of a right to occupy or use the inalienable property of the city to provide a public service."[2]

The City agencies that grant such rights to private entities and enter into such agreements include the Department of Citywide Administrative Services (DCAS), the Department of Information, Technology and Telecommunications (DoITT), the Department of Parks and Recreation (Parks), the Department of Transportation (DOT), the Economic Development Corporation (EDC), and the Department of Sanitation (DOS). The Charter states that agencies granting these type of agreements "shall also monitor the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent or concession under its jurisdiction."[3] These agreements encompass a full spectrum of businesses, from small operations such as hot dog vendors operating on City-owned property, to larger operations like cable franchises and Shea and Yankee stadiums. The granting of these agreements to profit-making entities benefit the City and the public, since the revenues and profits of the operation are shared with the City and the private concern. The rationale underlying such agreements is that the more the private entity strives to maximize its own revenues and profits, this will result in more revenues for the City Treasury. The public benefits as well because it is hoped that the services provided by the private entity will be performed more efficiently and, therefore, at a lower cost, then if performed by a government agency.

Methods used to grant franchises and concessions are similar to those used to select awardees in City procurement procedures. Also, according to the City Charter, the

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[1] The New York City Charter, as amended through July 2004, Chapter 14, §362 (a).
[2] Ibid.
[3] Ibid. §365 (c).

Comptroller's Office is responsible for reviewing all contracts, contract amendments, leases, and concessions between City agencies and vendors to determine whether the Comptroller's Office should register the agreement.

Under the City Charter, all franchises and franchise agreements require the review and approval of the Franchise and Concession Review Committee (FCRC), as do all concessions that are awarded without competitive sealed bid or a Request for Proposals (RFP). [4] The FCRC consists of six members, each of whom may be represented by a designee: the Mayor, who serves as chair; an additional member appointed of the Mayor; the Director of the Office of Management and Budget; the Corporation Counsel; the Comptroller; and, depending on the location of the franchise or concession at issue, the Borough President of that borough.

The FCRC has promulgated rules that govern the process followed by City agencies for the granting of concessions.[5] With regard to franchise agreements, the FCRC determines whether each franchise agreement proposed by a City agency is consistent with the document requesting solicitation upon which the franchise agreement was negotiated (the RFP or other such documents). If the FCRC determines that there are inconsistencies between the proposed franchise agreements and the documents of solicitation, it can require appropriate modifications to the franchise agreements to correct any significant inconsistencies.[6] The granting of franchises and concessions must also comply with the rules prescribed by the FCRC.

AUDITS CONDUCTED BY THE NEW YORK CITY COMPTROLLER'S OFFICE

The Comptroller's Office conducts audits of concession, franchise and lease agreements granted by City agencies pursuant to its authority under the City Charter. These audits provide a snap shot to evaluate the performance of the entity over the scope period of the audit. The results of these audits did not ensure the conditions found and the resulting findings were not present before the audits started or did not continue after the audit reports were issued to the public.

The audits of these agreements evaluate the payments made by such entities as cable television franchises, sports teams with leases to operate in public stadiums, and agreements between the City and concessionaires licensed to operate on parkland and other City property. The audits determine whether these private entities pay the City the fees they owe, in accordance with their agreements. Between January 1, 2002, and June 30, 2006, the Audit Bureaus have completed 41 audits of entities with City franchise, concession, license, and lease agreements. These audits resulted in the assessment of $23,804,840 million in additional revenue due the City. The City has collected $16,627,231 in revenue as a result of the audit findings, and has the potential to realize an additional $7,177,609 in outstanding revenue. The additional revenue can be collected if all recommendations identified in the audit reports are followed.

[4] Those that are awarded by a method other than competitive sealed bid and either have a term of 10 years or more and/or will result in a projected annual income to the City of more than $100,000, except for those of a very temporary nature.
[5] Ibid. Chapter 14, §373 (d (1).
[6] Ibid. Chapter 14, §373 (d (3).

Table II, below, lists the 41 audits that were conducted and the revenue amounts assessed in each audit.

Table II

Franchise, Lease, License, and Concession Audits
January 1, 2002–June 30, 2006

Monitoring Agency	Audit Number	Date Issued	Audit Title	Type of Audit	Total Revenue Assessed	Revenue Collected	Potential Revenue
Parks	FR02-091A	2/20/2002	Compliance of Leisure Management Corp.With Its License Agreement	CONCESSION	-	-	-
Parks	FN02-082A	3/15/2002	Compli. Central Parking System w/License Agree. for Shea Stadium Parking	CONCESSION	28,813	28,813	-
Parks	FN02-126A	5/30/2002	Compli. OF New York Yankees with Their Lease Agreement 7/1/97-12/31/2000	LEASE	367,321	367,321	-
Parks	FR02-089A	6/13/2002	Compliance of PBE Golf, Inc., With its License Agreement	CONCESSION	-	-	-
Parks	FM02-074A	6/24/2002	Compliance of Dyckman Marine Group, Inc., With Its License Agreement	CONCESSION	66,469	66,469	-
Parks	FM02-147A	6/24/2002	Compliance of Staten Island Hockey, Inc., With Its License Agreement	CONCESSION	-	-	-
Parks	FR02-092A	6/24/2002	Compliance of American Golf Corp. W/License Agreement for Silver Lake Golf Course	CONCESSION	-	-	-
Parks	FM02-076A	6/25/2002	Compliance of Shellbank Restaurant Corp. with Its License Agreement	CONCESSION	615,586	48,944	566,642
Parks	FN02-098A	6/27/2002	Compliance of Toto's South Shore With Its License Agreement	CONCESSION	256,872	134,862	122,010
Parks	FM02-168A	1/6/2003	Tavern on the Green Limited Partnership's Compliance With Its License Agreement	CONCESSION	5,991	5,991	-
Parks	FN02-125A	1/16/2003	Compliance of New York Mets With Their Lease Agreement 4/1/96-12/31/2000	LEASE	SEE FN03-115A		
Parks	MH02-179A	2/4/2003	Compliance of Izadi Enterprises Corp., with Its License Agreement	CONCESSION	96,726	7,575	89,151
Parks	FR03-107A	2/6/2003	Compliance of Flushing Golf Corporation, Inc., With Its License Agreement	CONCESSION	-	-	-
Parks	FM02-169A	4/4/2003	NY Restoration Project (The New Leaf Café) Compliance with its License Agreement	CONCESSION	2,959	2,959	-
Parks	FL02-090A	4/7/2003	Compliance of N.B.K.L. Corporation with Its Permit Agreement	PERMIT	24,113	24,113	-
Parks	FL02-180A	4/7/2003	Compliance of Luna Park Associates, Inc., with Its License Agreement	CONCESSION	13,835	13,835	-
Parks	FN03-115A	6/16/2003	Compliance of New York Mets With Their Lease Agreement 1/1/2001-12/31/2001	LEASE	3,340,113	3,340,113	-
Parks	FN03-111A	6/27/2003	Compliance of Brooklyn Cyclones with Their Lease Agreement	LEASE	86,800	86,800	-
Parks	FL02-102A	2/26/2004	Compliance of Crystal Ball Group, Inc. (Terrace on the Park) With its Permit Agreement	PERMIT	60,000	60,000	-
Parks	FN04-125A	12/1/2004	Compliance of the NY Yankees with Their Lease Agreement 1/1/2001-12/31/2002	LEASE	3,599,575	3,599,575	-
Parks	MH05-075A	5/2/2005	Hudson Beach Café and Compliance with Its Permit Agreement	PERMIT	5,648	5,648	-
Parks	MG05-096A	6/30/2005	Compliance of Hammonds Cove Marina, Inc., With its License Agreement	CONCESSION	79,544	46,314	33,230
Parks	MH05-115A	6/30/2005	Pier 70 Café's Internal Controls over Receipts and Compliance with Permit Agreement	PERMIT	-	-	-
Parks	FM04-074A	10/19/2005	the USTA National Tennis Center, Inc. Compliance with its Lease Agreement	LEASE	311,860	63,097	248,763
Parks	FM05-080A	1/27/2006	Compliance of Brooklyn Baseball Company, L.L.C., With Their Lease Agreement	LEASE	16,602	7,538	9,064
Parks	FN05-116A	6/30/2006	the Compliance of New York Mets with Their Lease 1/1/2002 -12/31/2002	LEASE	11,873	-	11,873
DOITT	Settlement	5/31/2002	Time Warner Cable of NYC	FRANCHISE	7,677,521	7,677,521	-
DOITT	FN02-107A	6/28/2002	Time Warner Cable of NYC, Queens (QUICS), with its Franchise Agreement	FRANCHISE	5,524	5,524	-
DOITT	FN02-108A	6/28/2002	Time Warner Cable of NYC, Northern Manhattan with its Franchise Agreement	FRANCHISE	2,446	2,446	-
DOITT	FN02-153A	6/28/2002	Time Warner Cable of NYC, Southern Manhattan with its Franchise Agreement	FRANCHISE	4,460	4,460	-
DOITT	FN02-154A	12/19/2002	Compli.of Time Warner Cable of NYC, SI Division, With Its Franchise Agreement	FRANCHISE	18,058	18,058	-
DOITT	FN03-162A	12/22/2003	Compliance of Cablevision Systems NYC for the Bronx With its Franchise Agreement	FRANCHISE	18,232	18,232	-
DOITT	FN03-163A	12/22/2003	Compliance of Cablevision Systems NYC for Brooklyn With its Franchise Agreement	FRANCHISE	14,804	14,804	-
DOITT	FN03-164A	1/28/2004	Compliance of Cablevision Systems New York City Corporation for Advertising Revenue	FRANCHISE	15,214	15,214	-
DOITT	FN04-097A	5/20/2005	Advertising Revenue OF Time Warner Cable of NYC For Its CityCable Advertising Division	FRANCHISE	-	-	-
DOITT	FL05-089A	12/2/2005	Compliance of Telebeam Telecommunications with its Franchise Agreement	FRANCHISE	5,250,706	16,371	5,234,335
DCAS	FL01-097A	6/6/2002	Compliance of East Broadway Mall, Inc., with its Lease Agreement	LEASE	$ 221,683	$ 152,215	$ 69,468
DCAS	FM04-118A	4/21/2005	Compliance of Hyatt Equities, LLC with Its License Agreement	CONCESSION	222,871	-	222,871
EDC	FN03-116A	6/27/2003	Compliance of Staten Island Yankees with Lease Agreement	LEASE	373,517	373,517	-
EDC	FN05-106A	4/21/2006	Compliance of SI Minor League Holdings, L.L.C., (Staten Island Yankees) with Their Lease	LEASE	570,202	-	570,202
DOS	FM04-098A	6/21/2004	Compliance of GSF Energy, L.L.C. With Certain Provisions of its Concession Agreement	CONCESSION	-	-	-
DOT	FM03-139A	6/28/2004	Compliance of Viacom Outdoor With its Franchise Agreement	FRANCHISE	418,902	418,902	-
					$ 23,804,840	**$ 16,627,231**	**$ 7,177,609**

In the majority of the audits that were conducted, the auditors concluded that the entity had inadequate internal controls and poor record keeping. This made it difficult for the auditors

to determine whether the respective entity had accounted for and reported all its revenue to the City and paid all the fees owed. The auditors used conservative methods to formulate an assessment of the revenues earned by the entities and the fees they owed the City. Therefore, revenues earned and fees owed could be higher than the auditors' assessments.

