

City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER



FINANCIAL AUDIT

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Deputy Comptroller for Audit

Audit Report of the Permit Fees Due
From Urban Space Holdings, Inc., and
Compliance with Certain Provisions of
Its City Permit

FN15-079A

June 21, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
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June 21, 2016

To the Residents of the City of New York:

My office has audited Urban Space Holdings, Inc.'s (Urban) operation of the annual holiday market in Union Square Park in Manhattan (Market) to determine whether Urban accurately reported its gross receipts, properly calculated the permit fees due the City, paid the permit fees timely, and complied with other financial and operational terms of its permit with the New York City Department of Parks and Recreations (Parks). We audit permittee operations such as Urban to increase accountability and to ensure that City resources are used effectively, efficiently, and in the best interest of the public.

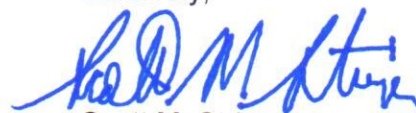
This audit found that Urban was generally in compliance with the requirements of its permit, including the requirement that it maintain adequate insurance and that it pay required security deposits. However, we found some weaknesses in Urban's compliance with permit requirements, including untimely submissions of its certified statement of gross receipts to Parks. We also found some internal control deficiencies in Urban's financial and operational practices, including that it did not always deposit its gross receipts into the Market's dedicated account and did not modify the vendors' contracts to reflect the actual payment amounts due. In addition, we found minor irregularities with Urban's accounting for vendor rentals, including that it did not report all fees collected and that it omitted required information in its submissions to Parks. Finally, we found that Parks' oversight of the Market needs to be improved to ensure that Urban fulfills all of its obligations under its permit.

The audit made eight recommendations to Urban and five recommendations to Parks. Among other things, we recommended that Urban submit all required financial reports to Parks on time, transfer funds collected from the operation of the Market to its dedicated bank account for increased accountability, and ensure that all contracts are updated to reflect accurate rental and placement fees charged. We also recommended that Parks include a checklist in its inspection report that records any vendor and booth-size changes subsequent to its approved vendor list, and that it compare its inspection reports to the approved vendor lists to ensure all last minute vendor changes are updated on its approved lists.

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

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,



Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report of the Permit Fees Due From Urban Space Holdings, Inc., and Compliance with Certain Provisions of Its City Permit

FN15-079A

EXECUTIVE SUMMARY

Urban Space Holdings, Inc. (Urban), operates an annual holiday market in Union Square Park in Manhattan (the Market) pursuant to a permit issued by the New York City Department of Parks and Recreation (Parks). The objective of the audit was to determine whether Urban accurately reported its gross receipts, properly calculated the permit fees due the City, paid those permit fees timely and complied with other financial and operational terms of its permit with Parks.

In October 2010, the City of New York (the City) through Parks issued a five-year permit to Urban that allowed Urban to install, operate and manage an outdoor holiday market at Union Square Park in Manhattan. In 2015, Parks issued a new five-year permit to Urban with the same terms as the earlier permit, except that the fee schedule was increased in the 2015 permit. In accordance with both its 2010 and 2015 permits, Urban is required to compensate the City in the amount of the higher of either the minimum required seasonal fee or 50 percent of the seasonal gross receipts. For Seasons 2014 and 2015, Urban paid 50 percent of its gross receipts to the City in the amount of \$1,462,254 and \$1,501,957, respectively, in fees from its operations at the Market. In addition, Urban is required to comply with other provisions of its permit, which governs the financial and operations practices.

Audit Findings and Conclusions

Our audit found that Urban was generally in compliance with the requirements of its permit, including the requirement that it maintain adequate insurance and that it make required security deposits. However, we also found that Urban did not comply with certain permit provisions. Specifically, we found that Urban failed to submit its certified statement of gross receipts to Parks within the required timeframes. We also found some internal control deficiencies in Urban's financial and operational practices. Most notably, Urban did not consistently deposit its gross receipts into the Market's dedicated account and did not modify the vendors' contracts to reflect the actual payment amounts due. In addition, we found irregularities with Urban's accounting for vendor rentals, including that it did not report all fees collected and that its submission of required

information to Parks were incomplete. Finally, we found that Parks' oversight of the Market needs to be improved to ensure that Urban fulfills all of its obligations under its permit.

Audit Recommendations

To address these issues, we make eight recommendations to Urban and five recommendations to Parks.

Our recommendations to Urban include that it should:

1. Submit all required financial reports to Parks on time.
2. Transfer funds collected from the operation of the Market to the dedicated and separate bank account for increased accountability and transparency. Also, all funds that do not belong in the dedicated Market account should be transferred to other appropriate accounts.
3. Ensure all contracts are updated to reflect accurate rental and placement fees charged and paid by participating vendors to enhance transparency and accountability.
4. Immediately remit to Parks any fees and interest due including \$462 for underreported placement fees received and determine the value of the 40 trees and calculate the corresponding fee.
5. Ensure all gross receipts are reported accurately and consistently between its accounts receivable ledger and its certified statement of gross receipts.
6. Ensure that the proposed vendor list is submitted to Parks for approval 30 days prior to the commencement of the Market, and that it contains all the required information including vendor booth sizes and fees payable to Urban.

