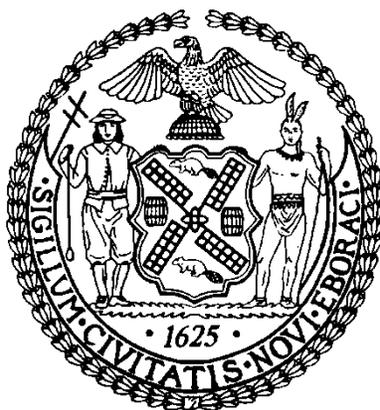


**CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

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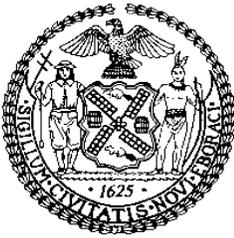


**Audit Report on
Department of Parks and Recreation
Oversight of Capital Improvements by
Concessionaires**

FR09-139A

August 09, 2010

<http://comptroller.nyc.gov/>



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

John C. Liu
COMPTROLLER

August 09, 2010

To the Residents of the City of New York

My office has audited the effectiveness of the Department of Parks and Recreation in monitoring concessionaires to ensure that they comply with the capital improvement provisions of their license agreements. We audit entities such as Parks as a means of ensuring that they are providing the necessary oversight of private concerns that conduct business on City property.

The audit found that problems continue to beset the Parks Department's management system that precludes it from adequately monitoring concessionaires to ensure that they comply with the capital improvement provisions of their agreements. As a result, capital improvements totaling nearly \$10 million were not completed at 33 of 54 sampled concessions. Moreover, the failure to undertake capital improvements resulted in a loss to the City of at least \$37,531 in concessionaire fees from improvements that would have generated revenue. Furthermore, the Department did not assess liquidated damages in at least 11 cases totaling \$640,100 when capital improvements were not completed on time, as permitted under the agreements.

The audit recommends that Parks should: strengthen the project management system for monitoring the progress of concessionaires in completing required capital improvements; issue notices-to-cure to concessionaires who have not completed required improvements; conduct routine inspections; ensure that concessionaires submit complete documentation needed to determine whether claimed improvement work was actually performed; assess liquidated damages when concessionaires fail to complete capital improvements and determine whether liquidated damages totaling \$640,100 should be assessed; ensure that all repair and maintenance work be excluded from license agreement provisions requiring capital improvements, and; issue notices-to-cure requiring that the concessionaires correct deficient conditions.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "JCL".

John C. Liu

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

**Audit Report on Department of
Parks and Recreation Oversight of
Capital Improvements by Concessionaires**

FR09-139A

AUDIT REPORT IN BRIEF

We performed an audit on the Department of Parks and Recreation's (Department) effectiveness in monitoring concessionaires to ensure that they comply with the capital improvement provisions of their license agreements. The Department oversees various City concessions for ice rinks, marinas, golf courses, restaurants, etc. Under the terms of their license agreements with the Department, concessionaires are, in many instances, required to perform and pay for specific capital improvements to the facilities they operate. At the start of Fiscal Year 2010, the Department had agreements with 90 concessionaires in which capital improvements were required.

The Department's revenue division is responsible for monitoring concessionaires to ensure that capital improvements are completed in accordance with requirements of their agreements. Any modifications to the capital improvement requirements of concession agreements require the approval of the Department's Assistant Commissioner for Revenue. If a concessionaire fails to perform required capital improvements satisfactorily, the Department may issue a Notice-to-Cure, requiring that the concessionaire comply with the provisions of its agreement, and may assess liquidated damages. License agreements provide that concessionaires that complete the capital improvements at a cost that is lower than the minimum amount specified in their agreements must remit the difference to the Department as additional fees.

Comptroller's Audit (No. EW03-136A dated January 2004) previously examined the Department's oversight of concessionaire capital improvements. That audit concluded that the Department did not effectively monitor concessionaires to ensure that they complied with the capital improvement provisions of their agreements.

Audit Findings and Conclusions

Since the publication of Comptroller's Audit No. EW03-136A, the Department has taken several recommended steps in establishing a project management system for monitoring

concessionaires to ensure that they comply with the capital improvement provisions of their agreements. But despite these noteworthy efforts, the Department still needs to bolster its management system to make it more effective. Thus, our current audit concluded that problems continue to beset the Department's management system that precludes it from adequately monitoring concessionaires to ensure that they comply with the capital improvement provisions of their agreements. As a result, capital improvements totaling nearly \$10 million were not completed at 33 of the 54 sampled concessions. Moreover, the failure to undertake capital improvements resulted in a loss to the City of at least \$37,531 in concessionaire fees from improvements that would have generated revenue.

