

# AUDIT REPORT



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

## **Audit Report on the Compliance of Concert Foods with Its Department Of Parks and Recreation Contract**

*FK09-129A*

**December 21, 2009**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Concert Foods with its Department of Parks and Recreation contract.

Concert Foods' agreement with the City permits it to operate a snack bar and two pushcarts at the Sheep Meadow Café (north of the Sheep Meadow in Central Park). We audit concessions such as this to ensure that private concerns under contract with the City comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

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

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

Very truly yours,

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

William C. Thompson, Jr.

WCT/fh

**Report: FK09-129A**  
**Filed: December 21, 2009**

## *Table of Contents*

<b>AUDIT REPORT IN BRIEF</b> .....	1
Audit Findings and Conclusions .....	1
Audit Recommendations .....	2
<b>INTRODUCTION</b> .....	3
Background .....	3
Objectives .....	3
Scope and Methodology .....	4
Discussion of Audit Results.....	9
<b>FINDINGS</b> .....	11
Concert Foods Failed to Report Gross Receipts of at least \$93,002 .....	11
Catering Services .....	12
Restaurant .....	12
Snack Bar .....	12
Concert Foods Lacked Sales Records and Internal Controls.....	14
Catering Services .....	14
Restaurant .....	15
Snack Bar .....	16
Concert Foods Failed to Expend \$156,047 on Capital Improvements and Make Specified Capital Improvements and Necessary Repairs .....	17
Concert Foods Did Not Comply with Other Permit Provisions .....	19
Scope of Operations and Vending Space.....	19
Authorized Products and Merchandise and Price Lists .....	19
Permits and Licenses.....	20
Insurance .....	21
Sales Tax.....	21
Parks Did Not Adequately Monitor Concert Foods’ Performance and Enforce Significant Agreement Terms and Conditions .....	22
Sales records .....	22
Capital Improvements.....	22
Scope of Operations and Vending Space.....	25
Authorized Products and Merchandise and Price Lists .....	26
Permits and Licenses.....	26
Insurance.....	27
<b>RECOMMENDATIONS</b> .....	28
<b>APPENDIX</b> Parks Capital Division Letters Sent to Concert Foods Requesting Proof of Payment for Capital Expenditures	
<b>ADDENDUM I</b> Response from Concert Foods	
<b>ADDENDUM II</b> Response from Parks	

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

**Audit Report on the Compliance of  
Concert Foods with Its  
Department of Parks and Recreation Contract**

**FK09-129A**

---

**AUDIT REPORT IN BRIEF**

Under a contract with the Department of Parks and Recreation (Parks), Concert Foods was authorized to operate a snack bar and two pushcarts at the Sheep Meadow Café (north of the Sheep Meadow in Central Park). The agreement covered the six-year period February 5, 2003–March 31, 2009. Under the terms of the agreement, Concert Foods agreed to pay Parks the higher of \$105,233 or 20 percent of gross receipts for the period May 1, 2008–March 31, 2009, and to submit specified documentation to Parks to substantiate its gross receipts. For the period ending March 31, 2009, Concert Foods reported gross receipts of \$637,386 and paid permit fees of \$127,477 based upon reported receipts.

The permit agreement also required Concert Foods to sell only authorized items at Parks-approved prices, maintain snack bars, restrooms, and surrounding area, and perform capital improvements in each operating year. Concert Foods was also required to conform to certain non-revenue related requirements of the agreement and to return equipment to Parks or replace it upon the expiration of the agreement.

In addition to the Sheep Meadow Café, Concert Foods operated two other concessions on City-owned properties in Central Park—the Delacorte Theatre and Rumsey Playfield. This audit pertains only to Concert Foods’ financial and operating practices for the Sheep Meadow Café.

**Audit Findings and Conclusions**

Concert Foods failed to report gross receipts of at least \$93,002 and, therefore, owes the City \$20,519—\$18,600 in fees and \$1,919 in penalties and interest. Further, Concert Foods failed to report additional gross receipts of \$46,673 that it maintained were generated at another Concert Foods concession, the Delacorte Theatre. Although we know that Concert Foods did not report all revenue earned at the Sheep Meadow Café, we could not determine the total gross receipts or the corresponding payments due the City because Concert Foods alleged it lacked sales records and Concert Foods lacked internal controls of any kind over the collecting, recording, and reporting of revenues. Given Concert Foods’ failure to report gross receipts of *at*

*least* \$93,002 and the utter lack of sales records and internal controls, it appears that Concert Foods may have perpetrated fraud.

Concert Foods also failed to expend \$156,047 on capital improvements and make specified capital improvements and necessary repairs to the Sheep Meadow Café. During the course of our audit, Concert Foods paid Parks \$31,487 toward its capital improvements requirement and Parks accepted this money in lieu of required capital improvement expenditures. Therefore, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement. However, Parks may not be able to collect the total \$145,079 owed it—\$124,560 for capital improvements and \$20,519 for fees, penalties, and interest—because the Concert Foods agreement has expired, and its required security deposit was only \$26,308.

The audit also revealed that Concert Foods expanded the scope of its operations and vending space, sold unauthorized items, and charged customers more than amounts approved by Parks. Further, Concert Foods did not obtain necessary permits and licenses, designate insured parties as specified, and pay all New York State and City sales tax. Concert Foods did not comply with and fulfill these contractual obligations, and Parks failed to adequately monitor Concert Foods' performance and enforce the terms and conditions of its agreement, as required by the New York City Charter, Chapter 14, §365. In fact, the oversight by Parks was so lacking that it created an environment conducive to fraud.

### **Audit Recommendations**

Ordinarily we would address our recommendations to Concert Foods, but its permit has expired, and it was not awarded this concession again. Therefore, we address our recommendations solely to Parks. We make four recommendations with regard to Concert Foods and 10 recommendations with regard to future snack bar concessions, including that Parks should:

- Seize Concert Foods' security deposit of \$26,308 and apply it toward the \$145,079 it owed Parks for capital improvements, fees, penalties, and interest.
- Refer the collection of the remaining \$118,771 owed it for capital improvements, fees, penalties, and interest to the New York City Law Department.
- Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.
- Monitor concessionaires' performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, §365.
- Issue Notices to Cure, assess liquidated damages when permissible, and follow up on concessionaires that do not comply with and fulfill agreement provisions.
- Issue Advices of Caution in the City's VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

## INTRODUCTION

### **Background**

Concert Foods was authorized to operate a snack bar and two pushcarts at the Sheep Meadow Café (north of the Sheep Meadow in Central Park), under a contract with the Department of Parks and Recreation (Parks). The agreement covered the six-year period February 5, 2003–March 31, 2009. Under the terms of the agreement, Concert Foods agreed to pay Parks the higher of \$105,233 or 20 percent of gross receipts for the period May 1, 2008–March 31, 2009. Concert Foods was required to submit certified, properly segregated statements of gross receipts to Parks monthly and maintain specified sales records in a form suitable for audit. Further, Concert Foods was required to retain these records for at least six years and make them available to the Office of the Comptroller and Parks on demand. For the period ending March 31, 2009, Concert Foods reported gross receipts of \$637,386 and paid permit fees of \$127,477 based upon reported receipts.

The permit agreement also required Concert Foods to sell only authorized items at Parks-approved prices, maintain snack bars, restrooms, and surrounding area, and perform capital improvements in each operating year. Concert Foods was also required to obey all relevant laws and regulations, obtain all necessary permits and licenses, maintain certain types and amounts of insurance coverage, post a security deposit of \$26,308 with the City, collect and pay New York State and City sales tax, and pay utility charges. And upon the expiration of its agreement, Concert Foods was to return equipment to Parks or replace it.

In addition to the Sheep Meadow Café, Concert Foods operated two other concessions on City-owned properties in Central Park—the Delacorte Theatre and Rumsey Playfield. This audit pertains only to Concert Foods’ financial and operating practices for the Sheep Meadow Café.

### **Objectives**

The objectives of this audit were to determine whether:

- Concert Foods accurately and completely reported gross receipts of the Sheep Meadow Café, properly calculated permit fees due the City, and paid permit fees on time,
- Concert Foods complied with certain other non-revenue-related requirements of its permit agreement, and
- Parks adequately monitored Concert Foods’ performance and enforced the terms and conditions of its agreement with Concert Foods, as required by the New York City Charter, Chapter 14, §365.

## **Scope and Methodology**

We conducted this performance audit in accordance with generally accepted government auditing standards—except for our inability to obtain sufficient, appropriate evidence to determine the total gross receipts of the Sheep Meadow Café or the corresponding total payments due the City for the audit period. This issue is more fully disclosed in the subsequent paragraph. 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.

We intended to determine whether cash receipts were accurately and completely recorded and reported to Parks. However, Concert Foods lacked sales records and internal controls of any kind over the collecting, recording, and reporting of revenues. Most notably, Concert Foods did not retain sales records for the Sheep Meadow Café restaurant, did not maintain pre-numbered, sequential agreements that were signed by customers for Sheep Meadow Café catering services, and did not provide access to snack bar cash registers and retain detailed sales records for Sheep Meadow Café snack bar sales. Since Concert Foods did not provide us sales records and failed to implement internal controls, we could not determine the total gross receipts or the corresponding total payments due the City.

With regard to capital improvements, the audit covered the period February 5, 2003–March 31, 2009. For all other tests, the audit covered only the period May 1, 2008–March 31, 2009 because Concert Foods could not provide sales records prior to this period. Concert Foods Vice President purported that sales records for previous operating years were damaged by a water heater leak and subsequently discarded.

To gain an understanding of the policies, procedures, and regulations governing the operation of the Sheep Meadow Café, we reviewed the permit agreement between Concert Foods and Parks and interviewed Concert Foods and Parks officials. We interviewed Concert Foods Vice President to obtain an understanding of and to evaluate procedures for recording and reporting gross receipts for the Sheep Meadow Café.

To determine whether Concert Foods accurately and completely reported gross receipts, properly calculated permit fees due the City, and paid permit fees on time, we performed the following tests of the various Sheep Meadow Café operations.

### **Catering Services**

We requested copies of signed agreements and invoices for Sheep Meadow Café catering services. However, Concert Foods claimed that it maintained only catering proposals submitted to customers. Moreover, only one of six catering proposals provided was signed by customers. As Concert Foods did not maintain pre-numbered, sequential agreements that were signed by customers, we do not know whether we received sales records for all Sheep Meadow Café

catering events and whether the sales records provided accurately and completely represented catering service charges. Therefore, we also sent letters to customers who received catering proposals to confirm the amounts they paid for catering events.

Although we do not know whether we received sales records for all Sheep Meadow Café catering events and whether the sales records provided accurately and completely represented catering service charges, we calculated minimum gross receipts for Sheep Meadow Café catering services based on the Concert Foods catering proposals and invoices, credit card slips, and checks, and compared this figure to Sheep Meadow Café catering service gross receipts reported by Concert Foods.

### **Restaurant**

We purchased items at the Sheep Meadow Café restaurant to evaluate the controls over the receiving and recording of cash and to determine whether these sales were accurately and completely recorded and reported to Parks. We repeatedly requested copies of guest checks, but Concert Foods did not provide them to us until after our exit conference. Consequently, we cannot rely on these records because they were provided to us 11 months after our initial request. Further, Concert Foods did not provide us guest checks for all operating days or all the guest checks within pre-numbered sequences that were used.

In the absence of sales records, we could not determine cash receipts and total gross receipts for the Sheep Meadow Café restaurant. However, we determined minimum gross receipts for the restaurant by estimating its credit card receipts. We requested and reviewed copies of credit card merchant statements for the credit card terminal used to process Sheep Meadow Café restaurant and catering service sales transactions. Concert Foods maintained that it provided us with credit card slips for all catering services that were charged to credit cards. Therefore, we estimated restaurant credit card receipts by first excluding catering service sales—based on catering proposals, correspondence, and credit card slips—from credit card merchant statement sales totals and then reducing the balance by the combined New York State and New York City sales tax rate of 8.375 percent. We then compared this figure to Sheep Meadow Café restaurant gross receipts reported by Concert Foods.

