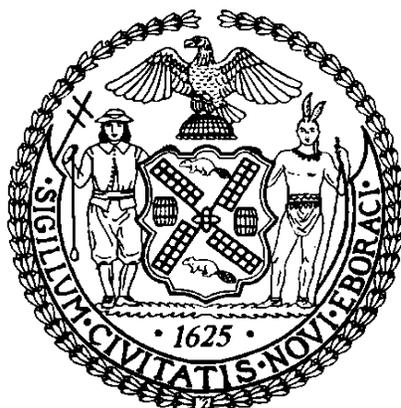


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

**John C. Liu
COMPTROLLER**

BUREAU OF FINANCIAL AUDIT

**H. Tina Kim
Deputy Comptroller for Audit**



**Audit Report on the
Operation and Management of Piers 92 and 94
January 1, 2007–December 31, 2009**

FN10-086A

June 30, 2010



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

John C. Liu
COMPTROLLER

June 30, 2010

To the Residents of the City of New York:

My office has audited the operation and management of Piers 92 and 94 on the Hudson River, which are owned by the City of New York. We audit City entities such as this as a means of ensuring that they comply with the terms of their agreements, properly report and allocate revenues, and comply with established policies and procedures.

The City Economic Development Corporation administers the agreements with the operators of the piers under its City Maritime contract. The audit found that in general the piers operators were in compliance with the agreements. However, operator Un-Convention Center, Inc., (Un-Convention) understated its revenue by \$197,920 and its base charge by \$300 and, as a result, owes the City \$20,092 in additional fees and base charges. In addition, Un-Convention did not perform the required pier improvements resulting in the City having to reimburse \$81,387 to the new operator MMPI Piers LLC (MMPI) for the costs. MMPI understated its events revenue by \$45,257, underpaid its base charge by \$968, did not maintain an adequate security deposit and submitted \$774,513 in excess of the reimbursable capital improvement allowed.

We made recommendations to Un-Convention, MMPI, and EDC to address these findings. If the recommendations are implemented, they will result in compliance with the City agreements, payment of correct capital improvement reimbursements, and calculation and payment of appropriate fees and charges.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Liu".

John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	1
Audit Recommendations	2
INTRODUCTION	3
Background.....	3
Objectives	4
Scope and Methodology	4
Discussion of Audit Results.....	5
FINDINGS	7
Un-Convention Did Not Include \$197,920 in the Calculation of Its Final Fee	7
Un-Convention Did Not Perform \$81,387 in Required Fire Safety Improvements	7
MMPI Understated Its Events Revenue by \$45,257	8
MMPI Did Not Pay \$6,968 in Additional Base Charge and Security Deposit	8
MMPI Submitted \$774,513 in Excess of the Maximum Reimbursable Capital Improvement Amount	9
Other Issue	10
RECOMMENDATIONS	11
ADDENDUM I Un-Convention Response	
ADDENDUM II MMPI Response	
ADDENDUM III EDC Response	

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

**Audit Report on the
Operation and Management of Piers 92 and 94
January 1, 2007–December 31, 2009**

FN10-086A

AUDIT REPORT IN BRIEF

The City of New York is the owner of Piers 92 and 94 on the Hudson River between 52nd and 56th Streets. The properties include the surface area of the decks, the head house, the outdoor parking lot, and related improvements. Piers 92 and 94 operate as a facility for trade and consumer shows, customary convention center uses, supporting ancillary services, and public parking. Currently, the facility offers 208,000 square feet of exhibit or event space and approximately 280 parking spaces above Pier 92. The New York City Economic Development Corporation (EDC) is responsible for administering the agreements with the operators of the piers under its Maritime contract with the City. From calendar years 2007 through 2009, our audit scope period, the operations of Piers 92 and 94 have been under two separate companies. This report will address each company and their respective operating period separately.

Audit Findings and Conclusions

Our audit found that the operators were generally in compliance with the agreements, except for the following observations:

For the operating period January 1, 2007 through November 21, 2008, our review noted that The Un-Convention Center, Inc. (Un-Convention) understated its revenue by a total of \$197,920 and its base charge by \$300. Therefore, it owes the City \$20,092 in additional fees and base charge. In addition, Un-Convention did not perform the required pier improvements resulting in the City having to reimburse \$81,387 to the new operator for the costs.

For the operating period December 11, 2008, through December 31, 2009, we found that MMPI Piers LLC (MMPI) understated its events revenue by \$45,257, underpaid its base charge by \$968 and did not maintain an adequate security deposit. In addition, MMPI submitted \$774,513 in excess of the reimbursable capital improvement allowed. EDC has not approved these for reimbursement.

Audit Recommendations

To address these issues, we recommend that:

1. Un-Convention revise its revenue participation charge calculations and remit \$20,092 in base charge and revenue participation charges to EDC.
2. Un-Convention reimburse EDC \$81,387 for unfinished required improvements at the pier.
3. MMPI exclude parking operating expenses from its event revenue participation charge calculation.
4. MMPI submit the additional \$6,968 in base charge and security deposit to EDC.
5. MMPI capital improvement costs submitted to EDC are within the scope of Exhibit C of the occupancy permit.

We recommend that EDC:

6. Approve only capital improvements outlined in the occupancy permit with MMPI.
7. Ensure that the operators pay the correct base charge and security deposit, and verify the accuracy of participation charge calculations.
8. Ensure that the necessary improvements and maintenance work at the piers are performed in a timely manner.
9. Recoup \$81,387 from Un-Convention for unfinished capital improvements.

INTRODUCTION

Background

The City of New York is the owner of Piers 92 and 94 on the Hudson River between 52nd and 56th Streets. The properties include the surface area of the decks, the head house, the outdoor parking lot, and related improvements. EDC is responsible for administering the agreements with the operators of the piers under its Maritime contract with the City.