CITY AGENCY MONITORING AND ENFORCEMENT OF CONCESSIONS, LEASES AND FRANCHISES

In general, based on the results of the 41 audits of concession, franchise lease agreements overseen by a number of City agencies, it is apparent that the agencies do not adequately monitor the parties granted these agreements, as required by the City Charter. Moreover, the results of the majority of the audits raise the question as to the attitude of the agencies in their role as the City's oversight body charged with monitoring the activities of the entities granted concession, franchise and lease agreements. It appears that as long as these agreements provided revenue to the City, lax or no monitoring occurred from the oversight agency.

As a consequence, moneys owed to the City can remain unidentified and uncollected, as is evidenced by the approximately $23.8 million in assessments the Comptroller's Office levied against concessionaires, lessors, and franchisees identified in the 41 audits. The auditors also determined that most of those who were audited provided the services required by their agreements with the City and that most of them complied with the non-financial aspects of their agreements.

The auditors also uncovered instances in which the monitoring agencies were not ensuring that entities complied with the capital improvements or maintenance provisions of their agreements. Twenty-one of the 41 audits covered agreements requiring capital improvements or maintenance to the property. The entities examined in those 21 audits were to complete a total of $24.380 million in capital improvements by the end of their agreements with the City. In six of the 21 audits, the entity did not complete the required work and/or did not expend the amount that was required. For the four of the six audits in which the auditors cited the auditees for not completing the required capital work to the property, there was a total of $5.447 million in improvements not completed out of a total of $8.277 million required by the four agreements. Although in the remaining two audits, work was completed and funds were expended, for one case, certain parts of the property were poorly maintained; and in the other case, all funds were expended as required, but specific projects cited in the agreement were not constructed.

The following is a synopsis of the findings, conclusions, recommendations, and the assessment amounts of the concession, franchise and lease audits conducted by the Comptroller's Office between January 1, 2002, and June 30, 2006.

Monitoring Agency: Department of Parks and Recreation

Compliance of PBE Golf, Inc., with Its License Agreement and the Payment of License Fees Due the City
Audit # FR02-089A (Issued: June 13, 2002)
Audit Assessment Amount: None

On November 17, 2000, the Department of Parks and Recreation (Parks) entered into a 15-year licensing agreement with PBE Golf, Inc. (PBE) to operate, maintain, and manage Turtle Bay Cove, an outdoor recreational facility at Pelham Bay Park in the Bronx. Turtle Bay Cove has a driving range, a batting cage, a miniature golf course, and a food concession. The agreement requires that PBE: pay the City a minimum annual fee ranging from $90,000 in the first year to $100,000 in the fifteenth year, or a percentage of PBE's gross receipts received from operating the facility, whichever is greater. PBE must also pay 10 percent of the revenue earned from the food concession and from miscellaneous sales. The audit covered the period May 1, 2000 through April 30, 2001. For the audit period, PBE reported gross receipts amounting to $353,499 and paid $90,000, the minimum required under the agreement to the City in license fees.
The auditors determined that PBE did not report its gross receipts in conformance with its license agreement, because PBE did not include the receipts of an unauthorized sub-licensee on its gross receipts statements that it reported to Parks. In addition, the auditors determined that PBE's receipts from vending machines lacked documentation. Although, PBE maintained the required security deposit, had the required insurance coverage (general liability, workers' compensation, and property insurance) and paid its utility bills on time. Also noted, that as of November 8, 2001, PBE had expended $351,463 (of the $629,400 required under the agreement) on capital improvements, in substantial conformance with the approved schedule per the license agreement.

Compliance of Leisure Management Corporation with Its License Agreement and its Payment of License Fees Due the City
Audit # FR02-091A (Issued: February 20, 2002)
Audit Assessment Amount: None

On May 22, 1991, Parks granted the Leisure Management Corporation (Leisure) a three-year license to operate, maintain, and manage the Douglaston Golf Course in Queens, New York. Parks extended the license agreement for two five-year periods, making the expiration date December 31, 2003. Under the terms of the license agreement Leisure is required to pay the City either a minimum annual fee or 12.5 percent of gross receipts from green fees, cart and club rentals, plus 5 percent of pro-shop sales, whichever is greater. The minimum fee for the initial three-year period was $155,000 per year, which increased to $180,000 for each year in the first five-year extension period (1994-1998) and then increased to $220,000 for each year in the second five-year extension period (1999-2003). For the period of January 1, 1997, through June 30, 2001—the audit period—Leisure reported total gross revenues of $7,729,077 and paid license fees of $986,134 to the City.

The auditors found that Leisure maintained adequate control over the recording and reporting of its gross revenues, properly calculated fees due, and paid those fees in a timely manner to the City. In addition, Leisure: maintained the required insurance coverage such as worker's compensation, liability, builders, and property; paid the facility's utility bills on time; and deposited the required security deposit with the City; spent $609,326 on capital improvements, $49,326 more than required by the license. However, the auditors noted that Leisure never received a "Certificate of Completion" from Parks showing that Parks approved of the capital improvements and deemed them complete.

Compliance of Central Parking System of New York City with its License Agreement for the Shea Stadium Parking Facilities and its Payment of License Fees Due the City
Audit # FN02-082A (Issued: March 15, 2002)
Audit Assessment Amount: $28,813, all of which was collected.

In March 1998, Parks entered into a four-year license agreement with Central Parking System of New York (Central Parking) for the maintenance and operation of the primary parking lots, supplementary parking areas, and parking fields at Shea Stadium, in Queens, New York. The license agreement expired on March 31, 2002. The license agreement requires that Central Parking to pay the City either a minimum annual fee of $1,650,000, 74.2 percent of the annual gross receipts between $2,223,720 and $2,500,000, or 85 percent of the annual gross receipts over $2,500,000. The agreement also requires that Central Parking post a $412,500 security deposit with the City, maintain certain amounts and types of insurance coverage, and expend a minimum of $102,500 for capital improvements to the property. For the three-year audit period of March 22, 1998 to March 31, 2001, Central Parking reported $10.1 million in gross receipts and paid the City $7.7 million in license fees.

The auditors determined that Central Parking made some minor errors in calculating, reporting, and paying its fees due the City. These errors resulted in Central Parking owing the City $32,609, $20,293 in additional fees and $12,316 in late charges. However, subsequent to the release of the audit report, Parks reduced the late charges to $6,158. The auditors also disclosed that Central Parking had not been billed for $2,362 in water and sewer use for the parking lot. The auditors noted that Central Parking generally had adequate internal controls to ensure that its revenues were properly recorded and its corresponding license fees were generally paid in compliance with the terms of the license agreement.

Compliance of the New York Yankees with Their Lease Agreement and Lease Fees They Owe the City
Audit Period: July 1, 1997 to December 31, 2000
Audit # FN02-126A (Issued: May 30, 2002)
Audit Assessment Amount: $367,321 all of which was collected.

In 1972, the New York Yankees, Inc., and Parks entered into a 30-year lease agreement for the rental and use of Yankee Stadium. In March 1973, the New York Yankees, Inc., assigned its interest in the lease to the New York Yankees Partnership (Yankees). The lease agreement, monitored by Parks, expires on December 31, 2002, but includes two five-year renewal options

from the date of expiration. The lease allows the Yankees exclusive use of Yankee Stadium during the baseball season and permits the Yankees to sell tickets, to provide food and souvenir concessions, to provide parking for season ticket holders, and to provide cable television broadcasts. The lease agreement requires that the Yankees pay the City the greater of either an annual minimum rent of $200,000 or a percentage of revenues from gross admission, concessions, wait service, pre-paid parking, and a portion of cable television receipts. The agreement allows the Yankees to deduct payments made to Major League Baseball and all sales taxes before calculating rent payments to the City. For the audit period of January 1, 1997 to December 31, 2000, the Yankees reported gross revenues of $416.7 million and paid the City $18.8 million in rent.

The auditors determined that the Yankees underreported revenue by $1,394,110, and overstated the credits that they were entitled to take against revenue by $2,502,968. Consequently, the audit concluded that the Yankees owed the City $367,321 in additional fees for the audit period of January 1, 1997 to December 31, 2000. In addition, the auditors noted that the Yankees satisfied the prior audit assessment of $189,879. Further, the Yankees generally adhered to the lease provisions and had an adequate system of internal controls over revenue collection and reporting functions and adhered to certain non-revenue-related requirements of its lease.

Compliance of the New York Yankees with Their Lease Agreement
Audit Period: January 1, 2001 to December 31, 2002
Audit #FN04-125A (Issued: December 1, 2004)
Audit Assessment Amount: $3,599,575 all of which was collected.

This audit assessed the compliance of the Yankees with their City lease agreement. According to the agreement and its amendments, the Yankees are required to pay the City the greater of either an annual minimum rent of $200,000 or a percentage of revenues from gross admission, concessions, wait service, prepaid parking, and a portion of cable television receipts. The agreement allows the Yankees to deduct payments made to Major League Baseball related to ticket sales and local cable television receipts and all sales taxes, before calculating rent payments to the City. The lease also allows the Yankees to deduct new-stadium-planning costs incurred up to $5 million each year for five years and 25 percent of property insurance premiums for Yankee Stadium from their rent payments. For the audit period, January 1, 2001, to December 31, 2002, the Yankees reported gross revenues totaling $384.4 million and paid the City $9.9 million.