At our exit conference, Concert Foods maintained that gross receipts totaling \$46,673 that were attributed to the Sheep Meadow Café restaurant pertained to meals and catering services provided at another Concert Foods concession—the Delacorte Theatre—and thus not subject to reporting and fee requirements under its contract with Parks. Concert Foods subsequently provided us catering proposals, correspondence, and credit card slips and merchant statements in support of this assertion. We conducted a site visit of the Delacorte Theatre to determine whether it was feasible to provide meals and catering services there—i.e., whether food preparation and seating areas were available. However, the Delacorte Theatre Manager informed us that food preparation areas and facilities had been totally renovated since the time of our audit. Therefore, we could not determine whether the Delacorte Theatre was a viable catering site.



Given the lack of adequate documentation and the fact that these transactions were processed through the Sheep Meadow Café credit card terminal, we questioned whether these sales should have been reported to Parks, and we quantified gross receipts based on catering proposals, correspondence, and credit card slips and merchant statements.

### **Snack Bar**

We conducted unannounced observations of the Sheep Meadow Café snack bar to evaluate the controls over the receiving and recording of cash. We purchased items at the snack bar and intended to determine whether these sales were accurately and completely recorded and reported to Parks. We requested copies of detailed cash register tapes for sales recorded on snack bar cash registers. However, Concert Foods generally did not maintain detailed cash register tapes.

We also intended to review detailed cash register tapes to determine whether cash register cumulative gross receipts figures accurately and completely reflected Sheep Meadow Café snack bar sales. Specifically, we intended to determine whether transactions that reduce gross receipts—refunds, voids, and negative sales—and instances in which the register drawer was opened but no sale was recorded—“no sale” entries—were reasonable and appropriate. However as noted, Concert Foods generally did not maintain detailed cash register tapes. Therefore, we could not determine whether cash register cumulative gross receipts figures accurately and completely reflected Sheep Meadow Café snack bar sales.

Nevertheless, we requested an inventory of and access to cash registers used at the Sheep Meadow Café snack bar. We intended to inspect all cash registers used at the snack bar, record their cumulative totals, and calculate gross receipts based on beginning and year-end totals. However, Concert Foods did not provide access to the two registers used to record snack bar sales from April through nearly all of July 2008 because the registers purportedly broke down and were discarded. As these registers were allegedly discarded, we could not inspect them, record cumulative totals, and calculate gross receipts. For the new cash register put into service on July 29, 2008, we based gross receipts on its year-end cumulative total.

Although we could not be reasonably assured that the cash register tapes accurately and completely reflected Sheep Meadow Café snack bar sales, we determined minimum snack bar gross receipts based on beginning and year-end cumulative totals indicated on the available summary and detailed cash register tapes and daily sales figures indicated on management reports. We then compared this figure to Sheep Meadow Café snack bar gross receipts reported by Concert Foods.

### **All Sheep Meadow Café Operations**

We compared our minimum estimate of gross receipts for all Sheep Meadow Café operations to gross receipts reported by Concert Foods and determined minimum unreported gross receipts. As Concert Foods percentage fees exceeded its minimum fee of \$105,233, we calculated minimum additional fees due the City of 20 percent of minimum unreported gross

receipts. And we assessed late penalties of two percent and monthly interest charges of two percent on these additional fees.

As we could not determine total gross receipts for the Sheep Meadow Café using sales records, we intended to estimate gross receipts based on inventory records. Specifically, we intended to contact vendors independently to determine the quantities of food and beverage items sold at the Sheep Meadow Café and calculate the revenue earned from the sale of these items. However, we could not perform this test because Concert Foods purchased food and beverage items for all of its concessions from a wholesale cash-and-carry supplier making it impossible to identify and quantify those items used only by the Sheep Meadow Café.

To determine whether Concert Foods complied with certain other non-revenue related requirements of its permit agreement, we reviewed Concert Foods agreement provisions related to scope of operations, vending space, authorized products and merchandise, price lists, sanitation, capital improvements, permits and licenses, insurance, security deposit, sales tax, utility costs, and fixed equipment. And we conducted the following tests to determine whether Concert Foods complied with and fulfilled these provisions.

### **Scope of Operations and Vending Space**

We observed Sheep Meadow Café operations and determined whether they were authorized and confined to specified locations.

### **Authorized Products and Merchandise and Price Lists**

We observed and documented snack bar and restaurant items for sale and sales prices and obtained snack bar and restaurant menus and price lists on file at Parks. We then compared items and pricing documented by auditors to those on file with and approved by Parks and identified discrepancies.

### **Sanitation**

We reviewed New York City Department of Health and Mental Hygiene and Parks inspection reports and related correspondence and determined whether Concert Foods maintained the Sheep Meadow Café in sanitary manner.

### **Capital Improvements**

We determined whether Concert Foods performed required capital improvements for the Sheep Meadow Café by reviewing purchase and payment documentation provided by Concert Foods and Parks, and by interviewing Parks Revenue Division Chief Architect and reviewing his approved list of capital expenditures. Further, we inspected the condition of the Sheep Meadow Café building and capital equipment purchases.

## **Permits and Licenses**

To determine whether Concert Foods obeyed all relevant laws and regulations and obtained all necessary permits and licenses for the Sheep Meadow Café, we reviewed certificates, permits, and licenses provided by Concert Foods and displayed at the Sheep Meadow Café. We also searched agencies publicly available Web sites and contacted the following agencies: Department of Buildings, Department of Consumer Affairs, Fire Department, and Department of Health and Mental Hygiene.

## **Insurance**

We reviewed Concert Foods insurance policies, declarations, and certificates and determined whether Concert Foods maintained required amounts and types of insurance for the Sheep Meadow Café and named primary and additional insured parties as specified in the agreement.

## **Security Deposit**

We confirmed that Concert Foods submitted a security deposit to the Comptroller's Office Bureau of Accountancy (Accountancy) and that Accountancy deposited these funds in the City's General Fund by obtaining and reviewing Parks Security Deposit Transmittal Form and Accountancy Report of Deposits and associated Cash Receipt Form. We also compared the amounts shown on these documents to the security deposit required by Concert Foods agreement.

## **Sales Tax**

We compared our minimum estimate of Sheep Meadow Café sales to Sheep Meadow Café sales reported on Concert Foods' monthly and quarterly sales tax returns, and determined minimum unreported sales and minimum New York State and City sales tax due for these reporting periods.

To determine whether Concert Foods collected sales tax from customers appropriately, we reviewed Sheep Meadow Café detailed sales records and determined whether applicable sales tax of 8.375 percent—4.375 percent for New York State and 4 percent for New York City—was charged and collected. Specifically, we reviewed Sheep Meadow Café snack bar cash register receipts and restaurant guest checks for purchases that we made. And we reviewed available snack bar detailed cash register tapes, restaurant guest checks, and catering proposals and invoices.

## **Utility Costs**

We reviewed provider bills and Concert Foods bank statements and checked whether billed amounts were paid. For water and sewer charges, we also viewed Concert Foods' history of charges

and payments for the Sheep Meadow Café in the Department of Environmental Protection's Customer Information System.

### **Fixed Equipment**

Since Concert Foods agreement with the City expired on March 31, 2009, we determined whether it returned or replaced all equipment that was provided. We reviewed the final Parks inspection memorandum, inspected the Sheep Meadow Café, and determined whether all equipment—including equipment provided by Parks and capital improvement equipment purchases—was returned to Parks or replaced.

To determine whether Parks adequately monitored Concert Foods' performance and enforced the terms and conditions of its agreement with Concert Foods, as required by the New York City Charter, Chapter 14, §365, we reviewed the Parks inspection reports, Notices to Cure, and related correspondence and documentation to determine whether Parks monitored Concert Foods' performance and noted Concert Foods' failure to comply with and fulfill provisions of its agreement. When Parks did so, we determined whether Parks took enforcement and subsequent follow-up action to ensure that Concert Foods complied with and fulfilled these provisions.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Concert Foods and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Concert Foods and Parks officials on July 24, 2009 and discussed at an exit conference held on August 17, 2009. On October 2, 2009, we submitted a draft report to Concert Foods and Parks officials with a request for comments. We received written responses from Concert Foods and Parks on October 19, 2009.

In its response, Concert Foods stated:

Firstly, Concert Foods believes that we have always paid all monies due the City of New York, in a timely manner, for minimum rents and commissions under the terms of this contract. The record will indicate that all payments and reports were timely filed throughout the six year term of our license agreement. This amount, totaling almost \$600,000, is in sharp contrast to the two concessionaires previous to us, both of whom defaulted on their contracts and paid the City of New York virtually nothing. We imagined, designed, built and operated the Sheep Meadow Café so that it became an important destination for both New Yorkers and visitors. We were required to invest \$240,000 in capital to this project, and, at this time, it has all been paid despite our disagreement with the Parks Department about \$13,000 of the total. . . .

Lastly, after consultation with the Parks Department, last week I submitted a check in the amount of \$8105.00. This amount, plus our deposit of \$26,519 represents all money due the Department of Parks, as per their revenue division. It

should not be interpreted as any admission of liability. Although we do not agree with the Parks Department's interpretation that gratuities should be considered as income and thus subject to additional rent, it is our desire to conclude this matter with the knowledge that to defend our position in litigation would probably cost more than the disputed amount.

In its response, Parks stated:

Parks generally agrees that Concert Foods lacked sufficient internal financial controls during the audit period, and has already addressed concerns identified in the City Comptroller's audit. However, Parks disagrees with the several of the Report's conclusions, particularly with respect to Concert Foods' capital commitment, permitted scope of operations and vending space. . . .

In summary, in addressing general oversight requirements for concessions, the Report's recommendations fully endorse and reflect Parks' current operational policies and practices. Parks continues to explore additional options for ensuring full compliance with concession requirements, including providing targeted assistance to concessionaires, to help them understand and meet their obligations.

Finally, Parks thanks the Comptroller's audit staff members for their efforts in performing this review.

Specific Concert Foods and Parks comments and our rebuttals are contained in the relevant sections of this report. However, it should be noted that Concert Foods did not have a license agreement, as Concert Foods repeatedly asserts. Rather Concert Foods operated under a permit agreement. Parks generally uses license agreements for entities whose fees are based either in whole or in part on gross receipts, and the terms its license agreements are correspondingly far more comprehensive and detailed than those of its permit agreements. Although Concert Foods fees were based upon gross receipts, Parks entered into a permit agreement with Concert Foods.

The full text of the responses received from Concert Foods and Parks are included as addenda to this report.

## FINDINGS

Concert Foods failed to report gross receipts of at least \$93,002 and therefore owes the City \$20,519—\$18,600 in fees and \$1,919 in penalties and interest. Further, Concert Foods failed to report additional gross receipts of \$46,673 that it maintained were generated at another Concert Foods concession, the Delacorte Theatre. Although we know that Concert Foods did not report all revenue earned at the Sheep Meadow Café, we could not determine the total gross receipts or the corresponding payments due the City because Concert Foods alleged it lacked sales records and Concert Foods lacked internal controls of any kind over the collecting, recording, and reporting of revenues. Given Concert Foods' failure to report gross receipts of *at least* \$93,002 and the utter lack of sales records and internal controls, it appears that Concert Foods may have perpetrated fraud.

Concert Foods also failed to expend \$156,047 on capital improvements and make specified capital improvements and necessary repairs to the Sheep Meadow Café. During the course of our audit, Concert Foods paid Parks \$31,487 toward its capital improvements requirement and Parks accepted this money in lieu of required capital improvement expenditures. Therefore, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement. However, Parks may not be able to collect the total \$145,079 owed it—\$124,560 for capital improvements and \$20,519 for fees, penalties, and interest—because Concert Foods agreement has expired and its required security deposit was only \$26,308.

The audit also revealed that Concert Foods expanded the scope of its operations and vending space, sold unauthorized items, and charged customers more than amounts approved by Parks. Further, Concert Foods did not obtain necessary permits and licenses, designate insured parties as specified, and pay all New York State and City sales tax. Concert Foods did not comply with and fulfill these contractual obligations, and Parks failed to adequately monitor Concert Foods' performance and enforce the terms and conditions of its agreement, as required by the New York City Charter, Chapter 14, §365. In fact, the oversight by Parks was so lacking that it created an environment conducive to fraud.