In June 2005, EDC entered into an agreement with Un-Convention for the operation of Pier 94, subject to termination on any earlier date in accordance with the terms of the agreement.¹ This agreement was terminated on November 21, 2008.

The operating agreement with Un-Convention required it to pay a minimum retention payment and an annual revenue participation payment equal to 10 percent (10%) of annual gross revenue less an annual maximum of \$1.8 million for Heating Ventilating and Air Conditioning (HVAC) equipment rental and installation credits. Un-Convention was also required to repair and maintain the premises, including the repair work specified in Exhibit E of the agreement. From January 1, 2007 through November 21, 2008, Un-Convention paid EDC \$579,153 in minimum retention payment and \$354,657 in participation charges.

On April 23, 2008, EDC selected Vornado Trust Realty (Vornado) to redevelop and integrate Pier 94 with Pier 92 to double the exhibition space from 173,900 square feet to a total of 355,000 square feet. The \$100 million redevelopment project would include an 8,000-square-foot pavilion, open space around Pier 94, and a 60,000-square-foot logistics center on Pier 92. According to the redevelopment plan, Vornado would be fully responsible for the construction and in turn would receive a 49-year lease with five 10-year extensions. On December 11, 2008, EDC entered a short-term occupancy permit with MMPI, a subsidiary of Vornado for an initial period of December 11, 2008, through November 30, 2009, with two 1-year renewal options.

Under the occupancy permit, MMPI operates Piers 92 and 94 as a facility for trade and consumer shows, customary convention center uses, supporting ancillary services, and public parking. Currently, the facility offers 208,000 square feet of exhibit or event space and approximately 280 parking spaces above Pier 92.

The occupancy permit requires MMPI to pay EDC a base monthly charge and annual participation charges comprising an event revenue participation charge (equal to a participation rate of fifteen percent (15%) of net operating income of the initial permit period and each renewal period) and a parking revenue participation charge (equal to a participation rate of fifty percent (50%) of the gross revenues in excess of the annual threshold amount of \$400,000). The permit also requires MMPI to provide a security deposit of two months' base charges and to complete specific improvements as required by the New York City Board of Standards and Appeals (BSA) and the

¹In June 2002, the City entered into an occupancy permit with Un-Convention for the operation of Pier 94, for an initial period beginning on June 15, 2002 through June 14, 2003, and two 1-year renewal options.

New York City Department of Buildings (DOB).² Such improvements are eligible for reimbursement by the City up to \$700,000. In addition, MMPI has to pay all its utility costs, fulfill the insurance requirements, and properly repair and maintain the premises.

From December, 2008 to December, 2009, MMPI paid EDC \$381,387 in base monthly charges, \$15,000 in special event license fees, and \$60,000 as a security deposit.

Objectives

The objectives of this audit were to determine whether the pier operators:

- accurately reported gross revenue and properly calculated and paid the appropriate fees due the City and paid them on time;
- complied with certain non-revenue related requirements of their agreement (i.e., completed the required capital improvements, maintained the required security deposit and insurance coverage, paid utilities, etc.).

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 period January 1, 2007, through December 31, 2009. To develop our understanding of the operation and management of Piers 92 and 94, we reviewed and abstracted the relevant terms of the agreement for each facility operator. To evaluate the adequacy of the operators' internal controls over the financial data reported to the City including their accounting and record-keeping functions, we reviewed their financial records, interviewed key personnel, and conducted a walk-through of the operations. We documented our understanding of their internal control processes through written narratives.

To determine whether the operators properly recorded and reported all revenue to the City in accordance with the agreements, we reviewed the operators' annual reports submitted to the City, and compared the amounts to revenue and expenses reported in their general ledgers. We also traced the amounts from the event contracts and billing statements to the operators' general ledgers and the financial statements for accuracy and completeness. In addition, we traced all the operating expenses from the service contracts to the vendors' billings and payment records to substantiate the amount deducted from the reports submitted to the City. To determine whether MMPI accurately reported

² Based on MMPI's records, BSA in conjunction with DOB, issued a 2004 report that listed six noncompliant life safety items within Pier 94. These noncompliant items became part of the Exhibit C of MMPI's occupancy permit.

its parking revenue, we reviewed the revenue report prepared by the parking operator and compared the amounts to the annual parking gross revenue reports MMPI submitted to EDC.

To ascertain whether MMPI and Un-convention paid their base monthly payments and did so in a timely manner, we recalculated the monthly charges based on the terms and provisions of each agreement and compared them to the operators' payment records and to EDC's tenant history ledgers.

To determine whether MMPI complied with other non-revenue related requirements, we conducted the following tests: for water and sewer charges, we reviewed the billings and payment records of MMPI to determine whether the charges were fully settled. To determine whether MMPI maintained the proper security deposit, we compared the amount of security deposit required by the occupancy permit with EDC's tenant history ledger to determine whether the correct amount was in place. To determine whether MMPI was compliant with its insurance requirements, we compared MMPI's certificate of insurance with the coverage stated in the occupancy permit.

To verify the accuracy of MMPI's submission for the \$700,000 reimbursable improvements, we traced the amount claimed to the vendors' billing and payment records for accuracy and appropriateness. In addition, we observed the improvements and reviewed the construction filings to and approvals by DOB.

To determine whether Piers 92 and 94 were properly maintained, we conducted a walkthrough of the piers with a member of our engineering audit group to assess the physical conditions of the facility. We documented our observations with photos and narratives. To obtain a better understanding of the pre-existing conditions of the piers as stated in the Un-Convention and MMPI agreements, we reviewed and evaluated the inspection reports prepared by external consultants. We assessed the current physical conditions and compared them with the defects described in the report. We also conducted meetings with EDC officials to obtain an update of these pre-existing conditions. In addition, we obtained the related contracts to ascertain whether necessary reconstruction was performed.