The auditors revealed that the Yankees underreported their revenue by $9,070,960 and overstated deductions against revenue by $34,489,804. Consequently, the Yankees owed the City $3,599,575 in additional fees all of which was collected. Although the Yankees generally adhered to the provisions of their lease agreement with the City and they had an adequate system of internal controls over their revenue collection and reporting functions.

Compliance of American Golf Corporation with Its License Agreement for the Silver Lake Golf Course
Audit # FR02-092A (Issued: June 24, 2002)
Audit Assessment Amount: None

In 1987, Parks entered into a ten-year license agreement with the American Golf Corporation (American Golf) for the maintenance and operation of the Silver Lake Golf Course in Staten Island. The license was renewed for two five-year periods; the first renewal expired on February 28, 2002, with the second renewal scheduled to expire on February 28, 2007. According to the license agreement, American Golf is required to pay the City an annual fee of: the greater of $125,000, or 15 percent of revenue from greens fees and cart rentals, ten percent of food and beverage sales, five percent of Pro Shop sales, and 15 percent of miscellaneous income, which includes revenue from tournaments and promotional events. In addition, the agreement stipulated that American Golf: was required to perform $425,000 in specified capital improvements at the facility; remit a security deposit of $31,250 to the City; maintain proper types and levels of insurance coverage that names the City as an additional insured; and pay for its utilities.

The auditors determined that American Golf maintained adequate controls over the recording and reporting of its gross revenues, properly calculated fees due, and paid those fees in a timely manner to the City. In addition, the auditors confirmed that American Golf made the required security deposit of $31,250, spent $438,600 on capital improvements, and paid the facility's utilities bills on time.

Compliance of Dyckman Marine Group, Inc., With Its License Agreement and Its Payment of License Fees Due the City
Audit # FM02-074A (Issued: June 24, 2002)
Audit Assessment Amount: $66,469 all of which was collected.

On December 23, 1998, Parks entered into a 15-year license agreement, with Dyckman Marine Group, Inc. (Dyckman), to operate, maintain, and manage the Dyckman Marina on the Hudson River at the western end of Dyckman Street in Manhattan. Dyckman is responsible for the rental of moorings and slips, and the operation of the Tubby Hook Café, a restaurant at the marina. Under the license agreement, Dyckman is required to pay the City the greater of a minimum annual fee that escalates each year from $18,000 in year-one to $35,639 for the final year of the agreement, or 10 percent of its gross receipts. Dyckman is also required to refurbish and enhance the marina's facilities by spending a minimum of $400,000 in capital improvements. The agreement also stipulates that Dyckman: maintain the proper levels of fire, property, and comprehensive insurance coverage; submit monthly gross receipt reports and annual income and expense reports to Parks; maintain an $8,910 security deposit with the City; and pay all utility costs, including those for water use. The period covered by the audit was January 1, 2001 through December 31, 2001, in which Dyckman reported gross receipts totaling $283,512 and paid $28,351 in license fees to the City.

The auditors found that Dyckman did not have adequate internal controls over its gross receipts, and it did not report to Parks an estimated $599,114 (68 percent) of its gross receipts. Consequently, the auditors concluded that Dyckman owed the City $59,911 in additional licensing fees. In addition, the auditors noted that Dyckman had unpaid water bills totaling $6,558 as of April 8, 2002. The auditors also disclosed that Dyckman violated New York State liquor laws. The violation occurred, because Dyckman did not purchase alcohol from authorized wholesale distributors, and it did not maintain records of business transactions related to

purchases and sales of alcoholic beverages. In addition, the physical inspection of the marina found that sections of the marina's bulkhead, decking, and retaining walls were in an advanced state of deterioration. Finally, Dyckman did not obtain a permit for moving silt from the marina—a serious violation of environmental regulations.

Compliance of Staten Island Hockey, Inc., With Its License Agreement May 1, 2001, through April 30, 2002
Audit # FM02-147A (Issued: June 24, 2002)
Audit Assessment Amount: None

On April 26, 1999, Parks entered into an eight-year license agreement with Staten Island Hockey, Inc., to renovate, operate, and maintain an outdoor recreation facility at Schmidts Lane and Manor Road, in Staten Island. Pursuant to the license agreement Staten Island Hockey is required to pay the City the greater of either: a minimum annual fee of $85,000 for the first and second years of the license, or 15 percent of gross receipts; a minimum annual fee of $100,000 for the third and fourth years, or 16 percent of gross receipts; a minimum annual fee of $110,000 for the fifth and sixth years, or 17 percent of gross receipts; and a minimum annual fee of $120,000 for the seventh and eighth year, or 15 percent of gross receipts. In addition, Staten Island Hockey was required to expend a minimum of $438,119 on specified capital improvements. The audit covered the period May 1, 2001, through April 30, 2002, the second operating year of the agreement of Staten Island Hockey. For this period, Staten Island Hockey reported gross receipts of $191,000 and paid the City the minimum annual fee of $85,000.

The auditors determined that Staten Island Hockey breached the license agreement since: it did not keep complete and accurate records to support revenue amounts it reported to Parks: it did not use a point of sale cash register system; and, it did not deposit cash receipts in a timely manner. Also, Staten Island Hockey co-mingled funds with the President of Staten Island Hockey's other business. Therefore the auditors' conservatively calculated that Staten Island Hockey should have reported gross receipts of at least $424,754 to Parks, 55 percent more than was actually reported. However, since Staten Island Hockey failed to maintain the required documentation and had no records indicating the amounts it collected, the auditors were unable to determine whether Staten Island Hockey would have exceeded the minimum annual fee that required it to pay percentage-based fees to the City. Finally, although Staten Island Hockey, despite receiving a "Certificate of Completion" for its required capital improvements from Parks, did not construct a two-lane go-cart track or pave the hockey parking lot, as specified in the license agreement and did not maintain the proper amounts of insurance required by the license agreement.

Compliance of Shellbank Restaurant Corp. with Its License Agreement and on License Fees It Owes the City
Audit Period: November 1, 1997 through October 25, 2000
Audit # FM02-076A (Issued: June 25, 2002)
Audit Assessment Amount: $615,586 of which $48,944 was collected.

On December 23, 1994, Parks entered into a 20-year license agreement with Shellbank Restaurant Corp. (Shellbank) to operate and maintain a restaurant (American Park Restaurant),

snack bar, and public bathrooms at Battery Park, in Manhattan. (Shellbank is a subsidiary of TAM Restaurants, Inc., a former Parks concessionaire that operated the Loeb Boathouse restaurant in Central Park from February 1985 to September 2000.) Under the license agreement Shellbank was required to pay the City $50,000 or six percent of the gross receipts derived from its operation of the restaurant facility and snack bar for its first year of operation. The percentage of gross receipts increased to seven percent in the second year of operation and to eight percent for the third through the twentieth year. Shellbank reported to Parks $11,780,914 in revenue and paid license fees totaling $864,319 for the period covered in the audit, November 1, 1997, through October 25, 2000.

The auditors determined that Shellbank underreported gross receipts to Parks by $712,349, and it consequently owed the City $83,950 in additional license fees and late charges. Subsequent to the release of the audit report, Parks reported that based on the information provided in the audit, it has assessed Shellbank an additional $26,494. The auditors also noted that Shellbank owed the City $16,142 for water and sewer use, and Shellbank violated its license agreement, because it did not maintain adequate records to support reported revenue. In addition, Shellbank never paid commercial rent tax, and TAM, its parent company, did not pay this tax on its operation of the Loeb Boathouse restaurant since May 31, 1995. Consequently, TAM owed the City approximately $489,000 ($57,000 for Shellbank and $432,000 for the Loeb Boathouse) for commercial rent tax, interest, and penalties. The auditors also determined that Shellbank underpaid its New York State sales taxes, did not pay its staff in accordance with New York State minimum wage law, and did not submit its income and expenses statements to Parks within the timeframe required in the license agreement.

Compliance of Toto's South Shore Country Club, Ltd., With Its License Agreement and Its Payment of License Fees Due the City
Audit # FN02-098A (Issued: June 27, 2002)
Audit Assessment Amount: $256,872 of which $134,862 was collected.

In 1989, Parks entered into a 10-year license agreement with Toto's South Shore Country Club, Limited (Toto's), for the maintenance and operation of a restaurant, catering facility, and snack bar on the South Shore Golf Course, Staten Island. The license was renewed for a five-year period to expire on September 30, 2004. The license agreement required that Toto's pay the City a minimum annual fee ranging from $48,000 in the first year to $138,064 in the 15th and final year, and an annual percentage fee of 6 percent of its annual gross receipts over $800,000, 7 percent of its annual gross receipts over $1,500,000, eight percent of its annual gross receipts over $2,000,000, and 8.5 percent of its annual gross receipts over $3,000,000. In addition, the agreement requires that Toto's: post a $25,000 security deposit with the City; maintain certain types and amounts of insurance coverage that names the City as an additional insured; and, pay for its utilities use. For the period October 1, 1999 to September 30, 2000, Toto's reported $3,225,343 in gross receipts and paid the City $270,454 in fees.

Based on observations conducted at the facility and review of the available records, the auditors determined that Toto's did not include an estimated $1,829,320 in revenues on its gross receipts statements it submitted to Parks. Consequently, the auditors estimated that Toto's owed the City $256,872, of which $155,492 was for additional fees and $101,380 was for late charges. Also,

serious internal control weaknesses prevented the auditors from verifying the extent of Toto's under-reporting of its gross receipts to Parks. Specifically, Toto's failed to provide the auditors with: banquet calendars from October 1, 1999, through August 18, 2000; 42 banquet contracts covering the six-month period; and, any of its original source documentation to support reported snack bar revenue. Moreover, the auditors determined that Toto's did not properly segregate duties over its accounting functions.

Compliance of Sterling Doubleday Enterprises, L.P., (New York Mets) With Their Lease Agreement and Lease Fees They Owe the City
Audit # FN02-125A and FN03-115A (Issued: January 16, 2003 and June 16, 2003)
Audit Assessment Amount: $3,340,113 of which all were collected.

In 1985, Doubleday Sports, Inc., and Parks entered into a 20-year lease agreement for the rental and use of Shea Stadium. In 1986, Doubleday Sports, Inc. assigned the lease agreement to Sterling Doubleday Enterprises, L.P. (doing business as the New York Mets). The lease expired on December 31, 2004. The first amendment, dated December 28, 2001, extended the lease to December 31, 2005, and includes five annual renewal options to be exercised at the Mets' discretion. According to the lease agreement, the Mets are required to pay the City the greater of either an annual minimum rent of $300,000 or a percentage of revenues from gross admissions, concessions, wait service, parking, stadium advertising, and a portion of cable television receipts. The agreement allows the Mets to deduct portions of the payments they make to Major League Baseball and all sales taxes before calculating rent payments to the City. For the period covered under the two audits, April 1, 1996 through December 31, 2001, the Mets reported gross revenues of $655.8 million and paid the City $43.6 million in rent.