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

### **Concert Foods Failed to Report Gross Receipts of at least \$93,002**

At a minimum, Concert Foods failed to report gross receipts of \$93,002 and, therefore, owes the City \$20,519—\$18,600 in fees and \$1,919 in penalties and interest. Further, Concert Foods failed to report additional gross receipts of \$46,673 that it maintained were generated at another Concert Foods concession, the Delacorte Theatre. For the period May 1, 2008–March 31, 2009, Concert Foods was required to submit certified, properly segregated statements of gross receipts to Parks monthly and pay Parks the higher of \$105,233 or 20 percent of gross receipts. Concert Foods reported gross receipts of \$637,386 and paid permit fees of \$127,477 based upon reported receipts. However, Concert Foods did not report all gross receipts earned at the Sheep Meadow Café as follows:

## **Catering Services**

Concert Foods failed to report gross receipts of at least \$65,589 for Sheep Meadow Café catering services. Concert Foods provided us six catering proposals for events that it maintained were held at the Sheep Meadow Café. Although these catering proposals and related invoices, credit card slips, and merchant statements evidenced catering gross receipts of \$336,410 for these events, Concert Foods reported gross receipts of \$270,821.

Additionally, Concert Foods failed to report gross receipts totaling \$46,673 for meals and services that it maintained were provided at the Delacorte Theatre and thus not subject to reporting and fee requirements under its contract with Parks. Although Concert Foods was required to maintain separate books and records for the Sheep Meadow Café, it processed 23 transactions totaling \$46,673 that it maintained were generated at the Delacorte Theatre. However, Concert Foods provided us only unsigned catering proposals and e-mail correspondence to support this assertion. Given the lack of adequate documentation and the fact that these transactions were processed through the Sheep Meadow Café credit card terminal, we question whether these sales should have been reported to Parks.

## **Restaurant**

Concert Foods failed to report gross receipts of at least \$17,366 for the Sheep Meadow Café restaurant. Concert Foods reported restaurant gross receipts of only \$28,461. However, catering proposals, correspondence, and credit card slips and merchant statements evidenced restaurant credit card receipts of \$45,827. In addition, we could not estimate restaurant cash receipts due to the lack of complete and reliable sales records.

## **Snack Bar**

Concert Foods failed to report gross receipts of at least \$10,047 for the Sheep Meadow Café snack bar. Concert Foods reported snack bar gross receipts of \$338,104. However, cash register tapes and management reports evidenced gross receipts of \$348,151.

**Concert Foods Response:** “Quite frankly, we are quite disturbed about the tone and inference of the audit’s observation and the conclusions that it reaches, namely that sales were not properly reported. At its core, the audit suggests that it has ‘discovered’ at least \$93,002 in unreported revenue. This incorrect assumption was discussed at our exit conference. In fact, during the course of the license agreement, we deducted gratuities, taxes, and as it related to the very large 2008 Chanel agreement, items that had nothing to do with the Sheep Meadow Café. In addition, the Chanel contract, which represents the majority of the alleged ‘discovered \$93,002’ occurred, was billed, and paid to us in five invoices, and records pertaining to all invoices, credit card receipts, banking statements, etc. were given to your auditors. In addition, all this data was again given to your auditors after the exit conference.

“With regard to the question of whether gratuities are income, we understand that the Parks Department believes that, without a written exception in the license agreement,

these gratuities are required to be reported and subject to percentage payments. On two grounds, this interpretation seems to us to be unreasonable. In our license agreement there are absolutely no reference to any specific restaurant reporting requirements. In our twenty years of restaurant experience, all commercial leases and agreements exclude taxes and gratuities from reportable income. Furthermore in the ‘walk through memorandum of September 23, 2008’ prepared by your office, I am quoted as stating that we deduct 30% for tax and gratuities from all restaurant charges, therefore that this is an issue of ‘fraud perpetuation’ rather than a difference of opinion is blatantly unfair and completely outrageous.”

**Auditor Comment:** Concert Foods is *completely* disingenuous in stating that the \$93,002 that it failed to report to Parks comprises only taxes and gratuities. We agree that taxes should not be included in gross receipts when calculating percentage fees due the City and we did not do so. However, we did not exclude restaurant gratuities, catering staffing charges, and catering service charges from gross receipts because there was no provision in the Concert Foods permit agreement allowing it to do so. Nevertheless, these gratuities and charges account for only \$15,644 of the \$93,002 (at minimum) that Concert Foods failed to report to Parks. The remaining \$77,358 comprises minimum catering service sales of \$49,945, credit card restaurant sales of \$17,366, and snack bar sales of \$10,047. Although Concert Foods’ available sales records evidenced these sales, as detailed, Concert Foods did not report these sales to Parks and provided no explanation for its failure to do so.

Again, given Concert Foods’ failure to report gross receipts of at least \$93,002 and its utter lack of sales records and internal controls, it appears that Concert Foods may have perpetrated fraud.

**Concert Foods Response:** “The \$46,673 in credit card charges from the Delacorte Theater was not only in the data provided to the auditors, but was related to a separate license agreement between Concert Foods and the New York Public Theater, under which all commissions and fees were paid.”

**Auditor Comment:** It was only at our exit conference—11 months after we began our audit—that Concert Foods first maintained that gross receipts totaling \$46,673 attributed to the Sheep Meadow Café restaurant pertained to meals and catering services provided at the Delacorte Theatre and thus not subject to reporting and fee requirements under its contract with Parks. Concert Foods subsequently provided us catering proposals, e-mail correspondence, and credit card slips and merchant statements in support of this assertion. However, none of the catering proposals were signed by customers, and although Concert Foods was required to maintain separate books and records for the Sheep Meadow Café, Concert Foods processed transactions for meals and catering services purportedly provided at the Delacorte Theatre through the Sheep Meadow Café credit card terminal. Again given the lack of adequate documentation and the fact that these transactions were processed through the Sheep Meadow Café credit card terminal, we question whether these sales should have been reported to Parks.



## **Concert Foods Lacked Sales Records And Internal Controls**

Although we know that Concert Foods did not report all revenue earned at the Sheep Meadow Café, we could not determine the total gross receipts or the corresponding total payments due the City because Concert Foods lacked sales records and internal controls of any kind over the collecting, recording, and reporting of revenues generated from all Sheep Meadow Café operations. Concert Foods was required to maintain sales records in a form suitable for audit, retain these records for at least six years, and make them available to the Office of the Comptroller and Parks on demand. However, no adequate sales records and controls were in place to ensure that all Sheep Meadow Café revenues were properly recorded and reported to Parks. Most notably:

### **Catering Services**

Concert Foods did not maintain pre-numbered, sequential agreements that were signed by customers for Sheep Meadow Café catering services. Although Concert Foods records reference catering agreements, we were provided only catering proposals submitted to customers. These catering proposals were not pre-numbered and sequential. Further, only one of the six catering proposals provided was signed by customers. As Concert Foods did not maintain pre-numbered, sequential agreements that were signed by customers, we do not know whether we received sales records for all Sheep Meadow Café catering events and whether the sales records provided accurately and completely represented catering service charges.

***Concert Foods Response:*** “The conclusion of this paragraph would be more appropriate for an agreement with a full-service restaurant or catering hall, rather than an outdoor seasonal facility. There were very few events each summer, and each one was substantiated by proposals, credit card receipts, or checks, all of which were traceable to our merchant statements, banking records, and tax filings. Further, our license agreement requires no signed or sequential agreement forms.”

***Auditor Comment:*** In September 2008, Concert Foods Vice President informed us that “there are lots of parties in the back, where the restaurant is, and this business is what truly holds up the Sheep Meadow Café. Clients each year that hold parties include such companies such as J.P. Morgan Chase, Morgan Stanley, Road Runners and many others.” However Concert Foods subsequently proffered only six catering agreements for the period May 1, 2008–March 31, 2009, and now maintains that there were “very few events each summer.”

Although Concert Foods is correct in saying that the agreement does not expressly state that “signed or sequential agreement forms” must be maintained, the agreement does stipulate that Concert Foods must maintain sales records in a form suitable for audit. Basic auditing procedures require that records be tested for completeness and accuracy. Pre-numbered agreements that are used in sequence enable auditors to identify missing agreements so as to determine whether sales records are complete. Additionally,

agreements that are signed by customers provide auditors reasonable assurance that catering service charges indicated on agreements are complete and accurate.

Since Concert Foods did not institute internal controls over its catering service agreements that established accountability for agreements and related gross receipts, Concert Foods sales records were not in a form suitable for audit, as required its agreement. The Concert Foods Vice President signed each page of the agreement indicating he agreed with its provisions. However, Concert Foods ignored and trivialized this requirement and justified doing so by minimizing the nature and magnitude of Sheep Meadow Café's operations.

### **Restaurant**

Concert Foods did not record restaurant sales on cash registers or other income-recording devices. Instead, we observed that hand-written guest checks were issued to restaurant customers, and the cash received for these sales was placed in a bank style bag. More important, Concert Foods did not provide us guest checks until after our exit conference—more than 11 months after our initial request. Further, Concert Foods did not provide us guest checks for all operating days and all guest checks within pre-numbered sequences that were used. In fact, Concert Foods did not provide us with guest checks for 30 of 86 operating days—nearly 35 percent—and based on the series of sequentially-numbered guest checks provided to us, Concert Foods did not provide us 240 of 938 guest checks—more than 25 percent. In the absence of reliable and complete sales records, we could not determine total gross receipts for the Sheep Meadow Café restaurant.

**Concert Foods Response:** “In fact, there were only 58 days when the restaurant was in operation, not the 86 days referred to in your report. . . .The manager’s log lists each date of operation, credit card sales, cash sales, tips, etc. Again, each day is batched with credit card transactions of the date and credit card daily reconciliations. This matches the Manager’s sales log, and the monthly merchant statements. To assume that we are operating for more than the 58 days reported is inappropriate since the facts show otherwise.”

**Auditor Comment:** We calculated the 86 Sheep Meadow Café restaurant operating days based on season opening and closing dates of May 28, 2008, and September 7, 2008, respectively. These were the first and last dates that credit card merchant statements evidenced restaurant sales. We then excluded days that catered events were held during Sheep Meadow Café restaurant operating hours. We also excluded all Mondays, as Concert Foods Vice President informed us that the restaurant was closed on Mondays and as credit card merchant statements did not evidence sales on Mondays.

As noted, Concert Foods did not provide us guest checks for 30 of these 86 operating days. Concert Foods credit card merchant statements and manager’s logs evidence sales on 7 of the 30 days for which Concert Foods did not provide us guest checks. Additionally, as noted, Concert Foods did not provide us 240 of 938 guest checks based on the series of sequentially-numbered guest checks provided to us. Again, in the absence

of reliable and complete sales records for more than a third of the Sheep Meadow Café restaurant's operating season, we could not determine total gross receipts for the restaurant.

### **Snack Bar**

Concert Foods did not retain detailed cash register tapes and did not provide us access to snack bar cash registers. In addition, Sheep Meadow Café snack bar summary cash register tapes evidenced numerous transactions that reduced gross receipts—refunds, voids, and negative sales—and instances where the cash register drawer was opened but no sale was recorded—“no sale” entries. For example the summary cash register tape for August 1, 2008, indicated gross sales of \$2,290. However, these sales had been reduced by \$3,179 as follows:

- 25 transactions totaling \$1,613 were refunded,
- 8 transactions totaling *negative* \$1,489 were recorded for sales of fruit, and
- 11 transactions totaling \$77 were voided.

There were also 85 “no sale” entries. Therefore, we intended to review Sheep Meadow Café snack bar detailed cash register tapes to determine whether sales were appropriately recorded and reported. However, Concert Foods generally did not maintain detailed cash register tapes for any of the three snack bar cash registers so we could not determine whether cash register cumulative gross receipts figures accurately and completely reflected Sheep Meadow Café snack bar sales.