Discussion of Audit Results

The matters covered in this report were discussed with Un-Convention, MMPI, and EDC officials during and at the conclusion of this audit. A preliminary draft report was sent to Un-Convention, MMPI, and EDC officials and discussed at an exit conference held on May 20, 2010. On June 8, 2010, we submitted a draft report with a request for comments. We received written responses from Un-Convention, MMPI, and EDC on June 22, 2010.

In their response, Un-Convention officials generally disagreed with the audit report conclusions. However, they did not provide relevant information to justify the basis for their disagreement.

MMPI partially agreed with the report conclusions. However, it did not agree that parking operating expenses should not be included in the calculation of event revenue participation charge.

EDC generally agreed with the recommendations addressed to it that involved MMPI, but did

not agree with those regarding Un-Convention. It agreed with our recommendation regarding the pier conditions.

A summary of the respective responses is included in the finding section of this report. The full texts of their responses are included as addenda to this report.

FINDINGS

Our audit of the operations and management of Piers 92 and 94 found that in general the piers operators were in compliance with the agreements, except for the following observations:

From January 1, 2007 through November 21, 2008, our review noted that Un-Convention understated its revenue by a total of \$197,920 and its base charge by \$300. Therefore, it owes the City \$20,092 in additional fees and base charge. In addition, Un-Convention did not perform the required pier improvements resulting in the City having to reimburse \$81,387 to the new operator for the costs.

For the operating period from December 11, 2008 through December 31, 2009, we found that MMPI understated its events revenue by \$45,257, underpaid its base charge by \$968 and did not maintain an adequate security deposit. In addition, MMPI submitted \$774,513 in excess of the reimbursable capital improvement allowed. EDC has not approved these for reimbursement.

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

Un-Convention Did Not Include \$197,920 In the Calculation of Its Final Fee

Our review of the summary of final fee calculations submitted to the City noted that Un-Convention understated its revenue by a total of \$197,920 and, therefore, owes the City \$19,792 in additional fees. Specifically, Un-Convention deducted the HVAC winterization costs in the amount of \$153,727 twice. In another instance, Un-Convention did not include \$44,193 in service commission fees it generated during the calendar year 2008. In addition, Un-Convention miscalculated its fee due the City resulting in an underpayment of \$300 for the month of November 2008. As a result, Un-Convention owes the City a total final fee of \$20,092.

Un-Convention Response: “Our records did not indicate this and we paid all the rent we believed was due. Please furnish the supporting documentation, such as work sheets, that led to the conclusion in the report.”

Auditor Comment: Since our conclusion was based on the information Un-Convention provided to EDC, Un-Convention should obtain from EDC the details of the understated revenue participation and base charges, and settle all the outstanding amounts as soon as possible.

Un-Convention Did Not Perform \$81,387 In Required Fire Safety Improvements

Our review of the scope of work required to be completed by Un-Convention noted that required improvements had not been performed since their operating agreement began in June 2005. Specifically, Un-Convention did not install metal egress doors with directional exit signs, as required by building code, and did not build the required 10-foot-high, two-hour-rated egress corridors or install separate fire drywalls at Pier 94. At the same time, EDC, as the pier administrator, also failed

to enforce the improvement requirements. As a result, the City would have to reimburse \$81,387 to the new operator for completing the unfinished required work.

Un-Convention Response: “Required Fire Safety Work- This work was performed in 1997 and 1998 (see attached documentation).”

Auditor Comment: The supporting documentation Un-Convention provided in reference to the improvements work performed in 1997 and 1998 has no relevance to the issue under discussion. The Fire Safety Requirements cited in this audit report were contained in the report issued by the New York City Department of Buildings in 2004. Since Un-Convention did not perform the required improvements stipulated in its 2005 operating agreement, Un-Convention should be responsible for the \$81,387 for the work completed by the succeeding operator.

MMPI Understated Its Events Revenue by \$45,257

Our review of the special purpose statement of gross revenues and operating expenses noted that MMPI underreported its events revenue by deducting parking operating expenses in the amount of \$45,257. The expenses allowed under the events revenue category do not include parking. According to the occupancy permit, MMPI is required to pay a parking revenue participation charge based on the gross amount above a threshold of \$400,000. Therefore, MMPI should not deduct parking expenses from its events revenue reported to EDC.

MMPI Response: “MMPI disagrees with the assertion that parking operating expenses should be deducted from parking revenue for purposes of calculating the Parking Revenue Participation Charge. . . . However, when determining the ‘Event Revenue Participation Charge’ (‘ERPC’) . . . that amount is calculated on a ‘net’ basis. The ERPC ‘is equal to a participation rate of fifteen percent (15%) of Net Operating Income....’ ‘Net Operating Income’ (emphasis added) is defined as the Event Gross Revenues less the ‘Operating Expenses’. . . . ‘Operating Expenses’ are defined as all costs and expenses for ‘on-site operating expenses in connection with the permitted Use of the Premises’. . . . the ‘Premises’ include all of Piers including the rooftop of Pier 92 where the parking is located. . . . Therefore, the expenses related to the parking garages should be included in the Operating Expenses and deducted from the Event Gross Revenues, not the Parking Gross Revenues.”

Auditor Comment: Although operating expenses are allowed in the calculation of event revenue participation charge, expenses for parking operations are not. In addition, according to the occupancy permit, parking revenue is reported based on a gross amount. Therefore, we reaffirm our position that MMPI should not include parking operating expenses in its event revenue participation charge calculation.