The Comptroller's Office conducted two audits of the lease agreement between the City and Sterling Doubleday Enterprises, L.P., (New York Mets) covering the operating periods from April 1, 1996 to December 31, 2001. The results of these audits were published on January 16, 2003 (covering the period April 1, 1996 to December 31, 2000) and June 16, 2003 (covering the period January 1, 2001 to December 31, 2001).

The auditors noted that the Mets had an adequate system of internal controls over their revenue collection and reporting functions and adhered to specific non-revenue-related requirements of the agreement. However, from April 1, 1996 through December 31, 2001, the auditors determined that the Mets underreported their revenue by $18,786,006 and overstated the deductions against revenue by $35,371,272. Consequently, the auditors concluded that the Mets owed the City $3,970,518.

In their response to the audit report, Mets officials disagreed with many of the findings and conclusion determined by the auditors. Parks officials agreed with the auditors' findings and recommendations and referred the report's findings to the City's Law Department for settlement.

Subsequent to the release of the audit reports, the Mets paid the City $2.75 million. This amount was in addition to the $590,113 the Mets paid based on findings contained solely in the audit released on January 16, 2003, covering the period April 1, 1996 to December 31, 2000. In total, the Mets paid $3.3 million to settle assessments based on the findings of these two audits.

Compliance of Tavern on the Green Limited Partnership With Its License Agreement
Audit # FM02-168A (Issued: January 6, 2003)
Audit Assessment Amount: $5,991, all of which was collected.

In 1985, Parks entered into a 25-year license agreement with Tavern on the Green Limited Partnership (Tavern) for the maintenance and operation of a restaurant and catering facility in Central Park. At the time of the audit Tavern was considered the highest–grossing–independently operated restaurant in the United States, generating annual revenue of approximately $33 million. The license requires that Tavern pay the City the greater of a minimum annual fee that ranges from $500,000 in the first year to $1,000,000 in the 25th and final year of the agreement, or a percentage of Tavern's annual gross receipts ranging from 2.5 percent to 3.5 percent. During the operating year ending October 7, 2001, Tavern reported gross receipts of $33,354,901, and paid the City $1,167,422 in fees.

The auditors found that Tavern deducted "Tele-charge" commissions—made to a third party for selling meal packages to Tavern customers—from its reported revenues on its gross receipts statements that it submitted to Parks. This deduction was not permitted under the license agreement. As a result, Tavern owed the City $5,991 in additional license fees and late charges. Moreover, Tavern improperly accepted New York State Sales Tax Resale Certificates from companies that resulted in Tavern owing $20,914 in additional sales taxes. The Tavern generally adhered to the provisions of its license agreement and certain other non-revenue-related terms of the license agreement.

Compliance of Izadi Enterprises Corp., with Its License Agreement
and Its Payment of License Fees Due the City
Audit #: MH02-179A (Issued: February 4, 2003)
Audit Assessment Amount: $96,726 of which $7,575 was collected.

The audit was conducted to determine whether Izadi Enterprises Corporation (Izadi) complied with its license agreement with Parks for the operation and management of a parking lot (the Webster Avenue lot) under the Cross-Bronx Expressway at Webster Avenue and Ittner Place in the Bronx and whether it paid fees due the City. Meanwhile, Izadi closed the parking lot on May 15, 2002, nine days following the initial meeting between the auditors and Izadi officials on May 6, 2002. Subsequently, Izadi did not provide documentation and information that were requested by the auditors. As a result, the auditors were unable to perform many of the planned audit tests. Parks terminated Izadi's license agreement on May 31, 2002, because they ceased to operate the parking facility.

The auditors determined that Izadi failed to comply with the major provisions of the license agreement. Specifically, Izadi: used the Webster Avenue parking lot to sell cars since it began operating the lot in July 2002 without obtaining prior approval from Parks and without possessing a license to sell cars as required by the Department of Consumer Affairs; failed to

report to Parks the revenue generated from selling cars; underreported its gross revenue by an estimated $130,501 for the period June 1, 2000, through March 31, 2002, thus requiring the payment of an estimated $78,166 in additional fees and late charges to the City; failed to maintain an adequate system of internal controls and to keep complete, accurate books and records of all its business activities; and failed to complete capital improvements at the parking lot totaling $18,560 of the required $27,000 in improvements that was stipulated in the agreement.

Compliance of Flushing Golf Corporation, Inc., With Its License Agreement and Its Payment of License fees Due the City
Audit # FR03-107A (Issued: February 6, 2003)
Audit Assessment Amount: None

In 1998, Parks entered into a 12-year license agreement with Flushing Golf Corporation, Inc. (Flushing Golf) to renovate, operate, maintain, and manage an outdoor pitch-and-putt golf facility, an 18-hole miniature golf course, a snack bar, and a food cart at Flushing Meadows-Corona Park, Queens. The license agreement requires that Flushing Golf pay the City minimum annual fees escalating from $140,000 in the first year to $170,000 in the 12th year, or 20 percent of Flushing Golf's gross receipts generated at the facility, whichever is greater. According to the agreement Flushing Golf is also required to: expend $760,200 on capital improvements to the recreational facility and pay Parks a Design Review Fee of $6,062; deposit $42,500 with the City as security; carry workers' compensation insurance as required by statute, employer's liability insurance, comprehensive general liability insurance, and property insurance policies, each naming the City as an additional insured; and, pay all utility charges for the facility. For the audit period, May 1, 2000 to April 30, 2002, Flushing Golf reported gross receipts amounting to $1,488,578, and paid the City $308,099 in license fees.

The auditors' determined that Flushing Golf: recorded its revenue fairly in its books and records; generally paid its corresponding license fees in compliance with the terms of the license agreement; and it adhered to certain non-revenue–related requirements of its license agreement. However, the auditors' noted that Flushing Golf did not maintain adequate records to support the amounts reported to Parks from the mobile food-and-beverage cart, and it did not maintain an inventory of the various items stocked in the cart or a written record of the items it sold.

Compliance of New York Restoration Project, Inc., (The New Leaf Café) and with its License Agreement and Payment of its License Fees Due October 1, 2000, through September 30, 2002
Audit # FM02-169A (Issued: April 4, 2003)
Audit Assessment Amount: $2,959 all of which was collected.

On September 13, 2000 Parks entered into a seven-year license agreement with New York Restoration Project, Inc. (NYRP), to renovate, operate and maintain the New Leaf Cafe in Fort Tryon Park, Manhattan. The license agreement covered the period of operation from October 1, 2000 through September 30, 2007. The cafe has a snack stand and seated dining for lunch, dinner, and banquets. The agreement requires that NYRP pay the City the greater of a minimum annual fee that escalates each year from $48,000 in year-one to $64,325 for the final year of the agreement, or 10 percent of its gross receipts. NYRP is also required to spend a minimum of

$184,000 on capital improvements during the first two years of the agreement and $10,000 each subsequent operating year. NYRP must also maintain certain types and amounts of insurance coverage that name the City as an additional insured party, remit a security deposit and a design review fee to the City, and, pay all taxes, fees and utility costs, including charges for water and sewer use. For the period covered under the audit, October 1, 2000 through September 30, 2002, NYRP reported gross receipts of $1,235,638 and paid $155,552 in license fees to the City.

The auditors' found that although NYRP had adequate controls over the recording and reporting of restaurant revenue, it did not have adequate controls over revenue of the catering and snack bar operations. Specifically, the auditors' determined that NYRP did not properly segregate duties over its catering operation. Such segregation would have provided the necessary checks and balances to ensure that all revenue is accounted for on NYRP's books and records. Moreover, NYRP maintained neither banquet calendars nor contracts nor records of snack bar receipts. Consequently, because of these control weaknesses the auditors were unable to determine whether NYRP accurately reported its gross receipts to Parks and paid all fees due. But from the records that were available, the auditors calculated that NYRP underreported its gross receipts by $28,671 to Parks and owed the City $2,959 in additional license fees and late charges. Finally, NYRP generally complied with certain other non-revenue-related terms of the license agreement.

Compliance of Luna Park Associates, Inc., with Its License Agreement and its Payment of License Fees Due the City
September 1, 1999, Through August 31, 2001
Audit # FL02-180A (Issued: April 7, 2003)
Audit Assessment Amount: $13,835, all of which was collected.

On August 10, 1993, Parks granted Luna Park Associates, Inc. (Luna) an 8-year license, which was extended to September 30, 2003, to operate a restaurant facility in Union Square Park, Manhattan. The license requires that Luna pay the City the greater of the minimum annual lease fee ranging from $25,000 to $35,177, or a percentage of gross receipts that ranges from 3.5 percent to 6 percent from sales of all food and beverages. In addition, the agreement required Luna to: make $150,000 in capital improvements to the facility; carry certain types and amounts of insurance coverage that names the City as an additional insured; remit a $8,794 security deposit to the City; and, pay all required taxes, fees, and utility charges related to the facility. For the two-year period covered by the audit—September 1, 1999, through August 31, 2001—Luna reported $3,305,674 in revenue and paid the City $198,341 in license fees.

The auditors found that Luna underreported its gross receipts to Parks by $228,096 resulting in $13,835 in additional license fees due the City. Of the additional license fees assessed in the audit finding, Luna paid $11,716 to Parks in July 2002. Moreover, Luna did not name the City as an additional insured on its automobile insurance policy.

Compliance of N.B.K.L. Corporation with Its Permit Agreement and its Payment of Fees Due the City
Audit # FL02-090A (Issued: April 7, 2003)
Audit Assessment Amount: $24,113, all of which was collected.