Nevertheless, we intended to inspect cash registers used at the snack bar, record their cumulative totals, and calculate total gross receipts based on beginning and year-end totals. However, Concert Foods did not provide access to the two registers used to record snack bar sales from April through nearly all of July 2008—approximately half of the Sheep Meadow Café operating season. Concert Foods Vice President purported that these two cash registers had broken down and had been discarded. It should be noted that these two registers allegedly broke just five weeks before our audit began. Further, cash register summary tapes evidenced that one of these registers had scarcely been used.

Again, given Concert Foods' failure to report gross receipts of *at least* \$93,002 and the utter lack of sales records and internal controls—it appears that Concert Foods may have perpetrated fraud.

***Concert Foods Response:*** “As to the auditor's contention regarding cash register tapes for the 2008 season, we, in fact, maintained and filed daily cumulative tapes. These tapes were matched with the manager's sales logs, all of which were provided to the auditors. There was no requirement in our license that we maintain tapes of individual transactions or provide an electronic point-of-sale system, both of which were required as part of the 2008 RFP for this facility.

“The multiple errors on the Friday, August 1, 2008 register tape that are referred to, is clearly and simply the result of human error and nothing more. Not only does the tape show a consistent pattern of what sales were on all Fridays during 2008, but it is also

consistent with the Managers Daily sales log. Also, as these multiple voids, refunds, negative transactions, etc are not found on any other cash register tapes, a reasonable interpretation that they were the result of a poorly trained server and nothing more.”

**Auditor Comment:** As noted, Concert Foods did not provide us adequate sales records to determine that all Sheep Meadow Café revenues were properly recorded and reported to Parks. Although the agreement stipulated that Concert Foods maintain sales records in a form suitable for audit, retain these records for at least six years, and make them available to the Office of the Comptroller and Parks on demand, Concert Foods did not do so. Concert Foods did not retain detailed cash register tapes and did not provide us summary tapes for all snack bar operating days.

Additionally, summary cash register tapes that were provided consistently included—contrary to Concert Foods’ assertion—transactions that reduced gross receipts and “no sale” entries. For the 27 days in August 2008 for which transaction data was available, summary cash register tapes included the following:

	<b>Transactions</b>	<b>Sales</b>
Voids	121	\$2,292.80
Refunds	913	\$5,021.25
Negative Sales	Indeterminate	\$1,488.75*
No Sales	1,695	Indeterminate
<b>Total Reductions to Gross Receipts</b>	<b>2,729</b>	<b>\$8,802.80</b>
<b>Sales</b>	<b>17,841</b>	<b>\$61,047.64</b>

\* Negative sales are reflected only on summary cash register tapes if the total daily sales for a particular item result in a negative sales figure.

These 2,729 transactions represent approximately 15.3 percent of sales transactions, and the \$8,803 reduction to gross receipts represents approximately 14.4 percent of sales for those 27 days. The significant number and dollar amount of transactions used to reduce gross receipts are not “clearly and simply the result of human error” as Concert Foods asserts. Rather the persistent failure to report accurate gross receipts is an indication that Concert Foods may have perpetrated fraud.

**Concert Foods Failed to Expend \$156,047 on Capital Improvements And Make Specified Capital Improvements and Necessary Repairs**

Concert Foods failed to expend \$156,047 on capital improvements and make specified capital improvements and necessary repairs to the Sheep Meadow Café. Concert Foods was required to perform capital improvements of at least \$85,000 in the first operating year, \$55,000 in the second year, and \$30,000 in each of the remaining four years of its agreement. These monies were to be used to make specific capital improvements to the Sheep Meadow Café

building, provide specified and necessary operating equipment, construct, furnish, and landscape seating areas, and repair the Sheep Meadow Café as it became necessary.

Based on Concert Foods purchase and payment documentation and Parks inspection reports, we determined that Concert Foods failed to expend \$156,047 on capital improvements for the Sheep Meadow Café as follows:

**Table I**

Capital Improvements Expenditures

<b>Operating Year</b>	<b>Minimum Required Expenditure</b>	<b>Capital Expenditures Per Auditors</b>	<b>Difference</b>
1	\$85,000	\$149,198	Exceeded Minimum
2	\$55,000	\$ 1,232	\$53,768
3	\$30,000	\$ 0	\$30,000
4	\$30,000	\$ 2,915	\$27,085
5	\$30,000	\$ 13,187	\$16,813
6	\$30,000	\$ 1,619	\$28,381
<b>Amount Concert Foods Failed to Expend</b>			<b>\$156,047</b>

During the course of our audit, Concert Foods paid Parks \$31,487 toward its capital improvements requirement, and Parks accepted this money in lieu of required capital improvement expenditures. Consequently, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement.

**Concert Foods Response:** “The auditors are incorrect in their interpretation of the capital improvements process. The Parks Department approved of paying for required year-two capital improvements in the first year so that the new construction would be completed earlier. This was discussed at the exit conference, thus there is no basis to conclude that year-two payments were not made.”

**Auditor Comment:** The agreement unequivocally states that Concert Foods must expend specified minimum amounts on capital improvements in *each* year “at cost of no less than **\$140,000.00** in the first two years of operation, and a minimum of **\$30,000.00** for each additional year. In the first year Concert Foods will spend a minimum of **\$85,000.00**, and a minimum of **\$55,000.00** in the second year.” (Emphasis in original.)

As Parks did not amend the agreement to alter the required capital improvements and schedule, it clearly did not approve terms claimed by Concert Foods. Additionally, Concert Foods disputes that it made required capital investments in its second operating year only, and it does not address its failure to make the specified minimum capital investments in the remaining four years of the agreement.

Therefore, we reiterate that Concert Foods failed to expend \$156,047 on capital improvements for the Sheep Meadow Café, as detailed. During the course of our audit, Concert Foods paid Parks \$31,487 toward its capital improvements requirement, and Parks accepted this money in lieu of required capital improvement expenditures. Consequently, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement.

### **Concert Foods Did Not Comply with Other Permit Provisions**

Concert Foods did not comply with other permit provisions regarding scope of operations, vending space, authorized products and merchandise, price lists, permits and licenses, insurance, and sales tax, as follows:

#### **Scope of Operations and Vending Space**

Concert Foods expanded the scope of its operations and vending space. Although Concert Foods agreement authorized only the maintenance and operation of a snack bar and two pushcarts, Concert Foods also operated a restaurant and provided catering services at the Sheep Meadow Café. Further, Concert Foods did not confine catered events to the agreement-specified Sheep Meadow Café seating areas. Instead, Concert Foods used adjacent lawns to accommodate catering guests.

#### **Authorized Products and Merchandise and Price Lists**

Concert Foods charged customers more than approved amounts for products and merchandise and sold items that were not approved by Parks. Concert Foods' agreement stipulates that it "charge no more for the products and services you sell than the posted, approved amounts. You may add to your list of items for sale (or menu) only with the prior written permission of Parks." In February 2003, Concert Foods entered into an agreement with Parks and submitted its initial snack bar and restaurant price lists to Parks for approval. Parks approved both of these menus even though, as noted above, the agreement did not authorize the operation of a restaurant.

Prior to our unannounced observations, Concert Foods did not submit revised snack bar and restaurant price lists to Parks for approval. We purchased items at the Sheep Meadow Café snack bar and restaurant, reviewed displayed menus, and found that Concert Foods charged more than the approved amounts for most items and sold many items that had not been approved by Parks. In October 2008—subsequent to our observations—Concert Foods submitted revised snack bar and restaurant price lists for 2007 through 2008 to Parks for approval, and Parks retroactively approved these price lists. Even so, Concert Foods continued to charge more than the retroactively approved amounts for many items. For example, the Sheep Meadow Café restaurant offered entrees ranging from \$16 to \$28 during the 2008 operating season. These prices were well in excess of entrée prices approved and on file with Parks at that time—\$6.50 to \$15—and the entrée prices retroactively approved in October 2008—\$14 to \$23.

Additionally, Concert Foods never submitted catering service price lists to Parks for approval.

### **Permits and Licenses**

Although Concert Foods agreement required it to obey all relevant laws and regulations and obtain all necessary permits and licenses for the Sheep Meadow Café, it did not do so, as follows:

- Concert Foods did not submit range hood fire suppression system installation plans to the Fire Department for review and approval, have the system tested in front of and inspected by the Fire Department after it was installed, and have the system inspected annually by the Fire Department to ensure that it was properly maintained. Consequently, the system was not properly approved and maintained. A Parks inspection report for April 16, 2008, noted that there was a Non-Compliance Inspection Tag on the system. These tags are issued by system servicing companies to indicate noncompliance with National Fire Protection Association standards.

***Concert Foods Response:*** “As to the Fire Department Fire Suppression permit, we admit that we did not have this permit, however the kitchen exhaust was built following the standards of the National Fire Protection Association, and tested for safety every year by Active Fire Suppression Systems.”

***Auditor Comment:*** Clearly, the Sheep Meadow Café range hood fire suppression system did not comply with National Fire Protection Association standards as Concert Foods’ own servicing company issued it a Non-Compliance Inspection Tag.

- Concert Foods did not obtain a Catering Establishment License from the Department of Consumer Affairs.

***Concert Foods Response:*** “The contention that we required a permit from the Department of Consumer affairs is also in error. In fact, over the six year term only one event was ever held off-premise.”

***Auditor Comment:*** Catering Establishment licensure requirements are not, as Concert Foods suggests, dependent on where services are provided but rather are determined by the services provided and whether such services are public or private. The New York City Administrative Code, §20-359, defines a catering establishment as:

Any room, place or space in the city, which is used, leased or hired out in the business of serving food or beverages for a particular function, occasion or event, to which the public is not invited or admitted and wherein music or entertainment is permitted.

As Concert Foods provided such services at the Sheep Meadow Café, Concert Foods was in fact required to have a Catering Establishment License.

## **Insurance**

Although Concert Foods maintained the appropriate amounts and types of insurance, it did not designate insured parties as specified in its agreement. The agreement required that Concert Foods maintain an extended-coverage fire insurance policy naming Parks as the *sole* insured party. However, Concert Foods named itself as the primary insured party and the City of New York, Parks, and the Central Park Conservancy—a private organization that is not a party to this agreement—as additional insured parties on this policy. By not designating insured parties as specified, Concert Foods exposed the City to potential liability.

Concert Foods was also required to maintain personal injury and property liability policies naming Parks as an additional insured party. However, Concert Foods also named the Central Park Conservancy as additional insured parties on these policies.

## **Sales Tax**

Concert Foods did not report all Sheep Meadow Café sales on its New York State Sales tax returns and therefore did not pay all State and City sales tax due for the Sheep Meadow Café. Under the terms of its agreement, Concert Foods was required to “collect and pay New York State and City Sales Tax.” However, Concert Foods did not do so. For example, Concert Foods reported Sheep Meadow Café sales of \$244,806 for the quarter ending August 31, 2008. However, we estimated Sheep Meadow Café sales of at least \$265,648 for this period. Therefore, Concert Foods did not report sales of at least \$20,842 and pay State and City sales tax of \$1,746 for those sales.

In addition, Concert Foods did not charge Sheep Meadow Café restaurant customers appropriate New York State and City sales tax rates. The combined sale tax rate is 8.375 percent—4.375 percent for New York State and 4 percent for New York City. However, Sheep Meadow Café restaurant guest checks and our observations evidenced that customers were charged sales tax rates between 4.762 and 18.571 percent.

***Concert Foods Response:*** “The auditors are completely in error about the payment of sales tax. Contrary to the view of the Parks Department, there are no NYS or NYC sales taxes on gratuities. Further, all sales taxes were timely filed and paid. As to occasional human error on the sales tax charged to Restaurant customers, they are of no significance on the sales tax filings as the appropriate sales tax is computed and paid on the net sales and not on the tax collected.”

***Auditor Comment:*** As noted, catering service charges accounted for only \$15,664 of the \$93,002 that Concert Foods failed to report to Parks. The remaining \$77,358 comprises *minimum* catering service sales of \$49,945, restaurant sales of \$17,366, and snack bar sales of \$10,047. Although the available Concert Foods sales records bore out these sales, as detailed, Concert Foods did not report all Sheep Meadow Café sales on its New York State Sales tax returns and therefore did not pay all State and City sales tax due for the Sheep Meadow Café.