MMPI Did Not Pay \$6,968 in Additional Base Charge and Security Deposit

MMPI did not pay the correct base charge for December 2009 and did not submit the additional security deposit for its renewal period. According to the occupancy permit, MMPI is required to pay a \$33,000 monthly base charge and maintain two months’ base charges as a security

deposit effective December 1, 2009. In addition, our review of the base charges paid by MMPI noted that MMPI underpaid \$968 for December 2009. As a result, MMPI did not pay a total of \$6,968 in additional security deposit and base charge to the City.

MMPI Response: MMPI agreed. “MMPI has submitted an additional \$6,000 towards its Security Deposit to Apple Industrial Development Corp. MMPI has remitted an additional \$968 to Apple Industrial Development Corp. for this amount.”

MMPI Submitted \$774,513 in Excess of the Maximum Reimbursable Capital Improvement Amount

Our review of MMPI’s BSA Cost Summary submitted to EDC for reimbursements found that MMPI reported total costs of \$1,474,513, including \$774,513 in expenses that were not within the scope of work outlined in the Exhibit C of the occupancy permit and, therefore, should not be approved for reimbursement by EDC. The occupancy permit states that MMPI could be reimbursed up to a maximum of \$700,000³ for certain specific improvements listed in Exhibit C for the term of the permit. However, our review noted that MMPI submitted \$774,513 in claims for the cost of improvement work that was in excess of the amount allowed in the permit. It should be noted that as of the close of audit fieldwork, EDC had not approved charges submitted.

MMPI Response: “[I]t should be noted that MMPI is involved in an on-going relationship with the City and it has and will continue to submit confirmation of all of its additional work in furtherance in this on-going relationship.”

Auditor Comment: The work improvement submissions in question relate to the specific items and threshold amount stated in the occupancy permit. Therefore, additional expenses incurred for work performed in connection with pending negotiations should not be commingled with the amounts allowed in the agreement.

³ Included in this amount is \$81,387 in outstanding improvements that were never performed by the previous operator, Un-Convention.

Other Issue

EDC Delayed Improvement Work at Piers 92 and 94

Our review of the operating agreements noted that both agreements cited the need for specific pier work improvement, based on the recommendation of a 2004 inspection report. EDC was responsible for performing this improvement work at the piers. Although our review noted that some repairs were completed in early 2007, improvements related to certain areas of the premises have not been resolved.

Our review of 2004, 2007 and 2008 pier inspection reports noted that EDC still has outstanding recommendations that needed to be addressed. For example, although the report issued in 2004 made recommendation for certain improvement, the design for the improvement plan was submitted for approval in March 2010. In addition, two subsequent inspections conducted in January 2007 and January 2008 for Pier 94 and Pier 92, respectively, also recommended repairs to piles, pile caps, timber bracing, and decking. However, these recommendations are still under consideration and have not yet been implemented.

Subsequent to our exit conference, EDC officials provided us with documentation in support of their work improvement plan that would address the outstanding work at the piers. In that regard, EDC should ensure that the recommendations are implemented without further delays.

RECOMMENDATIONS

For the pier operators, we recommend that:

1. Un-Convention revise their revenue participation charge calculations and remit \$20,092 in base charges and revenue participation charges to EDC.
2. Un-Convention reimburse EDC \$81,387 for unfinished required improvements at the pier.
3. MMPI exclude parking operating expenses from its event revenue participation charge calculation.
4. MMPI submit the additional \$6,968 in security deposit and base charge to EDC.
5. MMPI capital improvement costs submitted to EDC are within the scope of Exhibit C of the occupancy permit.

We recommend that EDC:

6. Approve only capital improvements outlined in the occupancy permit with MMPI.

EDC Response: “NYCEDC agrees. . . . NYCEDC has extensive processes and controls in place that ensure only eligible expenses are reimbursed for all of our agreements. EDC intends, as it always does, to approve only those amounts that are permitted pursuant to its agreements with MMPI.”

7. Ensure that the operators pay the correct base charge and security deposit, and verify the accuracy of participation charge calculations.

EDC Response: “NYCEDC partially agrees. NYCEDC has already requested and, on June 12, 2010, received a payment from MMPI in the amount of \$6,968. With respect to the amount due from the Un-Convention Center, the situation is complicated by the fact that NYCEDC is uncertain if the entity is solvent. NYCEDC is working with legal counsel to decide upon the most appropriate action to take on this recommendation.”

Auditor Comment: EDC should take the necessary steps to resolve with Un-Convention the final fees and security deposit issues as soon as possible.

8. Recoup \$81,387 from Un-Convention for unfinished capital improvements.

EDC Response: “NYCEDC disagrees. At the time of the original billing, NYCEDC took all reasonable and prudent steps to ensure amounts that it was paying were properly payable. In conjunction with the draft audit, NYCEDC went back to [Unconvention] to request additional documentation to confirm that its original payments were proper. Based on this additional documentation NYCEDC continues to believe that the payment was proper.”

Auditor Comment: Our audit review was based on the improvement requirements stipulated in the 2005 operating agreement with Un-Convention. In its response, EDC affirms only that the payment it made to Un-Convention for the improvements performed in 1998 was properly reviewed and well-supported. However, the required work was performed by the succeeding operator in 2009 at a total cost of \$81,387. Since the City has to reimburse the new operator for the improvements work that Un-Convention was obliged to perform, EDC should recoup the total costs of \$81,387 from Un-Convention.

9. Ensure that the necessary improvements and maintenance work at the piers are performed in a timely manner.

EDC Response: “NYCEDC agrees. NYCEDC has already programmed the recommendations included in the January 2007 and January 2008 inspection reports for Pier 94 and Pier 92 . . . Design for these repairs has been completed. Construction has already begun on Pier 92. Construction on Pier 94 will begin this calendar year pending approval of the design by regulatory agencies, for which applications have already been submitted.”