We also recommend that Parks should:

1. Ensure that Urban implements the recommendations in this report.
2. Include a checklist in its inspection reports that addresses all vendor and booth-size changes subsequent to the approved vendor list. The check list should include a notation of whether the vendors are displaying the required price lists and DOHMH permits.
3. Compare its inspection reports to the approved vendor lists to ensure all last-minute vendor changes are updated on the approved lists.
4. Reconcile Urban's certified statement of gross receipts to an updated approved vendor list which should be included in its Market lease ledger.
5. Consider exercising contract options 2 or 3 for the upcoming seasons in order to maximize revenue in the City's best interest.

Agency Responses

In Urban's response, it agreed with seven of the eight recommendations and stated "*Urban Space endeavors to have a PERFECT record and will do its best to achieve this and to act on the recommendations made by the Auditor.*" (Emphasis in original.) Urban did not address recommendation #8.

Parks agreed with recommendations #1, #2 and #3. Parks did not agree with recommendation #4 stating that their ledger is not set up to include all the vendors. With regards to recommendation #5, Parks stated that revenue cannot be the sole deciding factor when it decides which option is selected. Parks officials stated that they “are mindful that a potential expansion of the market would have impacts on the community and any decisions about selecting one of these options will require additional consideration and consultation with elected officials, the Community Board, and the appropriate stakeholders.”

AUDIT REPORT

Background

In October 2010, the City through Parks issued a five-year permit to Urban, which allows Urban to install, operate, and manage the outdoor holiday Market at Union Square Park in Manhattan. In 2015, Parks issued a new five-year permit to Urban with the same terms as the earlier 2010 permit, except for an increase in the fee schedule.¹ The new 2015-issued permit will expire in 2020.

The Market currently features approximately 180 booths and operates from on or about the week before Thanksgiving until December 24th each year. Under the permit, Urban is required to compensate the City in the amount of the higher of either the minimum seasonal fee (\$1,215,506 for Season 2014 and \$1,400,000 for Season 2015) or 50 percent of the seasonal gross receipts that Urban receives from vendors operating booths at the Market and from sponsorships (i.e., the percentage fees).

Urban is required to make two equal installment payments to the City for the minimum seasonal fee, one on November 15th and the second on January 15th of each operating season. Pursuant to its permit, any additional percentage fees due were required to be paid on March 30, 2015, and February 22, 2016, for the 2014 and 2015 Seasons, respectively. Parks can charge Urban a two percent late fee every month on an outstanding balance that is overdue more than ten days.

For Seasons 2014 and 2015, Urban paid 50 percent of its gross receipts to the City in the amount of \$1,462,254 and \$1,501,957, respectively, in fees from its operations at the Market.

In addition, Urban must comply with other provisions of the applicable permits which include:

- Maintenance of a revenue control system to ensure the accurate and complete recording of all revenue received from the operation of the Market;
- Receipt of prior approval from Parks thirty days before the commencement of each season for the vendors selected and the number of booths planned and provision of a statement of each vendor's proposed participation fee payable to Urban;
- Maintenance of a separate and dedicated bank account located in New York City;
- Ensure that food vendors have appropriate Department of Health and Mental Hygiene (DOHMH) permits;
- Submission of a certified statement of gross receipts to Parks within thirty days after the close of the Market and an income and expense statement within sixty days after the close of the Market;
- Maintenance of adequate insurance including commercial general liability, workers' compensation and disability benefits insurance;
- Payment of required security deposits;
- Payment of all utility costs associated with the Market operation;

¹ According to the 2015 permit, the 2015 seasonal fees vary depending on the number of booths that the Market has and Parks can exercise the following options with regard to payments due at least 90 days prior to the commencement of the operating season: Option 1: \$1,400,000 if the Market has up to 178 booths, Option 2: \$1,500,000 if the Market has 179 to 192 booths, and Option 3: \$1,700,000 if the Market has 193 to 226 booths.

- Provision for Market security at its own cost for the duration of the Market.

Parks is responsible for monitoring the operation of the Market to ensure that Urban complies with its permit requirements. In order to monitor Urban's performance, Parks is responsible for conducting unannounced inspections of the Market and may impose liquidated damages for non-compliance with the terms of the permit including "missing or unauthorized price lists" and "vending food without valid Department of Health and Mental Hygiene (DOHMH) permits."

Objectives

The audit objectives are to determine whether Urban:

- Accurately reported its gross receipts, properly calculated the permit fees due the City, and paid the permit fees timely, and
- Complied with other financial and operational terms of its permit.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the period from January 15, 2014, through February 24, 2016, (final season of the 2010 permit and the first season of the 2015 permit). Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with Urban and Parks' officials during and at the conclusion of this audit. A preliminary draft report was sent to Urban and Parks officials on May 17, 2016, and was discussed at an exit conference on May 31, 2016. On June 2, 2016, we submitted a draft report with a request for comments. We received written responses from Urban and Parks on June 16, 2016.

In Urban's response, it agreed with seven of the eight recommendations and stated "*Urban Space endeavors to have a PERFECT record and will do its best to achieve this and to act on the recommendations made by the Auditor.*" (Emphasis in original.) Urban did not address recommendation #8.

Parks agreed with recommendations #1, #2 and #3. Parks did not agree with recommendation #4, stating that their ledger is not set up to include all the vendors. With regards to recommendation #5, Parks stated that revenue cannot be the sole deciding factor when it decides which option is selected. Parks officials stated that they "are mindful that a potential expansion of the market would have impacts on the community and any decisions about selecting one of these options will require additional consideration and consultation with elected officials, the

Community Board, and the appropriate stakeholders.” The full text of Urban’s and Parks’ responses are included as addenda to this report.