With regard to sales tax rates, customers were consistently charged erroneous tax rates. In fact, Concert Foods charged the appropriate sales tax rate on only 4 of 690<sup>1</sup> Sheep Meadow Café restaurant guest checks. Concert Foods overcharged customers 530 times and undercharged customers 156 times. Regardless of sales tax paid to the State, Concert Foods was not authorized to charge customers more than the combined sale tax rate of 8.375 percent.

### **Parks Did Not Adequately Monitor Concert Foods’ Performance and Enforce Significant Agreement Terms and Conditions**

Parks failed to adequately monitor Concert Foods’ performance and enforce the terms and conditions of the agreement as required by the New York City Charter. Chapter 14, §365, of the Charter states that agencies responsible for concessions shall “monitor the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent or concession under its jurisdiction.” Although Parks reviewed documentation submitted by Concert Foods and conducted numerous inspections of the Sheep Meadow Café, it failed to identify or follow up on significant agreement violations regarding sales records, capital improvements, scope of operations, vending space, authorized products and merchandise, price lists, permits and licenses, and insurance.

#### **Sales Records**

Parks failed to ensure that Concert Foods maintained and retained sales records as required. Under the terms of the agreement, Concert Foods was required maintain sales records in a form suitable for audit and retain sales records for at least six years. The agreement authorized Parks to review and audit Concert Foods’ books and records to ensure that sufficient records were kept, gross receipts accurately and completely recorded and reported to Parks, and fees correctly calculated. However, Parks did not do so over the six-year term of the agreement. Consequently, Concert Foods did not maintain adequate sales records, and we could not determine total gross receipts or the corresponding payments due the City. Furthermore, Concert Foods did not accurately and completely report gross receipts to Parks and New York State. Therefore, it did not pay all fees and sales tax due for the Sheep Meadow Café

#### **Capital Improvements**

Parks did not request capital expenditure documentation and inspect the Sheep Meadow Café each year to ensure that Concert Foods expended specified minimum amounts each year and made required improvements and necessary repairs. In fact, Parks did so only after the first and final operating years. Concert Foods reported that it spent \$224,120 on capital improvements over the course of its agreement and provided Parks with documentation to substantiate this figure. Parks credited Concert Foods with expending \$214,618, accepted \$31,487 in lieu of

---

<sup>1</sup> Concert Foods provided us a total of 698 guest checks. However, 7 of the 698 guest checks did not include food and beverage charges. On three occasions, charges were transferred to another guest check, and on four occasions charges were “comped.” Additionally, one guest check did not itemize food, beverage, and sales tax charges.

capital improvements, and determined that Concert Foods owed Parks \$13,895 toward its capital improvements requirement. However, Parks miscalculated the amount owed because it did not require Concert Foods to expend specified minimum amounts in *each* year. Instead, Parks required Concert Foods to expend only the aggregate of specified minimum amounts—\$260,000—over the duration of the agreement. Moreover, Parks credited Concert Foods for capital expenditures that were not supported by purchase and payment documentation, and inspected and approved by Parks.

We determined that Concert Foods failed to expend \$156,047 on capital improvements. As noted, Concert Foods paid Parks \$31,487 toward its capital improvements requirement, and Parks accepted this money in lieu of required capital improvement expenditures. Therefore, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement. However, Parks may not be able to collect this money because Concert Foods agreement expired, and its required security deposit was only \$26,308. Given that the Parks Intent to Award package indicated that Concert Foods was awarded the Sheep Meadow Café largely due to its “weighty capital expenditure plan,” Parks should have ensured that Concert Foods did in fact perform these improvements.

***Parks Response:*** “Parks does not agree with the Report’s calculation that Concert Foods failed to expend \$156,047 in capital improvements for the following reasons:

- The Permit requires Concert Foods to submit documentation to Parks for capital expenditures ‘. . . in the form of bills and/or invoices.’ The submission of expenditures in the form of canceled checks is not required. Despite this, the Report disallows \$42,879.54 in capital expenditures because Concert Foods did not provide canceled checks. For example, the Report disallows \$25,000 of \$125,904 that was paid by Concert Foods to the Central Park Conservancy (‘Conservancy’) for landscaping work because, ‘no canceled check was provided. . . .’ We concur with the Comptroller that Concert Foods did not maintain adequate records. However, with regard to this matter, Parks received an invoice from the Conservancy for the entire contract amount. To further document Concert Foods’ payments to the Conservancy, Parks verified with them that the full amount of \$125,904 has been received (please see the attached letter from the Conservancy). Parks disagrees with the Report’s disallowance of these expenditures, as it is based upon an incorrect interpretation of Concert Foods’ legal obligations. In fact, Concert Foods has fully satisfied the documentation requirements of the Permit.”

***Auditor Comment:*** Parks did in fact require Concert Foods to provide proof of payment for capital improvements. The Parks Capital Division repeatedly sent letters to Concert Foods requesting proof of payment for capital expenditures, including canceled checks (see Appendix), recorded payment information in its Capital Expenditure Verification Forms, and maintained payment documentation in its files.

With regard to payments made to the Central Park Conservancy (CPC), Concert Foods provided us canceled checks for four of five payments totaling \$100,904.61. Accordingly, we credited Concert Foods for this amount. We did not credit Concert

Foods for the remaining \$25,000 because we did not receive any proof of payment, and the CPC letter confirming the payment schedule was not consistent with information Concert Foods provided to us and Parks throughout the course of the audit.

Even if we credited Concert Foods for this \$25,000 payment, it would not alter our determination of the total owed by Concert Foods toward its capital commitment because the payment was for work performed in the first operating year. As detailed, Concert Foods exceeded required capital investments in its first operating year. However, Concert Foods failed to make specified minimum capital investments totaling \$156,047 in the remaining five years of its agreement.

**Parks Response:** “The Permit requires that Concert Foods expend, ‘no less than \$140,000 in the first two years of operation.’ Concert Foods expended \$149,198.04 before the completion of the first year of operation. The Report, however, disallows \$53,768 of expenditures because Concert Foods failed to expend the \$140,000 in the prescribed order of \$85,000 in the first year and \$55,000 in the second year. It lacks reason to penalize this concession more than \$50,000 because it made its expenditures more rapidly than the capital improvement commitment of its Permit required.”

**Auditor Comment:** Again, the agreement unequivocally states that Concert Foods must expend specified minimum amounts on capital improvements in *each* year “at cost of no less than **\$140,000.00** in the first two years of operation, and a minimum of **\$30,000.00** for each additional year. In the first year Concert Foods will spend a minimum of **\$85,000.00**, and a minimum of **\$55,000.00** in the second year.” (Emphasis in original.)

Clearly, Parks intended for Concert Foods to make regular and recurring capital investments in the Sheep Meadow Café. This intent is further evidenced by Parks Intent to Award package, which indicated that Concert Foods was awarded the Sheep Meadow Café largely due to its “weighty capital expenditure plan.”

As Parks did not amend the agreement to alter the required capital improvements and schedule, it clearly did not approve the terms claimed by Concert Foods. Additionally, Parks disputes that Concert Foods made required capital investments in its second operating year only, and it does not address Concert Foods failure to make the specified minimum capital investments in the remaining four years of the agreement.

**Parks Response:** “The Report suggests that Concert Foods failed, ‘to make specified capital improvements and necessary repairs to the Sheep Meadow Café.’ However, the Report does not indicate which specific capital improvements Concert Foods allegedly failed to make nor does it provide any evidence that Concert Foods failed to make necessary repairs.”

**Auditor Comment:** Exhibit A of the agreement stipulates that Concert Foods must perform and complete specified “Required Investments and Improvements” to the Sheep Meadow Café exterior, interior, and seating areas and landscaping and that Concert Foods submit documentation to Parks evidencing that these improvements were made.

However, Concert Foods did not do so. For example, Concert Foods did not make the following capital improvements and necessary repairs to the Sheep Meadow Café:

- Repair cornice roof and gutters,
- Repair or replace tiles, fixtures, soap dispensers, and toilet paper dispensers as needed in the bathroom, and
- Repair roll down security gate.

As Parks inspection reports did not document these capital improvements and repairs and Parks did not receive any such documentation during the six-year term of the agreement, Parks should be well aware of the specific capital improvements and repairs that Concert Foods failed to make.

***Parks Response:*** “After accounting for . . . and careful review of Concert Foods’ capital documentation, Parks calculates that Concert Foods’ outstanding capital commitment is \$13,894, for a total amount owed of \$34,413. Parks will apply the full security deposit of \$26,308 toward this outstanding amount. After application of the security deposit, the remaining amount due Parks from Concert Foods is \$8,105, which was paid to Parks by Concert Foods on October 16, 2009.”

***Auditor Comment:*** We reiterate that Concert Foods failed to expend \$156,047 on capital improvements for the Sheep Meadow Café. During the course of our audit, Concert Foods paid Parks \$31,487 toward its capital improvements requirement, and Parks accepted this money in lieu of required capital improvement expenditures. Consequently, Concert Foods still owes Parks \$124,560 toward its capital improvements requirement.

### **Scope of Operations and Vending Space**

Parks failed to ensure that Concert Foods operated within the scope of its agreement and within the specified seating areas. As noted, Concert Foods operated a restaurant and provided catering services at the Sheep Meadow Café even though its agreement authorized only the operation of a snack bar and two pushcarts. And Concert Foods did not confine catered events to the specified Sheep Meadow Café seating areas. Parks inspected the Sheep Meadow Café several times each year, photographed menus, and noted items for sale. However, Parks inspectors failed to note that the operation of a restaurant was not authorized under the terms of the agreement and that Concert Foods provided catering services at the Sheep Meadow Café and used adjacent lawns to accommodate these events. Moreover, Parks approved restaurant menus and did so without modifying Concert Foods’ agreement to cover expanded operations.

***Parks Response:*** “Parks does not agree with the Report’s assessment that Concert Foods expanded its scope by operating a restaurant and providing catering services at the Sheep Meadow Café. The Permit expressly permitted this use: “[t]he area north of the north side of the building may be used for special events and dining.”

***Auditor Comment:*** The agreement expressly authorizes only “the maintenance and operation of one (1) snackbar facility, and two (2) pushcarts, located adjacent to the

snackbar in areas subject to Parks approval, at Mineral Springs, Central Park for the sale of food and beverage items.”

The Request for Proposals also refers only to the operation of a snack bar and two pushcarts.

For all other restaurant and catering facilities on Parks land, Parks enters into license agreements that do in fact expressly authorize the operation of a “restaurant” and “catering facility” in Article I of the license Grant of License. The Grant of License details each and every operation authorized under the license agreement. For example, the Grant of License for the Loeb Memorial Boathouse states:

Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to construct or renovate and operate a restaurant, café, catering facility, outdoor bar, snack bar, boat and bicycle rentals, a Park Activity & Resource Center, and operate a shuttle service at the Licensed Premises.

Clearly, if Parks intended to authorize the operation of a restaurant and catering facility, it would have expressly stated so as it does with all other restaurant and catering facilities on Parks land.

### **Authorized Products and Merchandise and Price Lists**

Parks failed to ensure that Concert Foods did not charge more than Parks-approved amounts for items and sold only Parks-approved items. Instead, Parks retroactively approved the Sheep Meadow Café price lists in violation of the agreement. Parks inspected the Sheep Meadow Café several times each year and repeatedly photographed menus and noted items for sale. And in August 2008, a Parks inspector reported that the Sheep Meadow Café displayed expensive menu items, noted specific menu items and pricing, and photographed menus. Subsequently, as noted, Concert Foods submitted revised price lists for 2007 through 2008 to Parks, and Parks retroactively approved them in October 2008. Since the agreement clearly stated that changes to menu pricing and items must be pre-approved, Parks should have assessed liquidated damages for overcharging and selling unauthorized items rather than retroactively approving price lists. More important, Parks should have realized that these revised price lists were not the same as those documented by Parks inspectors and that Concert Foods continued to overcharge customers and sell unauthorized items.