On August 10, 1993 Parks granted N.B.K.L. Corporation (N.B.K.L) d.b.a. Nellie Bly Amusement Park, a 10-year permit to operate an amusement park on Shore Parkway, Brooklyn, to provide the public with amusement activities, such as miniature golf, rides, food, beverages, and souvenirs. The permit requires that N.B.K.L. pay the City an annual minimum fee ranging from $150,000 in Year 1 to $200,000 in Year 10, or 20 percent of its gross receipts, whichever is greater. The permit agreement also requires that N.B.K.L.: spend $625,000 on capital improvements to the facility; carry certain insurance coverage, including $1 million in personal injury liability insurance naming the City as an additional insured; remit a $50,000 security deposit to the City; and pay all required taxes and utility charges related to the facility. For the 2000, 2001 and 2002 operating years, N.B.K.L. reported a total of $3,362,022 in revenue and paid the City $654,510 in permit fees. The audit covered the period April 1, 2000 through October 31, 2002.

The auditors' determined that N.B.K.L. had adequate controls over revenue generated at the amusement park. In addition, the auditors confirmed that N.B.K.L. complied with the non-revenue requirements of its permit agreement (e.g., carried the required liability insurance and paid its utility charges). However, the auditors found several mathematical errors on N.B.K.L.'s books and records that resulted in N.B.K.L. owing the City $24,113 in additional fees and related interest and penalties.

Compliance of Brooklyn Baseball Company, L.L.C., (BBC) with Their Lease Agreement for the period June 15, 2001- December 31, 2002
Audit # FN03-111A (Issued: June 27, 2003)
Audit Assessment Amount: $86,800, all of which was collected.

In June 2001, Brooklyn Baseball Company, L.L.C. (BBC), and Parks entered into a 20-year lease agreement commencing on June 15, 2001. The lease, which is monitored by Parks, grants the BBC the exclusive rights to use KeySpan Park on Surf Avenue in Brooklyn, where the Brooklyn Cyclones baseball plays its home games. The lease agreement requires that the BBC pay rent to the City based on a number of factors, which include game attendance, team store rent, special event net income, and advertising revenue. The lease also requires that the BBC deposit $25,000 each year into a sinking fund that permits Parks to perform capital work projects at the stadium. In addition, the lease requires that Parks pay the BBC a portion of the net parking lot income generated from the City parking lot adjacent to the stadium. For the audit period—June 15, 2001 through December 31, 2002—the BBC paid the City $1,131,196 in rental fees; for the same period, Parks paid the BBC $200,000 related to net parking lot income.

The auditors' found significant weaknesses in the BBC internal controls over the recording, and reporting of "actual attendance," "no-shows," and recreation area attendees to Parks. Consequently, the auditors could not determine whether all appropriate fees due the City were paid. The BBC do not use turnstile counts to record and report attendance; instead, the BBC count ticket stubs at the end of each game, identifying the different ticket categories (i.e., paid tickets, complimentary tickets, recreation area tickets) on the Daily Turnstile reports. The auditors reported that total turnstile counts did not match and could not be reconciled with the physical ticket stub count for the reported attendance on the Daily Turnstile reports. In addition, the auditors determined that the BBC: did not report $98,600 recorded on their books as rent

revenue from the Surf Avenue retail space and therefore owed the City $49,300 in additional fees; and did not deposit $37,500 into a sinking fund, as required by the lease.

Compliance of Crystal Ball Group, Inc. (Terrace on the Park) with its License Agreement and its Payment of Fees Due the City
Audit # FL03-102A (Issued: February 26, 2004)
Audit Assessment Amount: $60,000, all of which has been collected.

On April 24, 1998, Parks entered into a license agreement with Crystal Ball Group, Inc., (Crystal Ball) to renovate, operate and maintain the Terrace on the Park (Terrace) restaurant and catering facility in Flushing Meadows-Corona Park, Queens. The license agreement required that Crystal Ball pay the City an annual fee of nine percent of its gross receipts for the period October 1, 1998 to March 31, 2000, (referred to in the contract as the "construction period"). For the period April 1, 2000 to March 31, 2009, Crystal Ball is required to pay the City either a minimum annual operating fee of $2,000,000 or 20 percent of its gross receipts, whichever is greater. The annual minimum increases to $2,500,000 for the period April 1, 2009 to March 31, 2020, when the agreement concludes. The lease agreement also requires that Crystal Ball: spend a minimum of $8,000,000 on capital improvements; post a $625,000 security deposit with the City; carry certain types and amounts of insurance coverage; submit statements of gross receipts; and, pay all required taxes and utility charges related to the facility. For the 1999, 2000, and 2001 operating years, Crystal Ball reported a total of $23,363,573 in gross receipts and paid the City $4,545,409 in fees.

The auditors found weak internal controls over banquet contracts, therefore the City cannot be assured that appropriate fees were paid for the banquet revenue recorded on Crystal Ball's books and reported to Parks. Moreover, the auditors' noted that Crystal Ball took $524,477 in improper deductions from gross receipts resulting in $100,179 in additional fees and related interest and penalties due the City. Finally, the auditors disclosed that Crystal Ball did not expend the amount required under its license agreement for capital improvements to the facility. As a result of not expending the required amounts on capital improvements, the auditors determined that Crystal Ball could owe the City as much as $5,212,125.

Compliance of Hudson Beach Café with Its Permit Agreement and Controls over Cash Receipts
Audit #MH05-075A (Issued: May 2, 2005)
Audit Assessment Amount: $5,648, all of which has been collected.

In March 2003, Parks entered into a permit agreement with Riverside Beach Restaurant Corporation, doing business as Hudson Beach Café (Café), to operate a portable outdoor café consisting of chairs and tables with umbrellas, food preparation equipment, and bar facilities. The Café is at the Hudson Beach Volleyball Courts in Riverside Park at West 105th Street, and is open for business from April through October. The agreement covers a four-year period beginning April 1, 2003 and calls for a minimum payment to the City of $23,000 in 2003 and $24,000 in 2004 or 11 percent of gross receipts, whichever is higher. The permit fees are increased to $25,000 and $26,500 or 12 percent of gross receipts, whichever is higher, for 2005

and 2006, respectively. The agreement requires that the Café submit, in a form acceptable to Parks, no later than the 15th day of each month, a statement of gross receipts for the preceding month's operation. The agreement also requires, among other things, that the Café pay all electric, oil, gas, water, and other costs relating to this concession.
The Café is responsible for renovating bathrooms, repainting and repairing storage room walls, floors and ceilings, patching all paving to eliminate the danger of tripping, and regularly cleaning and maintaining bathrooms. The Café is also required to maintain proper levels of insurance coverage. The scope period of this audit was April 1, 2003 through October 31, 2004. The Café reported total gross receipts of $223,707 for the 2003 season and $272,571 for the 2004 season.

The auditors determined that the Café had inadequate internal controls over its cash receipts. Moreover, the auditors noted that cash receipts were not deposited regularly, inventory records of food and beverages were not maintained, statements of gross receipts were not forwarded to Parks each month, and cash receipts and purchases from one concession were commingled with cash receipts from a second concession. As a result, the auditors estimated that additional permit fees are due the City, which total a minimum of $1,467 for the 2003 season and a minimum of $4,181 for the 2004 season.

Compliance of Pier 70 Café's with its Permit Agreement and its Internal Controls over Cash Receipts
Audit #MH05-115A (Issued: June 30, 2005)
Audit Assessment Amount: None

In May 2004, Parks entered into a permit agreement with Riverside Beach Restaurant Corporation, doing business as Pier 70 Café (the Café), to operate a food service-outdoor café consisting of up to 24 tables, chairs, and umbrellas, and food preparation equipment. The Café is in Riverside Park South between Pier 1 on the Hudson River and the elevated portion of the Henry Hudson Parkway, at West 7 Street, in Manhattan, and was open for business from June through October 2004. The Agreement, which was effective May 21, 2004, expired September 30, 2004, and continued with a one-month extension through October 31, 2004.

The agreement required a minimum payment to the City of $14,000 or 11 percent of gross receipts, whichever was higher. The agreement requires that the Café submit to Parks: the applicable percentage permit fees; a statement of gross receipts in a form acceptable to Parks within thirty days of the end of the operating period; and, a reporting of gross receipts generated under the agreement during the operating period. The Café is responsible for keeping the area surrounding the concession clean and free of litter, to maintain proper levels of insurance coverage, and to obtain the appropriate license for serving alcoholic beverages. As of January 4, 2005, the Café paid the City $23,402 in fees plus late charges of $209 for a total of $23,611.

The auditors determined that the Café had inadequate internal controls over its cash receipts. As a result, the concessionaire may not have properly calculated the total gross receipts and may not have reported the correct amount of gross receipts to the City. Specifically, the concessionaire failed to keep complete and accurate records; and they did not maintain records of daily cash receipts such as sales slips, dated cash register receipts, and bank deposits. Moreover, the concessionaire failed to deposit daily cash receipts in the bank—in fact, making no deposits for

four months of the five-month period of the Agreement. In addition, the concessionaire failed to maintain adequate inventory controls and deposited cash receipts from the Café in the same bank account as cash receipts from a different concession.

Compliance of Hammonds Cove Marina, Inc., With its License Agreement
Audit #MG05-096A (Issued: June 30, 2005)
Audit Assessment Amount: $79,544 of which $46,314 has been collected.

On April 2, 2003, the City of New York, through Parks, entered into a License Agreement (or agreement) with Hammonds Cove to operate and manage a marina in the Bronx, which bordered Pennyfield, Longstreet, and Harding Avenues. The agreement is for 15 years, with an option for an additional five years. This licensee, as Locust Point Marina, Inc., had previously operated Locust Point marina at the same site from October 2002 to March 2003 under a temporary License Agreement with Parks. Under the agreement, Hammonds Cove management is required to pay the City the greater of either a minimum annual fee of $102,000 (in Years One and Two of the agreement) or various percentages of gross receipts. After the second operating year, the minimum fee escalates every two years until it reaches $117,166 in 2018, the final year of the agreement.

Among other things, Hammonds Cove officials are required to make capital improvements to the leased premises (at the inception of the lease) amounting to at least $200,000 and to pay a one-percent review fee for these improvements. Hammonds Cove management must also maintain insurance for fire, property, comprehensive general liability, employer's liability, and workers' compensation. The licensee must also submit a $30,550 security deposit to the City, pay water and electric bills, and keep the premises clean. From April 2003 to September 2004, the period covered by the audit, Hammonds Cove officials reported gross receipts of $792,389 to Parks and paid license fees to the City of $153,000. This amount included $102,000 for the license period April 2003 to March 2004 and $51,000 for the period from April 2004 to September 2004.