UnConvention Center, Inc

June 21, 2010

Ms. Tina Kim
Deputy Comptroller for Audits
Office of The Comptroller
1 Centre Street- Room 1100
New York, NY 10007-2341

Dear Ms. Kim

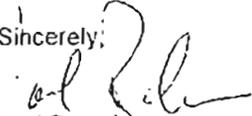
You have asked us to respond to the Comptrollers Office Audit Report on the Operation and Management of Piers 92 and 94.

There are two points raised about the operation of the Piers during the period that Unconvention Center Inc. (UCI) had a short-term occupancy permit from the City.

1. The report discusses the Calculation of the Final Fee and states that additional rent was owed because of a miscalculation of income. Our records did not indicate this and we paid all the rent we believed was due. Please furnish the supporting documentation, such as work sheets, that led to the conclusion in the report.
2. Required Fire Safety Work- This work was performed in 1997 and 1998 (see attached documentation).

Please amend your report to reflect the fact that the Required Fire Safety Work was performed. After we receive your worksheets, we can resolve the Calculation of the Final Fee and the Report can be completed.

Thank you for the opportunity to comment on the report.

Sincerely,

Joel Boruchow

Cc: Mr. Ernesto Padron
New York City Economic Development Corporation

Alma Fana
Audit Manager
Office of the Controller

Mr. Paul Travis
Washington Square Partners

From: Kevin Lorenz <klorenz@alliedcms.com>
Date: Fri, 4 Jun 2010 10:17:55 -0400
To: Paul Travis <paultravis@washsquare.com>
Cc: Joel Boruchow <JBoruchow@enkshows.com>
Subject: Pier 94 Audit

Paul

Regarding the audit of Pier 94, attached are copies of the Pier 94 Scope of Work – Interim Period and the Application and Certificate for Payment #: 7 with back up for the period ending July 15, 1998.

The Scope of Work was the original Scope used for the Contract with Cava Construction, the General Contractor for the project. Contained in this Scope is the Drywall work for the egress corridors and the Metal and Glass Storefronts and Frames.

On the back up spreadsheet prepared by Allied, the Drywall work is shown on page 2 under the Item Number 900: Finishes. The Metal and Glass Storefronts and Frames are indicated on page 1 under the Item Number 880: Aluminum Entrance Doors.

If you look to the right of each of these Line Items under Column "Q", you can see that by the date of this Application (July 15, 1998) all of the work is indicated as being 100% complete.

I hope that this answers your questions.

Kevin J. Lorenz, AIA
President

Allied / CMS, Inc.
Construction Management Services
675 Third Avenue, 25th Floor
New York, New York 10017

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Pier 94
Scope of Work
Interim Period

Demolition:

Remove debris inside pier and from surrounding walkway and roadway. Demolish existing block rooms. Demolish 3 sections of concrete base wall (6 feet wide each) at the north and south side of the Pier as it joins the headhouse.

Concrete/Masonry

Patch slab.

Steel

Repairs to roll down doors/gates. Fencing along pier aprons as necessary. Reinforcing steel for storefront. Structural steel support for drywalls, ceiling and egress corridors. Cut new 6 foot egress door openings as required by code in existing roll down doors on north and south sides of Pier.

Waterproofing

Repair roof, gutters and exterior.

Metal/Glass; Doors/Frames

Aluminum entry storefront. Hollow metal egress doors as required by code with directional exit signs.

Drywall/Carpentry

10 foot high 2 hour rated egress corridors in headhouse with ceilings and fire egress doors with hardware. 10 foot high two hour rated drywall fire separation walls running along the north and south sides of the Pier (approximately 360 feet from the headhouse). 10 foot high demising wall segregating Pier and one layer gypsum board to underside of trusses with fire egress door with hardware at approximately 360 feet from headhouse.

Painting

Clean walls, trusses, roof and floor. Paint floor, new sheetrock and entire exterior facade.

Plumbing

Modify existing services at headhouse. New temporary bathroom at middle of Pier.

EVAC

Horizontal ductwork distribution, exterior penetrations for temporary units.

016. Ac. 1558

APPLICATION AND CERTIFICATE FOR PAYMENT AIA DOCUMENT G702 (Instructions on reverse side) PAGE ONE OF TWO PAGES

TO OWNER: The Unconvention Center, Inc.
3 East 54th Street
New York, NY 10022

PROJECT: The Unconvention Center
755 12th Avenue

FROM CONTRACTOR: Cava Construction, Inc.
133 So. MacQuesten Parkway
Mount Vernon, NY 10550

VIA (Owners Rep.) Allied / CMS, Inc.

APPLICATION NO: SEVEN (7) PERIOD TO: OWNER ARCHITECT CONTRACTOR

PROJECT NOS.: 90-101

CONTRACT DATE: April 1, 1999

Job #

1805
798
1071

CONTRACT FOR:

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner and that current payment shown herein is now due.

CONTRACTOR: [Signature] Date: 7/29/99

State of: _____
County of: _____
Subscribed and sworn before me this _____ day of _____
Notary Public
My Commission expires: _____

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for Payment, as shown below, in connection with the Contract, Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 1,412,074.00
2. Not change by Change Orders \$ 423,609.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 1,835,683.00
4. TOTAL COMPLETED & STORED TO DATE \$ 1,746,891.00
(Column G on G703)
5. RETAINAGE:
 - a. % of Completed Work \$ 06.451.00
(Column D + E on G703)
 - b. % of Stored Material \$ _____
(Column F on G703)
- Total Retainage (Line 5a + 5b of Total in Column I of G703) \$ 06,451.00
6. TOTAL EARNED LESS RETAINAGE \$ 1,660,440.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 1,497,497.00
8. CURRENT PAYMENT DUE \$ 162,943.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 175,743.00

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	Change order #3/4	
Total approved this Month	408,833.00	
TOTALS	408,833.00	
NET CHANGES BY Change Order	416,121.00	

ARCHITECT: _____ Date: _____
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1