### **Permits and Licenses**

Parks did not ensure that Concert Foods agreement obeyed all relevant laws and regulations and obtained all necessary permits and licenses for the Sheep Meadow Café. Parks inspectors routinely checked that Concert Foods posted and maintained a valid Food Service Establishment Permit, Food Protection Certificate, and Wine License for the Sheep Meadow Café. However, Parks did not ensure that Concert Foods obtained a Certificate of Approval for its range hood fire suppression system and a Catering Establishment License. Additionally, Parks did

not obtain a Certificate of Occupancy from the Department of Buildings certifying the legal use and occupancy of the Sheep Meadow Café building. As a result, the Department of Buildings and the Fire Department did not perform initial and follow-up inspections of the Sheep Meadow Café building and equipment. Such inspections ensure compliance with building and fire codes and the safety of the public.

In addition, when Parks noted that Concert Foods did not comply with City laws and regulations, it failed to follow up on these issues in a timely manner. On April 16, 2008, a Parks inspector noted that the Sheep Meadow Café fire suppression system had a Non-Compliance Inspection Tag on it. On April 25, 2008, Parks issued a Notice to Cure to Concert Foods directing it to bring its fire suppression system into compliance with City building code within 24 hours or cease all cooking activity. Although Parks demanded that Concert Foods take immediate action, it did not ensure compliance through a prompt inspection of the Sheep Meadow Café. In fact, the subsequent Parks inspection did not take place until July 13, 2008, two and a half months later.

### **Insurance**

Although Parks maintained insurance certificates for the Sheep Meadow Café detailing primary and additional insured parties for each required type of insurance, Parks failed to ensure that these insured parties were named in accordance with the agreement. Concert Foods' agreement required that it maintain an extended-coverage fire insurance policy naming Parks as the *sole* insured party. However, Concert Foods named itself as the primary insured party and the City of New York, Parks, and the Central Park Conservancy—a private organization that is not a party to this agreement—as additional insured parties on this policy. By not ensuring that insured parties were named as specified, Parks exposed the City to potential liability.

Concert Foods was also required to maintain personal injury and property liability policies naming Parks as an additional insured party. However, Concert Foods also named the Central Park Conservancy as additional insured parties on these policies.

While the Concert Foods agreement was in force, Parks should have been more vigilant in monitoring Concert Foods and taking enforcement and follow-up action, such as issuing Notices to Cure, assessing liquidated damages, and issuing Advices of Caution in the City's Vendor Information Exchange System (VENDEX).

## RECOMMENDATIONS

Ordinarily we would address our recommendations to Concert Foods, but its permit has expired, and it was not awarded this concession again. Therefore, we address our recommendations solely to Parks.

With regard to Concert Foods, Parks should:

1. Seize Concert Foods' security deposit of \$26,308 and apply it toward the \$145,079 it owed Parks for capital improvements, fees, penalties, and interest.
2. Refer the collection of the remaining \$118,771 owed it for capital improvements, fees, penalties, and interest to the New York City Law Department.

**Parks Response:** "Parks agrees that Concert Foods failed to Report \$93,002 in gross receipts and therefore owes the City \$20,519 (\$18,600 in fees and \$1,919 in penalties and interest.)

"However, Parks does not agree with the Report's calculation that Concert Foods failed to expend \$156,047 in capital improvements. . . . Parks calculates that Concert Foods' outstanding capital commitment is \$13,894, for a total amount owed of \$34,413. Parks will apply the full security deposit of \$26,308 toward this outstanding amount. After application of the security deposit, the remaining amount due Parks from Concert Foods is \$8,105, which was paid to Parks by Concert Foods on October 16, 2009."

**Auditor Comment:** We are pleased that Parks agrees that Concert Foods failed to report gross receipts of \$93,002 and therefore owes the City \$20,519. However, we reiterate that Concert Foods failed to expend \$156,047 on capital improvements and urge Parks to collect the full amount due.

3. Consider this information if and when Concert Foods submits proposals to operate concessions on City-owned properties.

**Parks Response:** "Parks will also consider this Report should Concert Foods submit proposals for any future concessions."

4. Issue Advices of Caution in VENDEX regarding Concert Foods.

**Parks Response:** "Parks . . . will consider the Comptroller's recommendation concerning the issuance of an Advice of Caution for processing in VENDEX."

**Auditor Comment:** Cautionary information reported in VENDEX allows agencies to make informed decisions when considering providers for City contracts. Therefore, we urge Parks to issue—and not consider—Advices of Caution in VENDEX

regarding Concert Foods' failure to report gross receipts, fulfill its capital commitment, and comply with and fulfill other contractual obligations.

With regard to future snack bar concessionaires, Parks should:

5. Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.

***Parks Response:*** "Parks has made comprehensive revisions to the language in its RFPs, permits and license agreements for snack bars and other concessions, to more clearly stipulate the required internal control systems. . . . [C]oncessions are required to record information electronically through a point-of-sales system, and must include details on each sales transaction, including the item(s) sold, time, date of sale and price of the item sold. The concessionaire must also establish a dedicated bank account for deposits of concession-generated revenue and retain all financial records for at least six years."

6. Monitor concessionaires' performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, §365.

***Parks Response:*** "Parks will continue to monitor concessionaires' performance and enforce the terms and conditions of their agreements. Parks routinely meets with new concessionaires upon the commencement of their terms to review key financial and operation compliance items. Parks has initiated large-scale mailings to over 100 targeted concessionaires to address various hot topic issues, such as requesting approval for operational changes, financial report submissions, requests for amendments to capital improvement schedules, etc. Parks' regularly conducts both proactive and reactive inspections, to assess performance and compliance.

7. Periodically review and audit concessionaires' books and records to ensure that sufficient records are kept, gross receipts are accurately and completely recorded and reported to Parks, and fees are correctly calculated.

***Parks Response:*** "Parks will continue its current practice of periodically reviewing and auditing concessionaires' books and records to ensure that sufficient records are kept, gross receipts are accurately and completely recorded and reported to Parks, and fees are correctly calculated."

8. Annually review concessionaires' capital expenditure documentation and inspect concessions to ensure that concessionaires expend specified minimum amounts and make specified improvements and repairs.



**Parks Response:** “Parks will continue to review concessionaires’ capital work by maintaining a master capital spreadsheet to clearly show the progress of each concessionaire’s capital improvements, its submitted documentation and the amount of unexpended capital; Parks follows-up directly with any concessionaires that fall short of anticipated construction schedules.

9. Periodically inspect concessions to ensure that concessionaires’ operations are authorized and confined to locations specified in the agreements.

**Parks Response:** “Parks tracks the submission of and reviews data from annual Income and Expense Reports and monthly and annual gross receipts, and conducts follow-up reviews if data suggests any problems. Parks currently conducts and will continue to conduct regularly scheduled inspections to examine the physical condition of concessions, and will use Notices to Cure to ensure resolution of any issues identified during inspections.”

10. Compare items sold and pricing posted at concessions to those on file with and approved by Parks to ensure that concessionaires sell only Parks-approved items and do not charge more than Parks-approved amounts for items.

**Parks Response:** “Parks has increased its efforts to ensure that concessionaires sell only Parks-approved items and post Parks-approved prices. In mailings and meetings, Parks reminds concessionaires of the importance of requesting approval for any changes to concession operations (such as menu items, prices, or hours of operation.) Additionally, as part of their regularly scheduled inspections, Parks inspectors take photos of price lists and menus and compare them to those on file. When unauthorized products/prices are found, Parks contacts the concessionaire to obtain compliance. If a request for approval is not made within a stated time frame, liquidated damages are assessed for unauthorized products/prices.”

11. Review and maintain copies of concessionaires’ permits and licenses to ensure that concessionaires obtain all necessary permits and licenses.

**Parks Response:** “Parks will continue to review concessionaires’ permits and licenses to ensure that concessionaires obtain all necessary permits and licenses. However, Parks does not agree that we need to maintain copies of such individual permits and licenses issued by other entities.

**Auditor Comment:** Concert Foods’ failure to obtain all necessary permits and licenses may expose the City to potential liability. Therefore, we reiterate that Parks should maintain copies of concessionaires’ permits and licenses to ensure that concessionaires obtain all necessary permits and licenses.

12. Review concessionaires’ agreements and insurance certificates to ensure that concessionaires maintain required types and amounts of insurance and name insured parties as specified.

***Parks Response:*** “Parks will also continue to ensure that concessionaires maintain required types and amounts of insurance and name insured parties as specified.”

13. Issue Notices to Cure, assess liquidated damages when permissible, and follow up on concessionaires that do not comply with and fulfill agreement provisions.

***Parks Response:*** “Parks will continue to issue Notices to Cure when concessionaires do not comply with and fulfill agreement provisions.”

14. Issue Advices of Caution in the City’s VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

***Parks Response:*** “As appropriate, Parks will also issue Advices of Caution in the City’s VENDEX system, when concessionaires’ conduct warrants such response.



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

**APPENDIX**  
**Page 1 of 4**

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
betsy.smith@parks.nyc.gov

**CERTIFIED MAIL, R.R.R**

December 12, 2008

Mr. Peter Aschkenasy  
Concert Foods  
58 Tompkins Place  
Brooklyn, NY 11231

Re: **Capital Expenditures**  
**Mineral Springs SnackBar**  
**Permit # M-10-33-SB**

Dear Mr. Aschkenasy:

This is to inform you that pursuant to our letter dated October 3, 2008, in which we requested that you provide our office with additional documentation related to capital improvements performed at the above-referenced concession by November 3, 2008; to date we have not received any documentation to that effect.

This information is critically important.

Our records indicate an amount of \$75,904.61 owed to the Central Park Conservancy, for which we will need proof of reimbursement; and a remainder of capital expenditures on your part of \$98,041.13

If you cannot submit documentation for the aforementioned amounts in the form of cancelled checks and invoices, you must submit to our office a check for \$173,945.74 no later than by January 14, 2009.

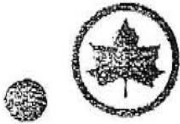
Thank you for your cooperation in this matter.

Sincerely,

Anthony Macari, R.A.  
Revenue Division Architect

Cc: Doug Blonsky, Central Park Conservancy  
Alex Han, Project Manager





City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
betsy.smith@parks.nyc.gov

**CERTIFIED MAIL, R.R.R**

January 8, 2008

Mr. Peter Aschkenasy  
Concert Foods  
61 Pierrepont Ave  
Brooklyn, NY 11201

Re: **Capital Expenditures**  
**Mineral Springs SnackBar**  
**Permit # M-10-33-SB**

Dear Mr. Aschkenasy:

Thank you for submitting expenditures for capital improvements performed at the above-referenced concession for the Year 2003. We were able to document an amount of \$36,104.26 out of the \$58,550.00 in Capital improvements mentioned in your letter of October 1, 2008. We also documented the amount of \$50,000.00 in payments to the Central Park Conservancy. Please submit cancelled checks (front and back) for the two additional payments of \$25,000 you made to the Conservancy on 09/28/2005, and 09/25/2008. We received invoices for \$125,904.61 in capital improvements for exterior work from records obtained from Central Park Conservancy, leaving a balance of \$25,904.61 due to the Conservancy provided we are able to confirm the two payments of \$25,000 mentioned above. Since your license agreement stipulates a total expenditure of \$260,000.00 over the length of the contract – 2/5/03 to 3/31/09 – please submit to our office no later than January 22, 2009, documentation for additional capital expenditures on your part of \$97,991.13.

If you cannot submit documentation for the aforementioned amounts in the form of cancelled checks and invoices you must submit to our office a check for \$123,895.74. This amount is the sum of the \$25,904.61 owed to the Conservancy plus the \$97,991.13 in outstanding capital improvements. Enclosed please find our verification forms detailing each expenditure. We have entered this amount in our records and logged the physical improvements to the facility.

Thank you for your cooperation in this matter.



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
betsy.smith@parks.nyc.gov

Sincerely,

Anthony Macari, R.A.  
Revenue Division Architect

Cc: Doug Blonsky, Central Park Conservancy  
Alex Han, Project Manager

Encl.



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
betsy-smith@parks.nyc.gov

**CERTIFIED MAIL, R.R.R**

January 16, 2009

Mr. Peter Aschkenasy  
Concert Foods  
61 Pierrepont Street  
Brooklyn, NY 11201

Re: **Capital Expenditures**  
**Mineral Springs SnackBar**  
**Permit # M-10-33-SB**

Dear Mr. Aschkenasy:

We are in receipt of your letter of January 13, including a copy of Check # 7494 in the amount of \$31,486.89.