FINDINGS

Our audit found that Urban was generally in compliance with certain key permit provisions, including its maintenance of adequate insurance and its payment of required security deposits. However, we also found that Urban did not ensure compliance with certain provisions of its permit. Specifically, we found that Urban failed to submit its certified statement of gross receipts to Parks within the required timeframes. We also found some internal control deficiencies in Urban's financial and operational practices. Most notably, Urban did not always deposit its gross receipts into the Market's dedicated account, and did not modify the vendors' contracts to reflect the actual payment amounts due. In addition, we found irregularities with Urban's accounting for vendor rentals, including that it did not report all fees collected and that there were omissions of required information in its submissions to Parks. Finally, we found that Parks' oversight of the Market needs to be improved to ensure that Urban fulfills all of its obligations under its Permit.

Control Weaknesses Over Gross Receipts

Urban's internal controls over its financial and operating practices need to be improved. Our review identified control weaknesses in areas related to cash deposits, discrepancies between vendor contracts and payments, and errors in reporting other sources of revenue generated at the Market as detailed below:

Gross Receipts Deposited Into Incorrect Bank Accounts

Urban did not deposit all Market gross receipts from rental and other income into a separate and dedicated account. Under the permit, all revenue must be deposited regularly in a separate and dedicated bank account located in New York City.² Our reconciliation of Urban's dedicated Market bank account and its certified statement of gross receipts revealed that for both the 2014 and 2015 seasons, Urban deposited income from the Market's operations into Urban's other operating bank accounts that it maintains for other New York City markets. As a result, Urban made 13 deposits from the operation of the Market into incorrect accounts and 20 deposits from markets operated at other locations into the Market's dedicated bank account in violation of the Permit.

Urban explained that the deposits were made in error and in some instances vendors had issued one check for two different market rentals. However, Urban did not then transfer these amounts to the correct dedicated accounts, which makes it difficult for Urban as well as Parks to track the payments. For example, a total of \$39,000 in gross receipts paid for the 2015 Union Square Market season was deposited on July 30, 2015, into an account not dedicated to the Market. As of our testing in March 2016, Urban had not yet transferred this amount to its dedicated account for the Market. In addition, Urban was unable to account for \$896 and \$395 in deposits that appear in the dedicated Market bank account for 2014 and 2015, respectively, and were not reported on Urban's certified statement of gross receipts for the Market, as shown in Table I. While this is a small amount, the permit requires that Urban properly accounts for all money it receives through the operation of the Market.

² General provisions #27(c) of the 2014 Permit and 33(c), of the 2015 Permit.

Table I

Urban Market's Incorrect Bank Deposits

Season	Total Urban Revenue in Dedicated Urban Account (A)	Urban Revenue Deposited into Non-Dedicated Accounts (B)	Other Market Revenue Deposited into Dedicated Account (C)	Refunds for the Market Issued from Urban's Corporate Account (D)	Adjusted Dedicated Account Deposits E= (A + B - C -D)	Gross Receipts Report on Certified Statement of Gross Receipts (F)	Unaccounted Deposit G=(E - F)
2014	\$2,977,353	\$ 49,500	\$95,450	\$ 6,000	\$2,925,403	\$2,924,507	\$896
2015	\$2,933,767	\$119,044	\$36,028	\$12,475	\$3,004,308	\$3,003,913	\$395

Contract Terms and Amounts Not Properly Updated

Our limited test of vendor contracts for the 2014 season revealed that 4 out of 24 vendor contracts sampled had discrepancies between the contracted amounts and the amounts recorded on the Accounts Receivable ledger, as detailed in Table II below:

Table II

2014 – Vendor Contract Discrepancies with Accounts Receivable Ledger

Vendor Contract #	Booth Size Recorded on AR Ledger	Booth Approved per Vendor Contract	Amount per Vendor Contracts	Amount per AR Ledger	Discrepancy between Vendor Contract and AR Ledger	Urban's Explanation
US13231	0.5	1	16,000	8,500	7,500	The vendor opted for half a booth.
US13108	0.5	0.5	9,200	8,500	700	Preferred Placement was not granted.
US13167	1	1	16,700	16,000	700	Preferred Placement was not granted.
US13252	1	1	16,700	14,400	2,300	Vendor is a Not for Profit with the 10 % discount. Preferred Placement was not granted.
Total Excess Amount of Agreement Over AR Ledger				\$ 11,200		

Similarly, for 2015 season we found that a fee for \$700 was not included in a contract although it was recorded in the Accounts Receivable ledger as paid by the vendor. Urban officials stated that they do not amend or update vendor contract files to reflect last-minute changes in booth sizes or placement fee; these are fees paid by vendors to secure a specific location in the Market. However, by not amending vendor contracts to reflect the most current terms, Urban is left exposed to defaults by the vendor and uncertainty regarding booth rental and placement fees which account for the major source of revenue for the Market.

Further, none of the vendor contracts contained the effective date of the contract or the date on which the contract was signed. Also the language noted on the vendor contracts regarding payment status is standardized and does not reflect the actual date that the vendor made a payment. Therefore, the payment dates recorded on the contract do not reconcile with the Accounts Receivable ledger and/or the vendors' check payments. Contracts that are not amended to reflect the agreed upon payment terms or that are not dated may lead to vendor denial of agreed participation dates and/or agreed payment terms. Urban officials stated that they were in the process of updating contract language.