Allied / CMS, Inc. Construction Management Services. APPLICATION FOR PAYMENT

Client: The Unconvention Center, Inc. **General Contractor:** Cwa Construction
Project: The Unconvention Center **Architect / Engineer:** 58 Holliffe Avenue
 Location: Pier 94 @ 54th Street & Raritan Ave New York, NY **Contract Number:** 10920
Date of Application for Payment: July 15, 1998 **Application Number:** Seven (7)
 One Rockefeller Plaza, Suite 500 New York, NY 10020

A Item No.	BUDGET INFORMATION			CURRENT APPLICATION			PREVIOUS APPLICATIONS			PROJECT TOTALS			
	C Original Budget	D Approved Changes	E Revised Budget (C+D)	Y Application Amount	G Retention Amount	H Application Less Ret. (Y-G)	J Application Amount	K Retention Amount	L Application Less Ret. (J-K)	N Completed & Stored (P+J)	O Retention Amount (O+K)	P Application Less Ret. (N+L)	Q % Complete (N/Q)
100 General Conditions													
111 General Condition	\$75,310	\$0	\$75,310	\$6,739	\$0	\$6,739	\$6,739	\$0	\$6,739	\$1,544	\$1,544	\$1,544	95%
112 Insurance	\$18,878	\$0	\$18,878	N/A	\$1,692	\$1,692	N/A	\$1,692	\$1,692	\$1,986	\$1,986	\$1,986	95%
120 Exc	\$62,739	\$0	\$62,739	\$1,648	\$1,368	\$1,368	\$3,699	\$2,331	\$1,368	\$59,821	\$2,981	\$56,840	95%
200 Site Work													
201 Demolition	\$45,500	\$0	\$45,500	\$0	\$0	\$0	\$45,679	\$2,384	\$43,295	\$45,679	\$2,284	\$43,395	100%
Misc. Power Washing	\$34,000	\$0	\$34,000	\$0	\$0	\$0	\$37,000	\$1,700	\$35,300	\$34,000	\$1,700	\$32,300	100%
Misc. Curb & Sidewalk Curb	\$5,000	\$0	\$5,000	\$0	\$0	\$0	\$5,000	\$250	\$4,750	\$5,000	\$250	\$4,750	100%
Misc. Fence	\$12,285	\$0	\$12,285	\$614	\$31	\$583	\$11,671	\$584	\$11,087	\$12,285	\$613	\$11,671	100%
300 Concrete													
Misc. Floor Patching	\$7,500	\$0	\$7,500	\$0	\$0	\$0	\$7,500	\$375	\$7,125	\$7,500	\$375	\$7,125	100%
500 Metals													
510 Structural Metal Framing	\$39,000	\$0	\$39,000	\$0	\$0	\$0	\$39,000	\$1,950	\$37,050	\$39,000	\$1,950	\$37,050	100%
Misc. Repair of Roll Downs	\$10,000	\$0	\$10,000	\$0	\$0	\$0	\$10,000	\$500	\$9,500	\$10,000	\$500	\$9,500	100%
700 Thermal & Moisture Protection													
700 Insulation	\$3,816	\$0	\$3,816	\$0	\$0	\$0	\$3,816	\$191	\$3,625	\$3,816	\$191	\$3,625	100%
760 Interior	\$11,500	\$0	\$11,500	\$0	\$0	\$0	\$11,500	\$975	\$10,525	\$11,500	\$975	\$10,525	100%
710 Roof Repair	\$43,940	\$0	\$43,940	\$0	\$0	\$0	\$41,940	\$2,107	\$39,833	\$43,940	\$2,107	\$41,833	100%
Misc. Waterproof Overhead Doors	\$24,360	\$0	\$24,360	\$0	\$0	\$0	\$23,360	\$1,218	\$22,142	\$24,360	\$1,218	\$23,142	100%
800 Doors													
820 Five Doors w/ Panic Bar	\$16,180	\$0	\$16,180	\$0	\$0	\$0	\$16,180	\$1,809	\$14,371	\$16,180	\$1,809	\$14,371	100%
830 Rolling Door (220 RKB)	\$3,700	\$0	\$3,700	\$0	\$0	\$0	\$3,700	\$185	\$3,515	\$3,700	\$185	\$3,515	100%
870 Door Frame & Install	\$4,100	\$0	\$4,100	\$0	\$0	\$0	\$4,100	\$365	\$3,735	\$4,100	\$365	\$3,735	100%
880 Alarm Entrance Door	\$39,500	\$0	\$39,500	\$1,875	\$104	\$1,979	\$39,623	\$1,481	\$38,142	\$39,623	\$1,481	\$38,142	100%