The auditors determined that Hammonds Cove management violated a number of major provisions in its agreement with the City. Its books and records were inaccurate and incomplete, and it had inadequate internal controls over the financial operations of the marina. There was no segregation of duties and little or no oversight by management to ensure that all gross receipts and fees collected were accounted for and reported to Parks. Also, sales tax of $26,079 due the City was either not collected or not submitted. Hammonds Cove officials also underreported gross receipts to Parks under the current license agreement as well as the temporary permit in place from October 2002 through March 2003.

Moreover, the auditors discovered that Hammonds Cove management did not maintain adequate records to substantiate whether they had spent $200,000 on capital improvements, as required. During fieldwork, the auditors found that Hammonds Cove did not have a reliable Accounts Receivable system and could not easily account for moneys owed for boat storage. Also, Hammonds Cove management did not obtain the required approval from Parks to incorporate the snack bar as a separate entity, subcontract the operation of the bait and tackle shop, and change its rates and fees. Finally, Hammonds Cove management did not submit all documents to Parks that were required in the agreement.

As a result, the auditors determined that Hammonds Cove owed the City license fees and late charges of $53,465: $24,681 for the period October 2002 to March 2003 and $28,784 for the period April 2003 to September 2004.

Compliance of the USTA National Tennis Center, Inc. with its Lease Agreement and the Fees Due the City for the Period January 1 to December 31, 2002
Audit # FM04-074A (Issued: October 19, 2005)
Audit Assessment Amount: $311,860 of which $63,097 has been collected.

On December 22, 1993, the City of New York through Parks entered into a 99-year lease with the USTA National Tennis Center Inc., (USTA) to "construct, renovate, maintain, manage and operate stadia and tennis courts for tennis activities." Under the lease agreement the USTA is required to annually pay base rent of $400,000 plus percentage rent—one percent of the gross revenue in excess of $25 million that is derived directly from or in connection with the tennis center. USTA is also required to pay $2.25 million for roadway improvements completed during construction of the facility and to contribute $8 million towards park improvements. For calendar year 2002, USTA reported approximately $164 million in revenue and paid $400,000 in base rent and approximately $1.4 million in percentage rent to the City.

The auditors found that the USTA understated the revenue it reported to the City by $31,185,978. Consequently, the auditors estimated that the USTA owes the City $311,860 in additional percentage rent. Based on the findings in our preliminary draft audit report the USTA remitted a check in the amount of $63,097 to the City for the additional rent from underreported hospitality revenue, unreported food concession revenue, and prior-period revenue adjustments, noted in the report. Moreover, the auditors determined that the USTA has not established guidelines for issuing and reporting complimentary tickets to the City. Such guidelines need to be established to indicate the categories of entities and individuals who may receive complimentary tickets for which the value does not have to be included in revenue reported to the City.

Compliance of Brooklyn Baseball Company, L.L.C., With Their Lease Agreement for the Period January 1, 2003 to October 31, 2004
Audit # FM05-080A (Issued: January 27, 2006)
Audit Assessment Amount: $16,602 of which $7,538 has been collected

In June 2001, Brooklyn Baseball Company, L.L.C. (BBC), owner of the Brooklyn BBC, and Parks entered into a 20-year lease agreement commencing on June 15, 2001. The lease grants BBC the exclusive right to use KeySpan Park on Surf Avenue in Brooklyn. The lease requires that BBC pay rent to the City based on game attendance, team store rent, special event net income, and advertising revenues. The lease agreement also requires that BBC: submit specific reports to Parks; deposit $25,000 each year into a sinking fund that permits Parks to perform capital projects at the stadium; to pay for stadium electricity; to carry comprehensive property and liability insurance that names the City as an additional insured party; and to pay for the stadium's water and sewer use.

The auditors determined that BBC did not report actual attendance to Parks based on turnstile

count, but rather ticket stub count, which is not in compliance with the lease agreement. In addition, the auditors determined that BBC underreported special event net income to Parks by $55,339, consequently underpaying the City by $16,602 in rent.

Compliance of Sterling Mets, L.P. (New York Mets) with Their Lease
January 1, 2002–December 31, 2002
Audit #FN05-116A (Issued: June 30, 2006)
Audit Assessment Amount: $11,873 of which none has been collected.

In 1985, Doubleday Sports, Inc., and Parks entered into a 20-year lease for the rental and use of Shea Stadium. In 1986, Doubleday Sports, Inc. assigned the lease Sterling Doubleday Enterprises, L.P, and due to a change in ownership, the lease was subsequently assigned to Sterling Mets L.P. in August 2002. The first amendment to the lease, dated December 28, 2001, extended its term to December 31, 2005, and included five annual renewal options to be exercised at the Mets' discretion. The lease requires that the Mets pay the City the greater of either an annual minimum rent of $300,000 or a percentage of specified revenues. The lease allows the Mets to deduct portions of the payments they make to Major League Baseball and all sales taxes before calculating rent payments to the City. For the 2002 audit period, the Mets reported gross revenues totaling $160.2 million and paid the City $4 million, which amounted to 2.5 percent of total revenues.

The auditors determined that the New York Mets generally adhered to the provisions of their lease with the City. However, a review by the auditors of the Mets books and records for the 2002 baseball season disclosed certain minor errors related to cable television, concessions, advertising, and Skyboxes revenues reported by the Mets to Parks. These errors totaled $97,685, which resulted in additional fees of $11,873 due to the City. Moreover, the auditors noted that none of the six amendments to the lease, executed between December 28, 2001 and September 1, 2004, that granted the Mets additional privileges were ever submitted by Parks for registration to the Comptroller's Office.

Monitoring Agency: Department of Information Technology and Telecommunications (DoITT)

The Comptroller's Office conducted three audits (FN02-107A, FN02-108A and FN02-153A, all issued on June 28, 2002) of the franchise agreements between the City and Time Warner Cable of New York City that resulted in a large settlement of franchise fees due the City. Time Warner reached an agreement to pay $7,677,521 for franchise fees that were excluded from gross revenue calculations from February 1998 to May 31, 2002, and owed under the seven Time Warner cable franchise agreements with the City. The payment of $7,677,521 was made to the City on May 31, 2002. Settlement amount based on franchise audit assessments: $7,677,521, all of which has been collected. In addition to this settlement, these audits found other compliance issues that Time Warner Cable had with its franchise agreements with the City. These issues are discussed below.

Compliance of Time Warner Cable of New York City, Queens Inner Unity Cable System (QUICS), with its Franchise Agreement

Audit # FN02-107A (Issued: June 28, 2002)
Audit Assessment Amount: $ 5,524, all of which has been collected.

In 1998, DoITT, and Time Warner Cable of New York City, Queens Inner Unity Cable System (QUICS) agreed to a renewed franchise agreement for 10 years. The agreement requires that Time Warner: pay the City five percent of its gross revenue, less the mandatory payments made to the New York State Public Service Commission (NYSPSC); carry $50 million in insurance that names the City as an additional insured; maintain a security fund deposit of $1.23 million; and, provide specified annual payments to the NYSPSC and the Community Access Organization (CAO). For the audit period, October 1, 1998 to December 31, 2000, Time Warner reported gross revenues of $137.9 million, and paid the City franchise fees of $6.7 million.

The auditors determined that Time Warner had an adequate system of internal controls over its revenue collection process. Time Warner complied with the remaining terms and conditions of its franchise agreement, i.e., it had proper insurance coverage and security deposit, and made the required contributions to the NYSPSC and to the CAO. However, the auditors noted that Time Warner did not report $78,900 in revenue from Non-Sufficient Fund check charges—a fee charged to each customer for each check returned by the bank as uncollectible, and did not report $16,194 on its gross revenue statements to the City relating to revenue received from subscriber trip charges—a fee charged to its subscribers to collect delinquent payments. This resulted in Time Warner owing the City $5,524 in franchise fees and interest.

Compliance of Time Warner Cable of New York City, Northern Manhattan Division, with its Franchise Agreement
Audit # FN02-108A (Issued: June 28, 2002)
Audit Assessment Amount: $2,446, all of which has been collected.

In 1998, DoITT and Time Warner Cable of New York City, Northern Manhattan Division agreed to a renewed franchise agreement for 10 years. The agreement requires that Time Warner pay the City five percent of its gross revenue, less the mandatory payments made to the New York State Public Service Commission (NYSPSC); carry $50 million in insurance that names the City as an additional insured; maintain a security fund deposit of $2.3 million; and provide specified annual payments to the NYSPSC and the Community Access Organization (CAO). For the audit period January 1, 1999 through December 31, 2000, Time Warner reported gross revenues totaling $210.3 million and paid the City $10.2 million in franchise fees.

The auditors determined that Time Warner had an adequate system of internal controls over its revenue collection process. However, Time Warner did not report $52,889 in revenue from Non-Sufficient Fund check charges—a fee charged to each customer for each check returned by the bank as uncollectible—and $38,617 relating to the value of free services that Time Warner provided to new employees and apartment managers. As a result, Time Warner owed the City $2,446 in franchise fees and interest.

Compliance of Time Warner Cable of New York City, Southern Manhattan Division, with its Franchise Agreement
Audit # FN02-153A (Issued: June 28, 2002)

Audit Assessment Amount: $4,460, all of which has been collected.

In 1998, the DoITT and Time Warner Cable of New York City, Southern Manhattan Division, agreed to a renewed franchise agreement for 10 years. The agreement requires that Time Warner: pay the City five percent of its gross revenue, less the mandatory payments made to the New York State Public Service Commission (NYSPSC); carry $50 million in insurance that names the City as an additional insured; maintain a security fund deposit of $3.5 million; and provide specified annual payments to the NYSPSC and the Community Access Organization (CAO). For the audit period October 1, 1998 through December 31, 2001, Time Warner reported gross revenues of $628 million and paid the City $39.3 million in franchise fees.

The auditors determined that Time Warner had an adequate system of internal controls over its revenue collection process. The auditors also confirmed that Time Warner complied with the remaining terms and conditions of its franchise agreement. However, the auditors noted that Time Warner did not report $75,046 in revenue from Non-Sufficient Fund check charges—a fee charged to each customer for each check returned by the bank as uncollectible. This resulted in Time Warner owing the City $4,460 in franchise fees and interest.

Compliance of Time Warner Cable of New York City, Staten Island Division, With Its Franchise Agreement October 1, 1998 through December 31, 2001
Audit # FN02-154A (Issued: December 19, 2002)
Audit Assessment Amount: $18,058, all of which has been collected.