Underreported Gross Receipts

We found that Urban underreported at least \$700 in gross receipts to Parks, which resulted in \$462 in additional percentage fees and late charges due. Specifically, one vendor participated in Season 2014 and paid \$700 for a placement fee that was not reported to Parks. This resulted in \$350 additional fees due the City and \$112 in late fees.³

In addition, during Season 2015, Urban bartered 25 to 30 feet of space that was behind the booths near the Market's southwest entrance in exchange for 40 trees from a vendor. These trees were used to decorate the Market. According to the Permit, "Gross Receipts is defined as all funds received by Permittee without deduction or set-off of any kind, from vendors operating vending booths at the Premises and from sponsorships." Although Urban did not receive any money from this vendor, it received 40 free trees which have value. Therefore, it should have reported the fair market value of the trees as gross receipts and paid the percentage fees to the City accordingly. Urban stated that the space where the trees were placed was not sellable, and thus the arrangement was not a barter.

Non-Compliance with Certain Provisions of the Permit

Urban did not adhere to certain Permit terms. This included requirements for: timely payments to Parks and timely submission of financial statements; the provision of pertinent information required to obtain prior Parks' approval of vendors, and the ability to demonstrate that DOHMH permits for food vendors at the Market were obtained. These matters are discussed in more detail below.

Untimely Reporting of Gross Receipts

Urban submitted its certified statement of gross receipts for 2015 late; and was late submitting Income and Expense statements for 2014 and 2015. With these late submissions, Urban did not comply with provision #34 of the 2015 Permit, Statement of Gross Receipts and Income, which requires that Urban submit a certified statement of gross receipts to Parks 30 days after the end of each season. For the 2015 season, this statement was due on January 23, 2016, but was not submitted until February 25, 2016, 33 days past the due date. Similarly, Urban's Income and Expense statements are due 60 days after the close of each Market, but were submitted on March 31, 2016, for both seasons, 403 days and 38 days past the due date for the 2014 and 2015 seasons, respectively. Since these statements enable Parks to compare and verify the income amounts reported on the certified statement of gross receipts, their late submission hinders Parks' ability to monitor whether Urban has reported all required income and remitted all required amounts to the City.

Missing Required Information on Vendor Lists

For both seasons, we found that Urban failed to provide Parks with a statement of each vendor's proposed participation fees. The Permits expressly states that:

[a]t the same time as it supplies Parks with the list of proposed vendors, Permittee shall also submit for Parks' approval (i) an estimate of the approximate space to be used per participating vendor [and] ... (v) a statement of each vendor's proposed participation fee payable to the Permittee.⁴

³ Late fees were calculated from the overdue date of April 10, 2015, to June 10, 2016.

⁴ General provisions #5 (c) and #2 (c) of the 2014 and 2015 permits, respectively,

In fact, the 2015 vendor list did not contain the proposed participation fees and also lacked the corresponding booth sizes. Omitting the booth sizes and the proposed participation fees limits Parks' ability to review and estimate the season's gross receipts, and to independently calculate fees due from booth rentals.

DOHMH Permits for Food Vendors Were Not Available for Review

Urban was unable to provide eight out of nine DOHMH permits for food vendors participating in the 2014 season. According to the 2014 permit provision #6(t),

Vendors selling food or beverages must obtain a DOHMH permit for their vending units and a DOHMH food operator's license for each operator of each such unit. Parks may instruct any vendor operating without a DOHMH permit or license to cease operations.

Urban officials stated that the person in charge of the permits had left the organization and they were unable to locate these permits.

We then asked Parks to provide us with the permits. Parks stated it could not do so, as the applicable Permit does not require Urban to provide Parks with copies of the food vendor permits. In addition, Parks' inspection reports do not address whether food vendors had their permits on display as required. Consequently, we were unable to determine whether all of the required food vendor permits were obtained and displayed for 2014. The permit provision #38 assigns \$350 in liquidated damage per occurrence for vending food without a valid DOHMH permit. The potential liquidated damages amount could have been as much as \$2,800 based on Urban's records reflecting that eight food vendors rented space in the Market in 2014.⁵ We also note that operating without a valid DOHMH permit could present a public health hazard.

Parks' Oversight of the Market Needs To Be Improved

We found that Parks' Inspection Reports of the Market contained inaccurate and incomplete information that hindered Parks from verifying whether Urban conformed to the provisions of the Permits, as discussed below.

- As noted above, Parks approved vendor lists submitted by Urban that lacked required information such as booth size and proposed vendor participation fees, in accordance with the Permits. In addition, Parks did not request Urban to obtain prior approval for last minute changes so the agency could determine whether these were justified and in the City's best interest. For example, the 2014 season list approved by Parks had a total of 181.5 booths, which later was reduced to 178 booths, a decrease of 3.5 booths valued at approximately \$56,000 in gross receipts.⁶ Parks' officials stated that it was always understood that changes could occur and Parks follows up by performing on-site inspections and maintaining a copy of the final site plan. While last-minute changes can happen, Parks should more vigilantly monitor the main source of revenue—income from booth rentals.
- While Parks did perform unannounced inspections of the Market, we found that the reports from those inspections failed to include material details such as the presence of vendors

⁵ This amount reflects a potential liquidated damage of \$2,800 (\$350x8) if the 8 vendors had been cited.