We remind you that our analysis of your capital expenditures for the above-referenced concession has not changed, as shown in the enclosed comparison assessment of your estimated expenditures with what we currently possess in our records.

As of this date, our records indicate an amount of \$36,104.26 – in addition to the \$31,486.89 just received - spent by Concert Foods on capital improvements, as well as the sum of \$100,000.00 issued as reimbursement to the Central Park Conservancy for their work on the facility's exterior.

Until we receive documentation in the form of cancelled checks and invoices for the capital improvements, we are not in position to confirm your assessment of what is owed for this concession.

As a reminder, the term of your concession expires on March 31, 2009.

Thank you for your cooperation in this matter.

Sincerely,

Anthony Macari, R.A.  
Revenue Division Architect

Cc: Doug Blonsky, Central Park Conservancy  
Alex Han, Project Manager  
Encl.





## CONCERT FOODS

61 Pierrepont Street Brooklyn, NY 11201  
Tel (718) 403-0440 Fax (718) 403-0023

October 17,2009

Mr. John Graham  
Deputy Comptroller  
NYC Comptrollers Office  
1 Centre Street  
New York, NY 10007-2341

### **Re: Concert Foods Response to audit of NYC Parks & Recreation FK09-129A**

Dear Mr. Graham:

Attached is a point-by-point rebuttal, where appropriate, and analysis of your draft audit of October 2. Before this rebuttal, we would like to make a few very fundamental points.

Firstly, Concert Foods believes that we have always paid all monies due the City of New York ,in a timely manner, for minimum rents and commissions under the terms of this contract. The record will indicate that all payments and reports were timely filed throughout the six year term of our license agreement. This amount, totaling almost \$600,000, is in sharp contrast to the two concessionaires previous to us, both of whom defaulted on their contracts and paid the City of New York virtually nothing. We imagined, designed, built and operated the Sheep Meadow Café so that it became an important destination for both New Yorkers and visitors. We were required to invest \$240,000 in capital to this project, and, at this time, it has all been paid despite our disagreement with the Parks Department about \$13,000 of the total.

Quite frankly, we are quite disturbed about the tone and inference of the audit's observation and the conclusions that it reaches, namely that sales were not properly reported. At its core, the audit suggests that it has "discovered" at least \$93,002 in unreported revenue. This incorrect assumption was discussed at our exit conference. In fact, during the course of the license agreement, we deducted gratuities , taxes, and, as it related the very large 2008 Chanel agreement, items that had nothing to do with the Sheep Meadow Café. In addition, this Chanel contract, which represents the majority of the alleged "discovered \$93,002" occurred, was billed, and paid to us in five invoices, and records pertaining to all invoices, credit card receipts, banking statements, etc. were given to your auditors. In addition, all this data was again given to your auditors after the exit conference.

(2)

With regard to the question of whether gratuities are income, we understand that the Parks Department believes that ,without a written exception in the license agreement, these gratuities are required to be reported and subject to percentage payments. On two grounds, this interpretation seems to us to be unreasonable. In our license agreement there are absolutely no reference to any specific restaurant reporting requirements. In our twenty years of restaurant experience, all commercial leases and agreements exclude taxes and gratuities from reportable income . Furthermore in the “walk through memorandum of September 23,2008” prepared by your office, I am quoted as stating that we deduct 30% for tax and gratuities from all restaurant charges, therefore that this is an issue of “fraud perpetuation” rather than a difference of opinion is blatantly unfair and completely outrageous.

Further, we also never alleged that we “lacked sales records and internal controls of any kind”. In fact, you reported in your walk-through memo that we stated that, while we had cash register tapes for 2008, all tapes prior to 2008 had been discarded in a completely unauthorized manner by the restaurant manager at the time. All other records, including but not limited to, managers sales reports, bank account records, cancelled checks, all invoices, credit card receipts, and merchant statements, sales tax and corporate tax returns were ,in fact, provided to your auditors. Your auditors stated that they would most likely interview our manager and conduct a cash count at the snack bar: this never occurred.

Lastly, as to the issue of capital improvements , we would have thought that as a result of the exit conference, your auditors would have accepted the very persuasive analysis of three Parks Department officials that this requirement had substantially been met. No reasonable person would have come to your auditor’s conclusion that monies beyond the \$13,000 in question was outstanding and due.

In addition, we would like to make the following specific objections and observations:

**Audit Findings and Conclusions (p1)**

The \$93,002 in so-called unreported income consisted primarily of gratuities, and service charges, mostly on the Chanel contract. This amount was never hidden and ,in fact, fully disclosed and apparent from the credit card receipts and other data provided to the auditors.

The \$46,673 in credit card charges from the Delacorte Theater was not only in the data provided to the auditors, but was related to a separate license agreement between Concert Foods and the New York Public Theater, under which all commissions and fees were paid. All appropriate New York state sales taxes were filed and paid for all these aforementioned transactions.

The auditors are incorrect in their interpretation of the capital improvements process. The Parks Department approved of paying for required year-two capital



(3)

improvements in the first year so that the new construction would be completed earlier. This was discussed at the exit conference, thus there is no basis to conclude that year-two payments were not made.

#### **Audit Recommendations (p2)**

As a matter of fact, Concert Foods chose not to submit a bid for the subsequent RFP and thus could not have been awarded “the concession again”

#### **Background (p4)**

As a matter of fact, Concert Foods was authorized, in our license, to provide dining.

#### **Scope And Methodology (p5)**

In the report of our entrance conference of September 23,2008, we state that register receipts prior to 2008 were water-damaged and discarded by the manager in the spring of 2008. this was a unilateral and completely unauthorized, and we have so stated. However to conclude that we did not provide any sales records and implement any internal controls during the entire course of the license agreement is false. We provided all sales journals, credit card receipts and statements, bank statements, invoices, tax returns, and managers logs.

#### **Catering Services (p5)**

The conclusion of this paragraph would be more appropriate for an agreement with a full-service restaurant or catering hall, rather than an outdoor seasonal facility. There were a very few events each summer, and each one was substantiated by proposals, credit card receipts, or checks, all of which were traceable to our merchant statements, banking records, and tax filings . Further , our license agreement requires no signed or sequential agreement forms.

#### **Restaurant (p6)**

Despite the auditor’s claim to the contrary, we, provided all appropriate back-up for the 58 days during summer 2008 when the restaurant was open and operating. We had the information and there was no reason we would not have made it available. Further, it is absurd to question the reliability of guest check sales as all individual credit card sales were attached, batched by date, and attached to the final credit card reconciliation for each day. Additionally, these documents were matched with the restaurant manager’s log, all of which were given to the auditors.

The factual errors concerning the Delacorte Theater credit card receipts are covered under our comments under “audit findings and conclusions” on Page 1.

(4)

**Snack Bar (p6)**

We note in your draft report that the auditors made several unannounced “observations” of the snack bar. Based on the detailed tone of your audit, a reasonable person would conclude that during your “observation”, all sales were rung up properly on the registers, receipts were issued, and the registers were not opened except to record sales. It would seem that these days of “observations” would have been the appropriate time to interview the manager and conduct a cash count. This was not done by your auditor, is not stated in your draft report, and seems to us to violate any standard of fairness and objectivity.

As to the auditor’s contention regarding cash register tapes for the 2008 season, we, in fact, maintained and filed daily cumulative tapes. These tapes were matched with the manager’s sales log, all of which were provided to the auditors. There was no requirement in our license that we maintain tapes of individual transactions or provide an electronic point-of-sale system, both of which were required as part of the 2008 RFP for this facility.

**All Sheep Meadow Café Operations (p7)**

In fact, all items purchased from the wholesale cash and carry supplier were listed on automated sales receipts and paid for by Concert Foods checks. No purchases were made by cash. All receipts were supplied to the auditors and these matched all check register statements, also in the auditor’s possession. Also, for 2008, we identified on each receipt which items were exclusively for the Sheep Meadow Café.

**Findings (p11)**

We will not comment here on those findings which we have already identified and disputed; however, there are some remaining points which are simply inaccurate and require a response or correction. Most important is your completely false statement that we had “alleged” that we lacked sales records and internal controls of any kind over the collecting, recording, and reporting of revenues. In fact, as no time did we say or suggest that and for you to include that in your report is a complete fabrication. For you to correlate this fabrication with some notion of fraud perpetuation is even more outrageous.

**Snack Bar (p13)**

The multiple errors on the Friday, August 1, 2008 register tape that are referred to, is clearly and simply the result of human error and nothing more. Not only does the tape show a consistent pattern of what sales were on all Fridays during 2008, but it is also consistent with the Managers Daily sales log. Also, as these multiple voids, refunds, negative transactions, etc are not found on any other cash register tapes, a reasonable interpretation that they were the result of a poorly trained server and nothing more.

(5)

**Restaurant (p13)**

In fact, there were only 58 days when the restaurant was in operation, not the 86 days referred to in your report... The manager's log lists each date of operation, credit card sales, cash sales, tips, etc. Again, each day is batched with credit card transactions of that date and credit card daily reconciliations. This matches the Manager's sales log, and the monthly merchant's statements. To assume that we were operating for more than the 58 days reported is inappropriate since the facts show otherwise. A reasonable person would conclude that gross sales could be accurately determined.

**Permits and Licenses**

The auditors do not mention the NYC Board of Health in this report. During our six year term, annual inspections were always passed on the first inspection without any serious violations. The contention that we required a permit from the Department of Consumer affairs is also in error. In fact, over the six year term only one event was ever held off-premise. The Parks Department never required a permit from the Buildings Department, primarily because the building was primarily occupied by the NYC Parks Department and the Central Park Conservancy.

As to the Fire Department Fire Suppression permit, we admit that we did not have this permit, however the kitchen exhaust was built following the standards of the National Fire Protection Association, and tested for safety every year by Active Fire Suppression Systems.

**Sales Tax**

The auditors are completely in error about the payment of sales tax. Contrary to the view of the Parks Department, there are no NYS or NYC sales taxes on gratuities. Further, all sales taxes were timely filed and paid. As to occasional human error on the sales tax charged to Restaurant customers, they are of no significance on the sales tax filings as the appropriate sales tax is computed and paid on the net sales and not on the tax collected.

Lastly, after consultation with the Parks Department, last week I submitted a check in the amount of \$8105.00. This amount, plus our deposit of \$26,519 represents all money due the Department of Parks, as per their revenue division. It should not be interpreted as any admission of liability. Although we do not agree with the Parks Department's interpretation that gratuities should be considered as income and thus subject to additional rent, it is our desire to conclude this matter with the knowledge that to defend our position in litigation would probably cost more than the disputed amount.

(6)

In conclusion, our company is proud of the facility we created, built, and operated at the Sheep Meadow Café, proud of the many New Yorkers and tourists who visited this facility, and particularly proud of our relationship with the New York City Department of Parks and Recreation.

Sincerely,

Peter Aschkenasy  
Vice President



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

October 19, 2009

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

The Arsenal  
Central Park  
New York, New York 10065

Elizabeth W. Smith  
Assistant Commissioner  
Revenue and Marketing

(212) 360-1366  
betsy.smith@parks.nyc.gov

**Re: Draft Audit Report on Concert Foods**  
**May 1, 2008-March 31, 2009, FK09-129A, Dated October 2, 2009**

Dear Mr. Graham:

This letter represents the Parks Department's ("Parks") response to the Recommendations contained in the New York City Comptroller's Draft Audit Report ("Report") on the compliance of Concert Foods with its Permit Agreement ("Permit"). Parks generally agrees that Concert Foods lacked sufficient internal financial controls during the audit period, and has already addressed concerns identified in the City Comptroller's audit. However, Parks disagrees with several of the Report's conclusions, particularly with respect to Concert Foods' capital commitment, permitted scope of operations and vending space.

Because Concert Foods' Permit has expired, the Report's Recommendations were directed to Parks. Several recommendations concerned Concert Foods, and the remainder addressed Parks' oversight of concessionaires. In regard to Concert Foods, the Report made four recommendations:

**Recommendation 1** – Seize Concert Foods' security deposit of \$26,308 and apply it toward the \$145,079 it owed Parks for capital improvements, fees, penalties and interest.