In 1998, DoITT and Time Warner Cable of New York City, Staten Island, agreed to a renewed franchise agreement for 10 years. The agreement requires that Time Warner: pay the City five percent of its gross revenue, less the mandatory payments made to the New York State Public Service Commission; carry $50 million in insurance that names the City as an additional insured; maintain a security fund deposit of $710,000; and provide specified annual payments to the NYSPSC and the Community Access Organization. For the audit period October 1, 1998 through December 31, 2001, Time Warner reported gross revenues totaling $264.5 million and paid the City $12.9 million in franchise fees.

The auditors found that Time Warner did not report $223,684 in revenue received from subscriber trip charges, $71,556 relating to the value of free services that Time Warner provided to employees and apartment managers, and $24,775 in revenue from Non-Sufficient Fund check charges—a fee charged to each customer for each check returned by the bank as uncollectible. This under-reporting of revenue to DoITT resulted in Time Warner owing the City $18,058 in franchise fees and interest.

Compliance of Cablevision Systems New York City Corporation for the Bronx With its Franchise Agreement for the period January 1, 2001—December 31, 2002
Audit # FN03-162A (Issued: December 22, 2003)
Audit Assessment Amount: $18,232, all of which has been collected.

In 1998, DoITT renewed the franchise agreement with Cablevision Systems New York City Corporation for the Bronx (Cablevision-Bronx) for 10 years. The agreement requires that

Cablevision-Bronx pay the City five percent of its annual gross revenues less the mandatory payments that Cablevision-Bronx makes to the New York State Public Service Commission (NYSPSC). According to the agreement Cablevision-Bronx is also required to: carry a $50 million combined insurance policy; maintain a security fund deposit of $3,120,000 with the City Comptroller's Office; and, provide $4.73 per subscriber annually to the Community Access Organization (CAO). For the audit period January 1, 2001 through December 31, 2002, Cablevision-Bronx reported gross revenues of $364.1 million, and paid the City franchise fees of $17.8 million. In addition, Cablevision-Bronx paid the NYSPSC $402,310.

The auditors determined that Cablevision-Bronx had an adequate system of internal controls over its recording and reporting of revenues. In that regard the auditors noted that Cablevision accurately reported its revenues to the City, and accurately calculated and paid it fees to the City on time. However, the auditors found that Cablevision-Bronx overstated its allowable sales tax deductions by $341,020 on its Quarterly Gross Revenue Statements for 2001, and owed the City $18,232 in additional franchise fees and calculated interest.

Compliance of Cablevision Systems New York City Corporation for Brooklyn With its Franchise Agreement for the Period January 1, 2001—December 31, 2002
Audit # FN03-163A (Issued: December 22, 2003)
Audit Assessment Amount: $14,804, **all of which has been collected.**

In 1998, DoITT renewed the franchise agreement with Cablevision Systems New York City Corporation for Brooklyn (Cablevision-Brooklyn) for 10 years. The agreement requires that Cablevision-Brooklyn pay the City five percent of its annual gross revenues less the mandatory payments that Cablevision-Brooklyn makes to the New York State Public Service Commission (NYSPSC). According to the agreement, Cablevision-Brooklyn is also required to: carry a $50 million combined insurance policy; maintain a security fund deposit of $4,380,000 with the City Comptroller's Office; and, provide $4.60 per subscriber annually to the Community Access Organization (CAO). For the audit period January 1, 2001 through December 31, 2002, Cablevision-Brooklyn reported gross revenues of $385.7 million, and paid the City franchise fees of $18.9 million. In addition, Cablevision-Brooklyn paid the NYSPSC $426,114.

The auditors determined that Cablevision-Brooklyn had an adequate system of internal controls over its recording and reporting of revenues. In that regard the auditors noted that Cablevision accurately reported its revenues to the City, and accurately calculated and paid it fees to the City on time. However, the auditors found that Cablevision-Brooklyn overstated its allowable sales tax deductions by $276,334 on its Quarterly Gross Revenue Statements for 2001, and consequently owed the City $14,804 in additional franchise fees and calculated interest.

Compliance of Cablevision Systems New York City Corporation for Advertising Revenue for the Period January 1, 2001—December 31, 2002
Audit # FN03-164A (Issued: January 28, 2004)
Audit Assessment Amount: $15,214 all of which has been collected.

In 1984, Cablevision began selling advertising time for its New York City-based cable outlets in Brooklyn and the Bronx through an exclusive advertising representative and sales agent

subsidiary, Rainbow Advertising Sales Corporation (RASCO). RASCO is responsible for the marketing and selling of advertising for Cablevision on more than 30 cable networks. Section 9.1.01 of Cablevision's franchise agreement with the City requires that it pay the City five percent of its gross revenues. Cablevision's franchise agreement does, however, allow it to deduct outside advertising commissions and bad debts from its advertising revenue before calculating the fees due the City. For the two-year audit period, January 1, 2001 through December 31, 2002, Cablevision reported gross advertising revenues of $25.5 million and paid the City $1.3 million in franchise fees. DoITT is responsible for monitoring Cablevision's compliance with the terms of its franchise agreement.

The auditors determined that Cablevision generally reported its financial data to the City, and paid its corresponding franchise fees in compliance with the terms of the franchise agreement. However, the auditors found that Cablevision omitted $167,695 in advertising revenue and $130,237 for the fair market value of trade (barter) revenue, and owed the City $15,214 in additional franchise fees and calculated interest.

Advertising Revenue Reported by Time Warner Cable of New York City
For Its CityCable Advertising Division for the Period January 1, 2000—December 31, 2002
Audit #FN04-097A (Issued: May 20, 2005)
Audit Assessment Amount: None

The Time Warner franchise agreement requires that it pay the City five percent of its gross revenue. With the exception of "national advertising spots carried over the System" and other listed exceptions (i.e., outside advertising agency commissions and bad debts), gross revenue includes all advertising revenue received directly or indirectly by Time Warner. CityCable's main sources of advertising revenue are from "spot sales," and from "interconnect," "representative," "cross-channel," and "production" revenue. Other advertising revenues may include "Barter Revenue" and bad debt recoveries. For the period covered under this audit, January 1, 2000 through December 31, 2002, Time Warner reported gross advertising revenues for CityCable of $207.6 million, paying the City $10.4 million in franchise fees.

The auditors found that Time Warner could not account for 3,194 (11.87 percent) of the 26,902 invoice numbers listed on CityCable's invoice registers and Billing Detail reports for the audit period. In that regard, CityCable did not provide to the auditors documentation that established whether these invoice numbers were for canceled transactions or related to revenue received but not reported to the City. Because of the lack of documentation maintained by Time Warner, the auditors could not determine whether Time Warner accurately reported its gross advertising revenue to the City, and calculated and paid the appropriate fees due the City. The audit report recommended that to ensure that all invoice numbers are accounted for Time Warner must maintain detailed documentation, and that DoITT ensure that Time Warner implements the audit report's recommendation.

Compliance of Telebeam Telecommunications Corporation With
§4 of Its Franchise Agreement for Calendar year 2003
Audit #FL05-089A (Issued: December 2, 2005)
Audit Assessment Amount: $5,250,706 of which $16,371 was collected

On September 30, 1999, the City of New York entered into a franchise agreement with Telebeam Telecommunications Corporation (Telebeam) to install, operate, repair, maintain, upgrade, remove, and replace public pay telephones (PPTs). Section 4 of this agreement gives Telebeam the right and consent to place advertising, through a media representative, on the exterior rear and side panels of PPT kiosks. The agreement also requires that Telebeam pay the City 26 percent of its net commission advertising revenue.

During calendar year 2003, Telebeam contracted with two media representatives, Van Wagner Kiosk Advertising, L.L.C. (Van Wagner) and Vector Media Street Furniture (Vector), to sell advertising, bill and collect advertising fees from advertisers, and, compute and pay the City the fees due. For calendar year 2003, Van Wagner and Vector reported a total of $28,166,568 in net commission advertising revenue and paid the City $7,323,308 in franchise fees. Of these amounts, Van Wagner and Vector allocated $8,250,646 in net commission advertising revenue to Telebeam and paid the City $2,145,168 on its behalf.

The auditors determined that Telebeam, through its media representatives, provided public-service advertising as required by the Franchise Agreement. However, the auditors concluded that Telebeam violated Section 4.8 of its franchise agreement, because it did not ensure that its media representatives properly reported its total net commission advertising revenue, and it did not correctly calculate and pay fees owed to the City. Specifically, the auditors discovered that Telebeam's media representatives underreported $4,781,564 on behalf of Telebeam. This underreported amount was attributable to $4,764,117 related to bonus-free kiosk advertising and $17,447 was related to excessive deductions for agency commissions, advertising exchanged for non-cash items not reported, and revenue for production of advertising not reported. Also, Telebeam's media representatives, Van Wagner and Vector, underreported an additional $11,436,768 on behalf of another 14 public pay telephone (PPT) operators they represent. $11,402,929 of this amount was related to bonus-free kiosk advertising, and $33,839 was related to excessive deductions for agency commissions, advertising exchanged for non-cash items not reported; and revenue for production of advertising not reported.

Consequently, the 15 PPTs owe the City $5,250,706, of which Telebeam owes $1,547,456 in fees and related interest, $1,541,886 related to bonus-free kiosk advertising and $5,569 related to excessive deductions for agency commissions, the value of advertising exchanged for non-cash items not reported, and the revenue for production of advertising not reported.

Monitoring Agency: Department of Citywide Administrative Services (DCAS)

Compliance of East Broadway Mall, Inc., with its Lease Agreement and its Payment of Fees to the City for the Period September 1, 1999 through August 31, 2001
Audit # FL02-097A (Issued: June 6, 2002)
Audit Assessment Amount: $221,683 of which $152,215 has been collected.

On March 1, 1985, the New York City Department of General Services, now renamed the Department of Citywide Administrative Services (DCAS), entered into a 50-year lease agreement with the East Broadway Mall, Inc. (EBM), to develop and operate a retail shopping

mall at 88 East Broadway in Manhattan. The lease requires that EBM pay an escalating annual base rent ranging from $50,000 in the first year increasing to $895,795 in the final year of the lease, as well as pay "percentage rent" ranging from 3 percent to 9 percent of gross operating revenue. The lease agreement also requires EBM to: make additional rent payments to the City in lieu of real property taxes; carry certain insurance coverage, including personnel liability insurance, naming the City as an additional insured; remit a $72,000 security deposit to the City; and, pay all required taxes and utility charges related to the facility. For the fiscal years ending August 31, 2000, and August 31, 2001, EBM reported $2,390,175 and $2,408,789, respectively, in gross operating revenue, and paid rent to the City of $820,297 and $992,339.