⁶ The rental value of one booth in 2014 was \$16,000, and one-half booth was \$8,000 (\$16,000 X3)+\$8,000

not previously approved; the number of single, double, half and one and half booths; and observations of the required display of price lists and DOHMH certificates for food vendors. For example, the inspection report for the 2015 season states that there were “180 stalls/booths of varying sizes. The set up matched the plan which was proposed and approved by our office.” This statement contradicts the actual set-up of the Market, which had 203 stalls of varying sizes (including the two free booths for the Art Making Center) and differed from the approved vendor list in that not all vendors approved were participating and some vendors that were not approved by Parks were participating. Thus the reports do not enable Parks to perform a reconciliation with the certified statement of gross receipts to calculate the fees due to the City. Without accurate and complete information regarding the booth rentals, Parks cannot verify the accuracy of the final certified statement of gross receipts submitted by Urban. Also, since the inspection reports do not address requirements such as DOHMH food permits, it is difficult to verify whether Urban conformed to the provisions of the Permit for the use of the Union Square space.

- Parks does not perform a reconciliation of Urban’s certified statement of gross receipts to its receivable ledger or to their approved list of vendors. Parks’ Accounts Receivable ledger shows only the total payment amounts due for each installment without details of the final number of vendors with their corresponding booth sizes and participation fees payable to the Permittee. Parks has no independent way to verify this information due to the limited scope of its Inspection Reports and due to incomplete vendor lists that Parks is approving, as mentioned above. We note that Parks accepts Urban’s certified statement of gross receipts as the total gross receipts for the operation without independently performing any tests to reconcile the information provided.

OTHER ISSUE

Parks Did not Consider the Optimization of Permit Revenue

Parks did not avail itself of an opportunity to optimize revenue for the City by selecting the most lucrative option available under the Permit applicable to the 2015 season. According to the renewed Permit, the 2015 seasonal fees vary depending on the number of booths that the Market has and Parks can exercise the following options at least 90 days prior to the commencement of the operating season: Option 1: \$1,400,000 if the Market has up to 178 booths, Option 2: \$1,500,000 if the Market has 179 to 192 booths, and Option 3: \$1,700,000 if the Market has 193 to 226 booths. Parks did not exercise either of the two options that had greater fees than the minimum fee due under the approved Option 1. As a result, there was a lost opportunity cost of as much as \$200,000 for the City.⁷

Parks had almost eight months from the expiration of the previous Permit on January 15, 2015, to the deadline for submitting an alternative option on August 21, 2015.⁸ However, Parks did not sign the Permit until September 2015, past the deadline for submitting alternative options, which resulted in defaulting to the least lucrative Option 1 with the City losing potential revenue.

⁷ The difference between the minimum fees due under Option 3 of \$1.7 million and the amount paid in fees for 2015 of approximately \$1.5 million equals \$200,000.

⁸ The Permit states that "In the First Operating Year, Option 1 shall apply, unless Parks approves another Option in writing at least 90 days before the commencement of each Operating Season which option shall apply."

RECOMMENDATIONS

Urban should:

1. Submit all required financial reports to Parks on time.

Urban's Response: "Urban Space had been submitting the Statement of Gross Receipts when the payments were due and missed the requirement that reports are due 30 days earlier than the payment. We will correct this going forward and insure ALL reports are submitted on time.

As an improvement to its financial controls, in early 2016 Urban Space enlarged its accounts department by hiring a controller who is a Certified Public Accountant with audit experience. The new controller has been involved with this audit review and will make sure we comply with all reporting requirements."

2. Transfer funds collected from the operation of the Market to the dedicated and separate bank account for increased accountability and transparency. Also, all funds that do not belong in the dedicated Market account should be transferred to other appropriate accounts.

Urban's Response: "Urban Space already makes deposits into separate accounts for increased accountability and transparency. The transfer of funds per this recommendation have already been affected.

In the period reviewed 1,106 vendor transactions were recorded. Of these, 33 were deposited into the wrong accounts because:

- a. 15 were due to customers giving us one checks for multiple markets, typically Union and Columbus Circle payments combined. In future we will not accept these checks, or we will make sure that amounts due other markets are immediately transferred to the appropriate account.
- b. 2 were due to repeating customers who used old wire transfer information. Going forward we will make sure any deposit that comes into the wrong account is not only credited to the correct market in our books, but also transferred into proper bank account.
- c. 7 were due to 2014 implementation issues with a PayPal account, where vendor deposits were applied to other markets. This issue has been rectified and did not exist in 2015.
- d. 3 were made into Urban Space main account in Nov / Dec 2015 after we learned our dedicated bank accounts had a security compromise and were shut down. We have since increased our internal security measures to prevent fraudulent checks.
- e. 6 were clerical errors, where the checks were improperly or inadequately marked and were deposited into the wrong market account.

At the beginning of 2016, Urban Space implemented a fully automated application process using Salesforce and Stripe to process payments. This system automatically connects invoices with the appropriate bank accounts and will eliminate most chances for error. (Emphasis in original.)

3. Ensure all contracts are updated to reflect accurate rental and placement fees charged and paid by participating vendors to enhance transparency and accountability.

Urban's Response: "Urban Space has already taken steps to implement this recommendation. The Salesforce system will automatically match contracts and payments

in one database. We will make sure any last minute updates are sent to Parks in a timely fashion.”

4. Immediately remit to Parks the fees and interest due including \$462 for underreported placement fees received and determine the value of the 40 trees and calculate the corresponding fee.