**Recommendation 2** – Refer the collection of the remaining \$118,771 owed it for capital improvements, fees, penalties, and interest to the New York City Law Department.

**Recommendation 3** – Consider this information if and when Concert Foods submits proposals to operate concessions on City-owned properties.

**Recommendation 4** – Issue Advices of Caution in VENDEX regarding Concert Foods.

Parks agrees that Concert Foods failed to Report \$93,002 in gross receipts and therefore owes the City \$20,519 (\$18,600 in fees and \$1,919 in penalties and interest.)

However, Parks does not agree with the Report's calculation that Concert Foods failed to expend \$156,047 in capital improvements for the following reasons:

- The Permit requires Concert Foods to submit documentation to Parks for capital expenditures "...in the form of bills and/or invoices." The submission of expenditures in the form of canceled



checks is not required. Despite this, the Report disallows \$42,879.54 in capital expenditures because Concert Foods did not provide canceled checks. For example, the Report disallows \$25,000 of \$125,904 that was paid by Concert Foods to the Central Park Conservancy (“Conservancy”) for landscaping work because, “no canceled check was provided....” We concur with the Comptroller that Concert Foods did not maintain adequate records. However, with regard to this matter, Parks received an invoice from the Conservancy for the entire contract amount. To further document Concert Foods’ payments to the Conservancy, Parks verified with them that the full amount of \$125,904 has been received (please see the attached letter from the Conservancy). Parks disagrees with the Report’s disallowance of these expenditures, as it is based upon an incorrect interpretation of Concert Foods’ legal obligations. In fact, Concert Foods has fully satisfied the documentation requirements of the Permit.

- The Permit requires that Concert Foods expend, “no less than \$140,000 in the first two years of operation.” Concert Foods expended \$149,198.04 before the completion of its first year of operation. The Report, however, disallows \$53,768 of expenditures because Concert Foods failed to expend the \$140,000 in the prescribed order of \$85,000 in the first year and \$55,000 in the second year. It lacks reason to penalize this concessionaire more than \$50,000 because it made its expenditures more rapidly than the capital improvement commitment of its Permit required.
- The Report suggests that Concert Foods failed, “to make specified capital improvements and necessary repairs to the Sheep Meadow Café.” However, the Report does not indicate which specific capital improvements Concert Foods allegedly failed to make nor does it provide any evidence that Concert Foods failed to make necessary repairs.

After accounting for the factors described above, and careful review of Concert Foods’ capital documentation, Parks calculates that Concert Foods’ outstanding capital commitment is \$13,894, for a total amount owed of \$34,413. Parks will apply the full security deposit of \$26,308 toward this outstanding amount. After application of the security deposit, the remaining amount due Parks from Concert Foods is \$8,105, which was paid to Parks by Concert Foods on October 16, 2009.

Parks will also consider this Report should Concert Foods submit proposals for any future concessions, and will consider the Comptroller’s recommendation concerning the issuance of an Advice of Caution for processing in VENDEX.

The report also includes a series of recommendations concerning the provisions of concession agreements and Parks’ oversight of such concessions, all of which reflect policies and practices already fully in place at Parks. These recommendations include:

**Recommendation 5** – Ensure that future snack bar concession agreements with fees based on gross receipts clearly stipulate that concessionaires maintain adequate systems of internal control and keep complete and accurate records as well as books of account and data, including daily sales and receipt records, which show in detail the total business transacted by the concessionaire and the gross receipts derived therefrom.

**Recommendation 6** – Monitor concessionaires’ performance and enforce the terms and conditions of their agreements, as required by the New York City Charter, Chapter 14, 365.

**Recommendation 7** – Periodically review and audit concessionaires’ books and records to ensure that sufficient records are kept, gross receipts are accurately and completely recorded and reported to Parks, and fees are correctly calculated.

**Recommendation 8** – Annually review concessionaires’ capital expenditure documentation and inspect concessions to ensure that concessionaires expend specified minimum amounts and make specified improvements and repairs.

**Recommendation 9** – Periodically inspect concessions to ensure that concessionaires’ operations are authorized and confined to locations specified in the agreements.

**Recommendation 10** – Compare items sold and pricing posted at concessions to those on file with and approved by Parks to ensure that concessionaires sell only Parks-approved items and do not charge more than Parks-approved amounts for items.

**Recommendation 11** – Review and maintain copies of concessionaires’ permits and licenses to ensure that concessionaires obtain all necessary permits and licenses.

**Recommendation 12** – Review concessionaires’ agreements and insurance certificates to ensure that concessionaires maintain required types and amounts of insurance and name insured parties as specified.

**Recommendation 13**- Issue Notices to Cure, assess liquidated damages when permissible, and follow up on concessionaires that do not comply with and fulfill agreement provisions.

**Recommendation 14** – Issue Advices of Caution in the City’s VENDEX regarding concessionaires that do not comply with or fulfill agreement provisions.

As detailed below, Parks agrees with the importance of the above recommendations, many of which have become standard practice at Parks as it continues to bolster its efforts to educate and monitor park concessionaires to ensure they meet City requirements. Parks has made comprehensive revisions to the language in its RFPs, permits and license agreements for snack bars and other concessions, to more clearly stipulate the required internal control systems. With regard to Recommendation 7, concessions are required to record information electronically through a point-of-sales system, and must include details on each sales transaction, including the item(s) sold, time, date of sale and price of the item sold. The concessionaire must also establish a dedicated bank account for deposits of concession-generated revenue and retain all financial records for at least six years.

With regard to Recommendations 6, 12, 13 and 14, Parks will continue to monitor concessionaires’ performance and enforce the terms and conditions of their agreements. Parks routinely meets with new concessionaires upon commencement of their terms to review key financial and operation compliance items. Parks has initiated large-scale mailings to over 100 targeted concessionaires to address various hot topic issues, such as requesting approval for operational changes, financial report submissions, requests for amendments to capital improvement schedules, etc. Parks’ regularly conducts both proactive and reactive inspections, to assess performance and compliance. Parks will continue its current practice of periodically reviewing and auditing concessionaires’ books and records to ensure that sufficient records are kept, gross receipts are accurately and completely recorded and reported to Parks, and fees are correctly calculated. Parks will continue to issue Notices to Cure when concessionaires do not comply

with and fulfill agreement provisions. As appropriate, Parks will also issue Advices of Caution in the City's VENDEX system, when concessionaires' conduct warrants such response.

Regarding Recommendations 8 and 9, Parks will continue to review concessionaires' capital work by maintaining a master capital spreadsheet to clearly show the progress of each concessionaire's capital improvements, its submitted documentation and the amount of unexpended capital; Parks follows-up directly with any concessionaires that fall short of anticipated construction schedules. Parks tracks the submission of and reviews data from annual Income and Expense Reports and monthly and annual gross receipts, and conducts follow-up reviews if data suggests any problems. Parks currently conducts and will continue to conduct regularly scheduled inspections to examine the physical condition of concessions, and will use Notices to Cure to ensure resolution of any issues identified during inspections. Parks does not agree with the Report's assessment that Concert Foods expanded its scope by operating a restaurant and providing catering services at the Sheep Meadow Café. The Permit expressly permitted this use: "[t]he area north of the north side of the building may be used for special events and dining."

Regarding Recommendation 10, Parks has increased its efforts to ensure that concessionaires sell only Parks-approved items and post Parks-approved prices. In mailings and meetings, Parks reminds concessionaires of the importance of requesting approval for any changes to concession operations (such as menu items, prices, or hours of operation.) Additionally, as part of their regularly scheduled inspections, Parks inspectors take photos of price lists and menus and compare them to those on file. When unauthorized products/prices are found, Parks contacts the concessionaire to obtain compliance. If a request for approval is not made within a stated time frame, liquidated damages are assessed for unauthorized products/prices.

Regarding Recommendation 11, Parks will continue to review concessionaires' permits and licenses to ensure that concessionaires obtain all necessary permits and licenses. However, Parks does not agree that we need to maintain copies of such individual permits and licenses issued by other entities. Parks will also continue to ensure that concessionaires maintain required types and amounts of insurance and name insured parties as specified.

In summary, in addressing general oversight requirements for concessions, the Report's recommendations fully endorse and reflect Parks' current operational policies and practices. Parks continues to explore additional options for ensuring full compliance with concession requirements, including providing targeted assistance to our concessionaires, to help them understand and meet their obligations.

Finally, Parks thanks the Comptroller's audit staff members for their efforts in performing this review.

Sincerely,



Elizabeth W. Smith

cc: Comm. Adrian Benepe, Robert Garafola, David Stark, Charles Kloth, Jun Lee, Walter Roberts, Jeffrey Kay (Mayor's Office of Operations), George Davis (Mayor's Office of Operations)





BOARD OF TRUSTEES

CHAIRMAN  
THOMAS L. KEMPNER, JR.

TREASURER  
MICHAEL GRONSTEIN

SECRETARY AND GENERAL COUNSEL  
KENNETH H. HEITNER

JUDY HART ANGELO  
JANE DAYARD  
ADRIAN BENEPE, *EX OFFICIO*  
CANDICE BERGEN  
DOUGLAS BLONSKY, *EX OFFICIO*  
PETER BRIGER  
ESTRELLITA BRODSKY  
JUDY CARSON  
RICHARD CASHIN  
HOWARD L. CLARK, JR.  
JEAN CLARK  
SUZANNE COCHRAN  
NORMA T. DANA  
GORDON J. DAVIS  
RICHARD GILDER  
WILLIAM B. HARRISON, JR.  
JANE HELLER  
KAY KOPLOVITZ  
SHEILA C. LABRECQUE  
EVELYN H. LAUDER  
WILLIAM M. LEWIS, JR.  
JAY P. MANDELBAUM  
LENI MAY  
BETSY MESSERSCHMITT, *EX OFFICIO*  
LYNDEN B. MILLER  
E. BLAKE MOORE, JR.  
MADELEINE MOORE  
KENNETH S. OLSHAN  
JOE L. ROBY  
ERIC RUDIN  
MICHELE SACCONAGHI  
IRWIN SCHNEIDERMAN  
DONNA SCHWARTZ  
RAE PAIGE SCHWARZ  
NORMAN C. SELBY  
A.J.C. SMITH  
DONALD G. SMITH  
RAYMOND W. SMITH  
BARBARA SMITH-GASBY  
MICHAEL A. STEINBERG  
JOHN STEINHARDT  
ERANA M. STENNETT  
JOHN STOSSEL  
SCOTT STRINGER, *EX OFFICIO*  
STUART SUBOTNICK  
PATSY TARR  
ELIZABETH K. VARET  
MARY WALLACH  
H. STRAUSS ZELNICK

LIFE TRUSTEES  
WILLIAM S. BEINECKE  
LEWIS W. BERNARD  
JAMES H. EVANS  
HENRY R. KRAVIS  
IRA M. MILLSTEIN  
MARGUERITE H. PURNELL  
ELIZABETH BARLOW ROGERS  
E. JOHN ROSENWALD, JR.  
JANET ROSS  
JOAN C. SCHWARTZ

October 15, 2009

Anthony Macari  
Revenue Architect  
New York City Department of Parks and Recreation  
830 5<sup>th</sup> Avenue, Rm. 407  
New York, NY 10065

RE: Concert Foods Payments to the Central Park Conservancy, Inc.

Dear Mr. Macari:

I writing to confirm that Concert Foods paid the Central Park Conservancy, Inc. a total of \$125,904.61 in connection with the capital improvements performed at the Mineral Springs Snack bar.

The checks and dates are follows:

Check #	Date	Amount
3157	1/20/06	\$25,000.00
4508	1/8/07	25,000.00
5959	2/4/08	25,000.00
7290	9/25/08	25,000.00
7501	2/1/09	25,904.61

I have attached copies of the checks for your records.

Please feel free to call me at 212-310-6623 with any questions you may have.

Sincerely,

Stephen Spinelli  
Chief Financial Officer and Vice President for Finance & Administration

Cc: Christopher Nolan, Central Park Conservancy  
Encl.