The auditors determined that EBM had adequate internal controls over the recording and reporting of revenue, and it generally complied with the terms of its agreement. However, the auditors found that EBM did not accurately report its gross operating revenue and common area maintenance charges to the City, and did not pay all percentage rent due the City. As a result of the underreporting of revenues to the City by EBM, the auditors determined that EBM owes the City $120,965 in additional percentage rent and related interest. In addition, the auditors noted a problem with the water bills for EBM in that the City's Department of Transportation was mistakenly billed for the water and sewer charges for the mall. After the auditors mentioned this error to Department of Environmental Protection (DEP) officials, DEP had the name on the account changed and billed EBM for $100,718 in unpaid water and sewer charges for the period December 1, 1999 to December 31, 2001.

Compliance of Hyatt Equities, LLC with Its License Agreement
Audit #FM04-118A (Issued: April 21, 2005)
Audit Assessment Amount: $222,871 of which none has been collected.

The Empire State Development Corporation (Empire), (previously known as the New York State Urban Development Corporation) and the City of New York—represented by the Department of Citywide Administrative Services (DCAS)—jointly own the land and building at Lexington Avenue and 42nd Street in Manhattan, on which the Grand Hyatt Hotel (formerly the Commodore Hotel) was built. In May 1978, a 99-year lease commenced whereby the hotel would be developed, maintained, and operated by Regency-Lexington Partners until Hyatt Equities, LLC (Equities) assumed the lease in 1996. Equities operates and maintains the Grand Hyatt Hotel, which consists of more than 1,300 guest rooms and suites, banquet and conference facilities, restaurants, and retail space.

Under the lease agreement, Equities is required to make three types of rent payments to Empire, which acts as a pass-through agent by remitting the payments to DCAS. The first type of payment is the Net Rent, which is an annual payment of $100. The second type of payment is the Tax Equivalency Fee, which is an annual payment in lieu of real property tax. For calendar year 2002, the period covered by this audit, the fee was $1,475,000. The third type of payment is the Percentage Rental payment, which is the percentage of various profits as defined in the lease agreement. During calendar year 2002, Equities reported $113 million in revenues and $13.2 million in net profits, and paid rent of $6.5 million.

The auditors determined that Equities accurately reported net profits from Grand Hyatt

operations and paid the fees due under the license agreement. However, the auditors uncovered that Equities understated its net profits by $445,743. This understatement resulted in additional fees due the City of $222,871. Specifically, the auditors noted that this understatement resulted from Equities: misclassifying certain tangible assets as repair and maintenance expenses; not provide supporting documentation for one repair and maintenance transaction; and incorrectly calculating cash sales; and, deducting an expense for which it was not entitled.

Monitoring Agency: Economic Development Corporation (EDC)

Compliance of Staten Island Minor League Holdings, L.L.C., (Staten Island Yankees) with Their Lease Agreement for the Period May 1, 2001–December 31, 2002
Audit # FN03-116A (Issued: June 27, 2003)
Audit Assessment Amount: $373,517 of which $340,442 has been collected.

In December 2000, the Staten Island Minor League Holdings L.L.C. (Staten Island Yankees) and the New York City Economic Development Corporation (EDC) entered into a 20-year lease agreement that commenced on May 1, 2001. The agreement grants the Staten Island Yankees exclusive rights to use the Richmond County Bank Ballpark. Under the terms of the agreement, the Staten Island Yankees are required to pay EDC an annual base rent for actual attendance, for complimentary tickets, for "no-shows," and for the team store, and percentages of revenues generated from special event net income and from advertising revenues. The agreement also requires that the Staten Island Yankees: deposit $25,000 each year into a sinking fund that permits EDC to perform capital projects at the stadium; carry comprehensive property and liability insurance that names the City as an additional insured party; pay for the stadium's electricity and water and sewer use; and provide a $50,000 security deposit to EDC. The agreement requires that EDC pay the Staten Island Yankees a portion of the net income from the City parking lot.

The auditors determined that the Staten Island Yankees adhered to certain non-revenue-related requirements of the agreement. However, the auditors found that because of inadequate controls over the recording and reporting of revenue from attendance, they could not determine whether the Staten Island Yankees paid the appropriate fees to EDC. Moreover, the auditors noted that payments that were due were consistently made late, resulting in late fees due of $35,774. Furthermore, the auditors discovered that the Staten Island Yankees did not reimburse EDC $303,858 for electricity use and have an outstanding balance of $25,000 due for their 2002 percentage of signage revenue. They also found that EDC overpaid the Staten Island Yankees $8,885 in parking lot net income. Thus, based on the available records, the auditors determined that the Staten Island Yankees owed EDC at least $373,517. Finally, even though the lease contains a provision for payments to EDC from sales at the team store, the amount to be paid has not been negotiated between the Staten Island Yankees and EDC.

Compliance of Staten Island Minor League Holdings, L.L.C., (Staten Island Yankees) with Their Lease for the Period January 1, 2003–December 31, 2004
Audit #FN05-106A (Issued: April 21, 2006)
Audit Assessment Amount: $570,202 none of which was collected.

In December 2000, the Staten Island Minor League Holdings L.L.C. (Staten Island Yankees) and the New York City Economic Development Corporation (EDC) entered into a 20-year lease agreement that commenced on May 1, 2001. The agreement grants the Staten Island Yankees exclusive rights to use the Richmond County Bank Ballpark. Under the terms of the agreement, the Staten Island Yankees are required to pay EDC an annual base rent for actual attendance, for complimentary tickets, for "no-shows," and for the team store, and percentages of revenues generated from special event net income and from advertising revenues. The agreement also requires that the Staten Island Yankees: deposit $25,000 each year into a sinking fund that permits EDC to perform capital projects at the stadium; carry comprehensive property and liability insurance that names the City as an additional insured party; pay for the stadium's electricity and water and sewer use; and provide a $50,000 security deposit to EDC. The agreement requires that EDC pay the Staten Island Yankees a portion of the net income from the City parking lot.

The auditors, because of various weaknesses noted in the counting and reporting of attendance by the Staten Island Yankees, could not determine whether the Staten Island Yankees owed EDC for base rent due in accordance with the lease. The auditors also disclosed that the Staten Island Yankees owed the City and EDC $570,202 for not: reimbursing EDC for electricity use; paying the City for water and sewer charges; and, making certain payments on time that resulted in late charges being due. In addition, the auditors noted that the Staten Island Yankees did not implement the recommendations made in the prior report. Specifically, the Staten Island Yankees paid $340,442 of the $373,517 assessed in the prior audit (FN03-116A (Issued: June 27, 2003) —the Staten Island Yankees still owe $33,075 in late fees. In addition, the recommendations made in the prior audit report (FN03-116A) that were not implemented were: make all payments that are due on time; to report actual attendance based on turnstile counts; and to adequately support actual attendance reported.

Monitoring Agency: Department of Sanitation (DOS)

Compliance of GSF Energy, L.L.C. With Certain Provisions of its Concession Agreement
Audit # FM04-098A (Issued: June 21, 2004)
Audit Assessment Amount: None

In 1998, DOS entered into a 20-year concession agreement with GSF Energy, L.L.C. (GSF) to operate a landfill gas extraction and purification facility at the Fresh Kills Landfill in Staten Island, New York. The concession agreement required that GSF: annually pay the City $950,000; a payment in lieu of taxes (PILOT); bonus payments if production exceeded certain thresholds; and, a payment if the amount of gas flared exceeded certain production levels. In addition, GSF was required to pay a $1,265,000 biannual facility fee. GSF was also required to upgrade the existing purification plant and construct a second plant.

As allowed by the agreement, on January 16, 2003, GSF filed a "Notice of Surrender" in which it sought to terminate its agreement with the City. In the notice, GSF claimed that commercial quantities of gas were no longer obtainable at the landfill, due in part to the deposit of debris from the September 11, 2001 destruction of the World Trade Center. After negotiation between GSF and DOS, the agreement was amended on January 7, 2004.

The auditors found that GSF generally paid the required fees and complied with certain non-revenue provisions of the agreement. In that regard, the auditors confirmed that GSF paid the annual concession fee of $950,000, the biannual facility fee of $1,265,000, and the $50,000 due under the PILOT provision. In addition, based on the amount of landfill gas processed, the auditors determined that GSF was not required to make bonus payments for calendar years 1999 through 2002. Although GSF did not complete the construction of the additional purification plant and did not pay $200,000 in excess flaring payments due for calendar years 2000 and 2001, it was relieved of these obligations by the amended concession agreement. Accordingly, the audit report made no recommendations to GSF.

Monitoring Agency: Department of Transportation (DOT)

Compliance of Viacom Outdoor With its Franchise Agreement
Audit # FM03-139A (Issued: June 28, 2004)
Audit Assessment Amount: $418,902 all of which has been collected.

On March 20, 1985, the City of New York entered into a franchise agreement with Miller Signs Associates to construct, maintain, operate, and display advertising on bus-stop shelters throughout the five boroughs of the City. A series of corporate mergers and acquisitions resulted in the reassignment of the agreement to several different entities. Since September 2002, Viacom Outdoor (Viacom) has been responsible for the franchise obligations of the franchise agreement. Viacom is required to pay the City the greater of 32.5 percent of gross advertising revenues or minimum quarterly payments of $2,750,000. Viacom was also required to provide and maintain a minimum of 3,415 bus-stop shelters by December 31, 2002, and provide free public service advertising to government and non-profit agencies on 2.5 percent of the advertising panels.

Although Viacom's contractual rights and obligations under this agreement expired on December 31, 2002, Viacom, with the City's approval, continued to operate under the same terms and conditions of the expired contract until a new agreement is executed. The New York City DOT administers this agreement.

The auditors determined that Viacom generally adhered to certain major non-revenue terms of its contract. However, the auditors found that Viacom did not ensure that all bus-stop shelter advertising contracts were sequentially numbered to ensure proper tracking and accountability. Because of this weakness in controls, the auditors could not determine whether all: of Viacom's bus-stop shelter advertising contracts were accounted for in its books and records; appropriate revenue was reported to DOT; and, fees were paid to the City. Nevertheless, based on the available records, the auditors determined that Viacom underreported gross revenue and took questionable deductions against revenue. Consequently, the auditors concluded that Viacom owes the City between $418,902 and $1,195,789 in additional franchise fees and interest.