Urban’s Response: “Urban Space will immediately remit to Parks payment of \$462 (\$350 under reported plus late fee). In addition, the 40 Christmas Trees which we used as decorations at the holiday market, are valued at \$30 each. Based on a total value of \$1,200, we will remit to Parks a payment of \$600 plus a \$192 late fee for a total of \$792.”

5. Ensure all gross receipts are reported accurately and consistently between its accounts receivable ledger and its certified statement of gross receipts.

Urban’s Response: “As discussed above, consolidation of databases using Salesforce will eliminate these discrepancies.”

6. Ensure that the proposed vendor list is submitted to Parks for approval 30 days prior to the commencement of the Market, and that it contains all the required information including vendor booth sizes and fees payable to Urban.

Urban’s Response: “Urban Space will ensure that proposed vendor lists are submitted to parks at least 30 days prior to the opening of the market with all required information.”

7. Ensure all last minute vendor and booth-size changes are approved by Parks prior to the opening of the Market.

Urban’s Response: “We will make sure any last minute updates are sent to Parks in a timely fashion.”

8. Ensure all DOHMH food vendors’ permits are properly retained and accessible for verification.

Auditor Comment: Urban did not address this recommendation in their response.

Parks should:

1. Ensure that Urban implements the recommendations in this report.

Parks’ Response: “Parks is currently following up with Urban Space to ensure that payment is received for \$462 in underreported placement fees, as well as the corresponding fee for the value of the 40 donated trees that the market received. We will also follow up with Urban Space to ensure that all required financial reports are submitted to Parks on time, that their proposed vendor list is submitted at least 30 days before the market and includes all required information, that any last minute changes are approved by Parks, and that all DOHMH food vendor permits are retained and submitted to Parks. Further, while the internal control weaknesses cited in the Report are minor with a few irregularities, we agree that Urban Space should continue to transfer funds collected from the operation of this market to their dedicated and separate bank account, that all contracts continue to be correctly updated, and that all gross receipts continue to be reported accurately and consistently.”

2. Include a checklist in its inspection reports that addresses all vendor and booth-size changes subsequent to its approved vendor list. The checklist should include a notation of whether the vendors are displaying the required price lists and DOHMH permits.

Parks’ Response: “We will include a checklist in our inspection reports that addresses any vendor and booth-size changes, as well as a notation of whether the vendors are displaying the required price lists. However, while we will ensure that Urban Space is in possession of all required DOHMH permits for any food vendors, the language in the

current agreement does not require that those DOHMH permits be displayed by the individual vendors. As per Section 6(j) 'At all times that a food vending booth is operating, a staff person with a valid DOHMH food handler's license must be present and Permittee must have all other required DOHMH permits and licenses.'"

Auditor Comments: Although Urban's permit with Parks does not include a specific provision to require food vendors to display the DOHMH permits/licenses, Section 6(a) of the permit states Urban is required to comply with "all laws, rules, regulations and orders of government agencies having jurisdiction." According to the New York City Administrative Code (see §17-311), permittees or licensees are required to post the permits/licenses conspicuously. Therefore, Parks should ensure that its permit with Urban includes language requiring food vendors to display their DOHMH permits as well.

3. Compare its inspection reports to the approved vendor lists to ensure all last minute vendor changes are updated on its approved lists.

Parks' Response: "We will compare our inspection reports to the final approved vendor list to ensure that any last minute changes are reflected."

4. Reconcile Urban's certified statement of gross receipts to an updated approved vendor list which should be included in its Market lease ledger.

Parks' Response: "Our ledger for the Union Square Holiday Market is designed to account for Urban Space's required payments to Parks, as the Permittee under the agreement. It is not set up to account for each specific vendor with their individual booth sizes and participation fees. Rather, any full reconciliation by Parks of Urban Space's certified statement gross receipts is best performed through an internal audit, which Parks performs regularly of our concessions."

Auditor Comments: Since Parks has agreed to update its approved vendor list based on a comprehensive inspection report, Parks should at least reconcile the final statement of gross receipts to this updated vendor list. This will enable Parks to perform an immediate reconciliation of fees due rather than wait until it performs its next audit of the Market.

5. Consider exercising options 2 or 3 for the upcoming seasons in order to maximize revenue in the City's best interest.

Parks' Response: "In our most recent agreement with Urban Space, three options are presented offering different size booth layouts and different corresponding fee payment amounts. The options are included to give us flexibility in determining the size and scope of the holiday market in future seasons. While Options 2 and 3 would result in additional fee payments to the City, revenue cannot be the sole deciding factor, as those options would also expand the footprint of the market in Union Square Park. We are mindful that a potential of the market would have impacts on the community and any decisions about selecting one of these options will require additional consideration and consultation with elected officials, the Community Board, and the appropriate stakeholders."

Auditor Comments: We appreciate Parks' concerns regarding any potential impact selecting one of the options may have on the community. We note that it is Parks' responsibility to exercise the option that is in the best interest of the City and the community as well.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covered the 2014 and 2015 seasons.

To obtain an understanding of the operation of the Market by Urban, we performed observations of the Market for the 2015 season, conducted walk-throughs of the operation, interviewed officials at Urban and Parks to understand their roles and responsibilities, and requested and reviewed financial documents received from Urban and Parks related to the operation of the Market. We documented our understanding of the operation in memoranda.