SCOPE OF WORK		BUDGET INFORMATION				CURRENT APPLICATION				PREVIOUS APPLICATIONS				PROJECT TOTALS:				
		A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
Item No.	Description of Work:	Original Budget:	Approved Changes:	Revised Budget:	Application Amount:	Retention Amount:	Application Less Ret.	Application Less Ret.	% Complete	Application Amount:	Retention Amount:	Application Less Ret.	Application Less Ret.	Completed & Stored:	Retention Amount:	Application Less Ret.	% Complete	
900	Flaherty																	
923	Drywall Wall	\$132,660	\$0	\$132,660	\$0	\$0	\$0	\$0	100%	\$132,660	\$6,633	\$126,027	\$126,027	\$132,660	\$6,633	\$126,027	100%	
923	Drywall Ceiling	\$84,048	\$0	\$84,048	\$0	\$0	\$0	\$0	100%	\$84,048	\$4,202	\$79,846	\$79,846	\$84,048	\$4,202	\$79,846	100%	
923	Drywall Return	\$9,900	\$0	\$9,900	\$0	\$0	\$0	\$0	100%	\$9,900	\$495	\$9,405	\$9,405	\$9,900	\$495	\$9,405	100%	
990	Family	\$106,408	\$0	\$106,408	\$1,972	\$1,976	\$104,432	\$104,432	10%	\$53,202	\$2,660	\$50,542	\$50,542	\$53,202	\$2,660	\$50,542	80%	
	Misc. Metal Wall Bracing	\$6,310	\$0	\$6,310	\$0	\$0	\$0	\$0	100%	\$6,310	\$315	\$5,995	\$5,995	\$6,310	\$315	\$5,995	100%	
1000	Specialties:																	
	Nile Paint Co. Inc.	\$15,000	\$0	\$15,000	\$0	\$0	\$0	\$0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0%	
1500	Mechanical:																	
1510	Fluores & Accessories	TBD	\$0	\$0	\$0	\$0	\$0	\$0	0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	0%	
1540	Plumbing	\$1,100	\$0	\$1,100	\$0	\$0	\$0	\$0	100%	\$1,100	\$55	\$1,045	\$1,045	\$1,100	\$55	\$1,045	100%	
1550	HVAC	\$299,250	\$0	\$299,250	\$29,272	\$1,496	\$28,429	\$28,429	10%	\$29,130	\$12,837	\$16,293	\$16,293	\$29,130	\$12,837	\$16,293	95%	
1600	Electrical:																	
1605	Electrical	\$173,870	\$0	\$173,870	\$17,567	\$578	\$16,619	\$16,619	10%	\$158,033	\$7,902	\$150,131	\$150,131	\$173,802	\$7,280	\$166,522	100%	
1610	Lighting	\$100,000	\$0	\$100,000	\$10,000	\$0	\$9,000	\$9,000	10%	\$90,000	\$4,500	\$85,500	\$85,500	\$100,000	\$5,000	\$95,000	100%	
	Change Order:																	
	CO#1 Concrete	\$0	\$7,488	\$7,488	\$0	\$0	\$0	\$0	100%	\$7,488	\$374	\$7,114	\$7,114	\$7,488	\$374	\$7,114	100%	
	CO#2 Add Bathroom	\$0	\$257,000	\$257,000	\$57,460	\$8,800	\$54,510	\$54,510	59%	\$214,330	\$10,717	\$203,613	\$203,613	\$271,730	\$13,587	\$258,143	95%	
	CO#3 Access Doors	\$0	\$4,121	\$4,121	\$0	\$0	\$0	\$0	100%	\$4,121	\$206	\$3,915	\$3,915	\$4,121	\$206	\$3,915	100%	
	CO#4 Electrical Installation in Place	\$0	\$115,000	\$115,000	\$0	\$0	\$0	\$0	0%	\$115,000	\$5,632	\$109,368	\$109,368	\$115,000	\$5,632	\$109,368	90%	
PROJECT TOTALS:		\$1,412,074	\$423,609	\$1,835,683	\$171,424	\$8,486	\$164,938	\$164,938	9%	\$1,575,467	\$77,964	\$1,497,503	\$1,497,503	\$1,746,891	\$86,451	\$1,660,440	86%	

Cheryl M. Longstreet
Vice President & Counsel

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Chicago IL 60654 USA
merchandiseartproperties.com
312 527 7545 P
312 527 7072 F
clongstreet@mmart.com



MMPI

VIA EMAIL AND FEDERAL EXPRESS

June 22, 2010

Ms. Tina Kim
Deputy Comptroller for Audits
The City of New York
Office of the Comptroller
1 Center Street Room 1100
New York, N. Y. 10007-2341

Re: Audit of Piers 92 and 94
Audit Period January 1, 2007 – December 31, 2009
Audit Report Dated June 8, 2010
FN10-086A

Ms. Kim :

Pursuant to your June 8 "Draft Report" for the above mentioned audit, we are providing a written response of our concerns related to your Audit Report Dated June 8, 2010 for the Audit of Piers 92 and 94 for the period of January 1, 2007 – December 31, 2009 ("Report"). Thank you for your cooperation in managing this audit and the final report with us.

The following comments are in order of the report:

1. MMPI Understated Its Events Revenue by \$45,257.

We disagree with this statement. It was based on a view of the Occupancy Permit that we do not share. The calculation of the Events Revenue was done in strict accordance with the Occupancy Permit which MMPI is required to adhere. In relation to the question of how MMPI is to account for the parking operating expenses, MMPI disagrees with the assertion that parking operating expenses should be deducted from parking revenue for purposes of calculating the Parking Revenue Participation Charge ("PRPC"). As defined in Section 4(b)(ii), the PRPC is equal to 50% of the "Threshold Gross Revenues" (emphasis added), which is defined as being the "Parking Gross Revenues" (emphasis added) over \$400,000. Further as set for in Section 19, "Parking Gross Revenues" are defined as "the sum of all revenues, receipts, income, fees,

proceeds, property (valued according to its fair market value), any other forms of consideration of whatever kind or nature collected by Permittee..." without any deductions of related expenses.

However, when determining the "Event Revenue Participation Charge" ("ERPC"), as defined in Section 4(b)(i)), the Occupancy Permit is clear that that amount is calculated on a "net" basis. The ERPC "is equal to a participation rate of fifteen percent (15%) of Net Operating Income..." "Net Operating Income" (emphasis added) is defined as the Event Gross Revenues less the "Operating Expenses". In Section 4(b)(iii) "Operating Expenses" are defined as all costs and expenses for "on-site operating expenses in connection with the permitted Use of the Premises". As stated in Section 1(d), the "Premises" include all of Piers including the rooftop of Pier 92 where the parking is located. Further, as stated in Section 2(a)(ii) the definition of "Use" specifically includes parking on the roof of Pier 92. Therefore, the expenses related to the parking garages should be included in the Operating Expenses and deducted from the Event Gross Revenues, not the Parking Gross Revenues.