To identify all vendors participating at the Market, we reconciled the list of accepted vendors obtained from Urban with the list of approved vendors from Parks for Season 2014. For Season 2015, we documented the vendors' information during our unannounced observation and then compared the observed vendor information to Urban's accepted vendor list and Parks' approved lists of vendors doing business at the Market. Based on our analysis, we identified 193 and 200 vendors participating in the Market for 2014 and 2015 seasons, respectively.⁹ This included a half booth for Urban during both seasons and one booth for Parks during the 2015 season. Each season had a total of 178 booths.

To determine whether Urban's operation utilized the sequential numbering system for its vendor contracts, we obtained the contract numbers associated with vendor contracts and performed a sequential test for missing numbers.

We reviewed and identified the various sources of income that Urban received during the two seasons in our audit period by analyzing Urban's certified statement of gross receipts. To ascertain the completeness and accuracy of the certified statement of gross receipts, we compared the information in the certified statement of gross receipts with the accounts receivable ledger and the accepted vendor list for both seasons.

To determine the accuracy of the revenue received from the vendors, we randomly selected vendors by choosing every tenth vendor on Urban's accepted vendor list for both seasons. We then reviewed the contracts for the selected vendors and reconciled the contracted amounts to Urban's accounts receivable ledger and to the checks deposited into the Market's bank account and credit card payments through PayPal. We also performed reconciliations of the bank statements and PayPal payments for all amounts received for Calendar Years 2014 and 2015 and compared the total receipts to the total amounts reported on the certified financial statement of gross receipts.

To determine whether Urban paid all permit fees to Parks, we reviewed and reconciled Urban's certified statement of gross receipts to Parks' Lease Ledger for the Market. In addition, we determined whether Urban made timely payments to Parks by conducting an analysis of the

⁹ This does not include Access One ATM on the premises.

payment dates to the due dates for each installment of the minimal seasonal fees and percentage fees.

To determine whether Urban had the required insurance, we reviewed the policies and ensured the City was listed as the additional insured on the policy. In addition, we requested from Parks and Urban the DOHMH permits for food vendors participating in the Market. Finally, we reviewed the New York City Administrative Code §17-311 to determine whether the food vendors were required to display their permits or licenses.

URBANSPEACE

July 15, 2016

Marjorie Landa
Deputy Comptroller for Audit
City of New York Office of the Comptroller
1 Center Street, Room 1100
New York, NY 10007

Dear Deputy Comptroller Landa:

In response to the Comptroller's Office draft audit dated June 2, 2016, Urban Space Holdings, Inc. has the following comments.

Overall, as the President of Urban Space Holdings, Inc. I was very pleased that the findings of the audit indicated that we were, "generally in compliance," and that only a \$350 underpayment to the Parks Department was identified out of total license agreement payments of \$2,964,211 made over the 2014 and 2015 Seasons. *Having said this, Urban Space endeavors to have a PERFECT record and will do its best to achieve this and to act on the recommendations made by the Auditor.*

RECOMMENDATIONS MADE BY AUDITOR

Recommendation 1: Submit all required financial reports to Parks on time.

Urban Space had been submitting the Statement of Gross Receipts when the payments were due and missed the requirement that reports are due 30 days earlier than the payment. We will correct this going forward and insure ALL reports are submitted on time.

As an improvement to its financial controls, in early 2016 Urban Space enlarged its accounts department by hiring a controller who is a Certified Public Accountant with audit experience. The new controller has been involved with this audit review and will make sure we comply with all reporting requirements.

Recommendation 2: Transfer funds collected from the operation of the Market to the dedicated and separate bank account for increased accountability and transparency.

Urban Space already makes deposits into separate accounts for increased accountability and transparency. The transfer of funds per this recommendation have already been affected.

In the period reviewed 1,106 vendor transactions were recorded. Of these, 33 were deposited into the wrong accounts because:

- a. 15 were due to customers giving us one checks for multiple markets, typically Union and Columbus Circle payments combined. In future we will not accept these checks, or we will make sure that amounts due other markets are immediately transferred to the appropriate account.
- b. 2 were due to repeating customers who used old wire transfer information. Going forward we will make sure any deposit that comes into the wrong account is not only credited to the correct market in our books, but also transferred into proper bank account.
- c. 7 were due to 2014 implementation issues with a PayPal account, where vendor deposits were applied to other markets. This issue has been rectified and did not exist in 2015.
- d. 3 were made into Urban Space main account in Nov / Dec 2015 after we learned our dedicated bank accounts had a security compromise and were shut down. We have since increased our internal security measures to prevent fraudulent checks.
- e. 6 were clerical errors, where the checks were improperly or inadequately marked and were deposited into the wrong market account.

At the beginning of 2016, Urban Space implemented a fully automated application process using Salesforce and Stripe to process payments. This system automatically connects invoices with the appropriate bank accounts and will eliminate most chances for error.

Recommendation 3: Ensure all (vendor) contracts are updated to reflect accurate rental and placement fees charged.

Urban Space has already taken steps to implement this recommendation. The Salesforce system will automatically match contracts and payments in one database. We will make sure any last minute updates are sent to Parks in a timely fashion.

Recommendation 4: Remit to Parks any fees and interest due including the \$462 for underreported placement fees and determine the value of the 40 trees and calculate the corresponding fee.

Urban Space will immediately remit to Parks payment of \$462 (\$350 under reported plus late fee). In addition, the 40 Christmas Trees which we used as decorations at the holiday market, are valued at \$30 each. Based on a total value of \$1,200, we will remit to Parks a payment of \$600 plus a \$192 late fee for a total of \$792.

Recommendation 5: Ensure all gross receipts are reported accurately and consistently between its accounts receivable ledger and its certified statement of gross receipts.

As discussed above, consolidation of databases using Salesforce will eliminate these discrepancies.

Recommendation 6: Ensure that the proposed vendor list submitted to Parks for approval 30 days prior to commencement of the Market and that it contains all required information including vendor booth sizes and fees payable to Urban.

Urban Space will ensure that proposed vendor lists are submitted to parks at least 30 days prior to the opening of the market with all required information.

Sincerely,



Eldon Scott, President
Urban Space Holdings, Inc.

Cc: David Cerron
Chief of Revenue, Concessions & Controls Oversight
George Davis III
Director of Audit Services, Office of the Mayor
Melissa Goldberg
Director of Concession Compliance, NYC Parks
Phil Abramson
Director of Revenue Communications, NYC Parks
Alyssa Cobb Conon
Assistant Commissioner Planning, Parklands & Development

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Parks & Recreation

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June 16, 2016

Marjorie Landa
Deputy Comptroller for Audit
City of New York Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Audit Report of the Permit Fees Due from Urban Space Holdings, Inc. and Compliance with Certain Provisions of its City Permit; FN15-079A

Dear Deputy Comptroller Landa:

This letter addresses the findings and recommendations contained in the New York City Comptroller's Draft Audit Report ("Report"), dated June 2, 2016, on the above subject matter.

Urban Space provides a high quality holiday market at Union Square Park. We are pleased that the audit found that Urban Space generally complied with their license and carries the required insurance, maintains the required security deposit, and pays its license fees in a timely manner. Filled with unique vendors with diverse and creative items for sale, Urban Space has established a favorite spot for New Yorkers and visitors of our city to gather during the holiday season to stroll, shop for gifts, and sample a variety of local food offerings. The Report includes eight recommendations to Urban Space and five recommendations to Parks.

Parks will send Urban Space a follow-up letter to cover the recommendations directed to them in reference to the Report's recommendations directed to Parks:

Recommendation 1 – Ensure that Urban implements the recommendations in this report.

Parks is currently following up with Urban Space to ensure that payment is received for \$462 in underreported placement fees, as well as the corresponding fee for the value of the 40 donated trees that the market received. We will also follow up with Urban Space to ensure that all required financial reports are submitted to Parks on time, that their proposed vendor list is submitted at least 30 days before the market and includes all required information, that any last minute changes are approved by Parks, and that all DOHMH food vendor permits are retained and submitted to Parks. Further, while the internal control weaknesses cited in the Report are minor with a few irregularities, we agree that Urban Space should continue to transfer funds collected from the operation of this market to their dedicated and separate bank account, that all contracts continue to be correctly updated, and that all gross receipts continue to be reported accurately and consistently.

Recommendation 2 – Include a checklist in its inspection reports that addresses a vendor and booth-size changes subsequent to its approved vendor list. The checklist should include a notation of whether the vendors are displaying the required price lists and DOHMH permits.

We will include a checklist in our inspection reports that addresses any vendor and booth-size changes, as well as a notation of whether the vendors are displaying the required price lists. However, while we will ensure that Urban Space is in possession of all required DOHMH permits for any food vendors, the language in the current agreement does not require that those DOHMH permits be displayed by the individual vendors. As per Section 6 (j) "At all times that a food vending booth is operating, a staff person with a valid DOHMH food handler's license must be present and Permittee must have all other required DOHMH permits and licenses."

Recommendation 3 – Compare its inspection reports to the approved vendor lists to ensure all last minute vendor changes are updated on its approved lists.

We will compare our inspection reports to the final approved vendor list to ensure that any last minute changes are reflected.

Recommendation 4 – Reconcile Urban’s certified statement of gross receipts to an updated approved vendor list which should be included in its Market lease ledger.


Our ledger for the Union Square Holiday Market is designed to account for Urban Space’s required payments to Parks, as the Permittee under the agreement. It is not set up to account for each specific vendor with their individual booth sizes and participation fees. Rather, any full reconciliation by Parks of Urban Space’s certified statement of gross receipts is best performed through an internal audit, which Parks performs regularly of our concessions.

Recommendation 5 – Consider to exercise Options 2 or 3 for the upcoming Seasons in order to maximize revenue in the City’s best interest.

In our most recent agreement with Urban Space, three options are presented offering different size booth layouts and different corresponding fee payment amounts. The options are included to give us flexibility in determining the size and scope of the holiday market in future seasons. While Options 2 or 3 would result in additional fee payments to the City, revenue cannot be the sole deciding factor, as those options would also expand the footprint of the market in Union Square Park. We are mindful that a potential expansion of the market would have impacts on the community and any decisions about selecting one of these options will require additional consideration and consultation with elected officials, the Community Board, and the appropriate stakeholders.

Finally, Parks wishes to thank you and your audit staff for the time and effort devoted to completing this report.

Sincerely,



David Cerron
Chief of Revenue, Concessions & Controls Oversight

CC: Eldon Scott
President, Urban Space Holdings, Inc.

George Davis III
Director of Audit Services, Office of the Mayor

Melissa Goldberg
Director of Concession Compliance, NYC Parks

Phil Abramson
Director of Revenue Communications, NYC Parks

Alyssa Cobb Konon
Assistant Commissioner Planning, Parklands and Development