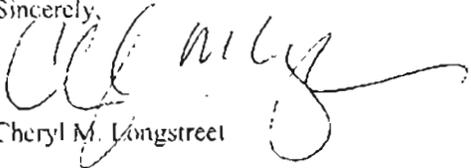
2. In relation to the \$968 underpayment of rent, while MMPJ did pay the amount that it was invoiced by Apple Industrial Development Corp., that amount was discovered to be an incorrect pro-ration and MMPJ has remitted an additional \$968 to Apple Industrial Development Corp. for this amount. This amount should be noted separately from the Security Deposit amount noted below. (See attached Exhibit A for confirmation.)

3. MMPJ has submitted an additional \$6,000 towards its Security Deposit to Apple Industrial Development Corp. This amount should be noted separately from the rental amount pro-ration. (See attached Exhibit A for confirmation.)

4. Lastly, in relation to the Auditor's comments that MMPJ submitted invoices to the NYCEDC in excess of the amounts noted for improvement in its Occupancy Permit, it should be noted that MMPJ is involved in an on-going relationship with the City and it has and will continue to submit confirmation of all of its additional work in furtherance in this on-going relationship.

Please let us know if you have any additional requests of us. We look forward to finalizing this audit on an expedited basis.

Sincerely,


Cheryl M. Longstreet

Cc: Barry Langer
Myron D. Maurer
Randall F. Clark
Lorenz Hassenstein
Lynn Currie
Ernest Padron

EXHIBIT A

Transfer Type: Domestic Wire	Accepted on: Jun 11, 2010 at 11:07:05 AM
MEMORANDUM	Send Date: Jun 11, 2010
Merchandise Mart Properties Inc 222 Merchandise Mart Ste 470 Chicago, IL 60654	
Debit Bank: BOACHGO355 - Bank of America Chicago 355	Credit Bank: 021000021 - JPMORGAN CHASE BANK, NA
Debit Account: 5000249731 - Merchandise Mart Properties Inc	Credit Account: 9302691350 - Apple Industrial Development Corp New York NY
Debit Currency: USD - US Dollar	Credit Currency: USD - US Dollar
Debit Amount: 6,967.74	Credit Amount: 6,967.74
Template ID: MMP1APPLEIND - 0 Approvers	
Originator Info: line 1 - MMP) Piers 92,94 Lease Payment	
Remittance Info: line 2 - Addl Security Deposit 6000.00	
line 3 - Addl Boco Rent for Dec 09 967.75	
Entry Custodian: MERC MART - REBECCAN	Value Date: Jun 11, 2010
	Entry Date/Time: Jun 11, 2010 - 11:07:04 AM
Bank Trace #: 0011100002107	Cost Trace #: 0011100002107

Please press the print button on your browser to generate a hard copy of this wire transfer request.
This transaction is subject to bank rules and regulations governing such electronic transactions as described in our services agreement. Please keep these numbers handy in case you have any questions regarding this transaction.
If any portion of the above is incorrect, or you have further questions, please contact customer service. Thank You



June 22, 2010

H. Tina Kim, Deputy Comptroller for Audit
The City of New York
Office of the Comptroller
1 Centre Street
New York, New York 10007-2341

Re: Response to Audit Report on the Operation and Management of Piers 92 and 94
FN10-086A

Dear Ms. Kim:

Thank you for the opportunity to respond to the above referenced Draft Audit Report. Below are NYCEDC's responses to your recommendations.

Recommendation #6: Approve only capital improvements outlined in the occupancy permit with MMPI.

NYCEDC's Response: NYCEDC agrees. As the report notes, to date, NYCEDC has not taken any actions in contravention of this recommendation, and in fact, not yet approved any charges that have been submitted by the tenant, relating to this recommendation. NYCEDC has extensive processes and controls in place that ensure only eligible expenses are reimbursed for all of our agreements. EDC intends, as it always does, to approve only those amounts that are permitted pursuant to its agreements with MMPI.

Recommendation #7: Ensure that the operators pay the correct base charge and security deposit, and verify the accuracy of participation charge calculations.

NYCEDC's Response: NYCEDC partially agrees. NYCEDC has already requested and, on June 12, 2010, received a payment from MMPI in the amount of \$6,968.

With respect to the amount due from the Un-Convention Center, the situation is complicated by the fact that NYCEDC is uncertain if the entity is solvent. NYCEDC is working with legal counsel to decide upon the most appropriate action to take on this recommendation.

Recommendation #8: Recoup \$81,387 from Un-Convention for unfinished capital improvements.

NYCEDC's Response: NYCEDC disagrees. At the time of the original billing, NYCEDC took all reasonable and prudent steps to ensure amounts that it was paying were properly payable. In conjunction with the draft audit, NYCEDC went back to [Unconvention] to request additional documentation to confirm that its original payments were proper. Based on this additional documentation NYCEDC continues to believe that the payment

was proper. We have shared this information with the auditors and we believe no further action is required.

Recommendation #9: Ensure that the necessary improvements and maintenance work at the piers are performed in a timely manner.

NYCEDC's Response: NYCEDC agrees. NYCEDC has already programmed the recommendations included in the January 2007 and January 2008 inspection reports for Pier 94 and Pier 92, respectively, and has prioritized repairs in order to maintain the service capacity of the piers in accordance with the occupancy permit. Design for these repairs has been completed. Construction has already begun on Pier 92. Construction on Pier 94 will begin this calendar year pending approval of the design by regulatory agencies, for which applications have already been submitted.

Thank you for the opportunity to respond to the recommendations in the audit report.

Very truly yours,



Christopher Malin
Controller

cc: Seth Pinsky
Jason Wright
Becky Ta
David Lombino
John Cicerello
Hope Mallari