Furthermore, the Department did not assess liquidated damages in 11 cases totaling \$640,100 when capital improvements were not completed on time, as permitted under the agreements. The audit also noted that although the Department receives invoices and canceled checks from concessionaires to substantiate capital improvement work performed, the Department does not always adequately review the documentation submitted. Finally, we found poor conditions at 15 of the 54 concessions that require correction.

Audit Recommendations

This report makes a total of 12 recommendations. The major recommendations are that the Department should:

- Strengthen the project management system for monitoring the progress of concessionaires in completing required capital improvements.
- Issue Notices-to-Cure to concessionaires who have not completed the capital improvements required by their agreements.
- Conduct routine inspections and prepare inspection reports that provide sufficient information about the status of required capital improvement work.
- Ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed.
- Assess liquidated damages when concessionaires fail to complete capital improvements in accordance with their agreements. Determine whether liquidated damages totaling \$640,100 should be assessed for the 11 cases noted in this report.
- Ensure that all repair and maintenance work be excluded from license agreement provisions that require concessionaires to expend funds for capital improvements.
- Issue Notices-to-Cure requiring that the concessionaires correct the conditions noted in this report.

INTRODUCTION

Background

The Department of Parks and Recreation (Department) operates a municipal park system that includes playgrounds, ball playing fields, tennis courts, swimming pools, and beaches. In addition, the Department oversees various City concessions for ice rinks, marinas, golf courses, restaurants, etc. Under the terms of their license agreements with the Department, concessionaires are, in many instances, required to perform and pay for specific capital improvements to the facilities they operate. The Department defines a capital improvement as “all construction, reconstruction or renovation of the Licensed Premises.” According to New York State Tax Law, a capital improvement is “an addition or alteration to real property that substantially adds to the value of the real property.” At the start of Fiscal Year 2010, the Department had agreements with 90 concessionaires in which capital improvements were required.

The Department’s revenue division (Division) is responsible for determining the types of capital improvements and for assessing the reasonableness of the minimum amounts required to be spent; preparing and soliciting requests-for-proposals from prospective concessionaires; and awarding and administering concession agreements. The Division is also responsible for monitoring concessionaires to ensure that capital improvements are completed in accordance with requirements of their agreements. Division staff review plans and specifications for capital improvements, conduct periodic site inspections of concession facilities, and prepare progress reports. In addition, Division staff review invoices and other documentation submitted by concessionaires to verify that minimum costs for the capital improvements were expended.

The Department has a capital projects division consisting of engineers and architects who occasionally, at the request of the Division, review plans or provide other technical assistance on capital improvements.

Any modifications to the capital improvement requirements of concession agreements require the approval of the Department’s Assistant Commissioner for Revenue. If a concessionaire fails to perform required capital improvements satisfactorily, the Department may issue a Notice-to-Cure, requiring that the concessionaire comply with the provisions of its agreement, and may assess liquidated damages. If a concessionaire does not comply, the Department may terminate the agreement. Many agreements require that concessionaires submit construction schedules for approval and notify the Department when capital improvements are substantially complete. Additionally, concessionaires are required to submit final or as-built drawings, specifications, and submit copies of manufacturers’ warranties. Concessionaires are required to pay a “design review fee,” which covers the Department’s cost for reviewing design drawings. The fee is generally one percent of the minimum amount that must be expended for capital improvements.

After the Department determines that a concessionaire has completed the required capital improvements, it issues a certificate-of-completion to the concessionaire. License agreements provide that concessionaires that complete the capital improvements at a cost that is lower than

the minimum amount specified in their agreements must remit the difference to the Department as additional fees.

Comptroller's Audit (No. EW03-136A dated January 2004) previously examined the Department's oversight of concessionaire capital improvements. The audit concluded that the Department did not effectively monitor concessionaires to ensure that they complied with the capital improvement provisions of their agreements. Consequently, capital improvements totaling nearly \$10 million were not completed by the concessionaires.

Objective

The audit's objectives were to determine whether the Department effectively monitors concessionaires to ensure that they comply with the capital improvement provisions of their agreements, and to determine whether concessionaires performed capital improvements as required by their license agreements.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS), except for organizational independence as noted in the following 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 performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter. This audit was conducted by staff that included auditors with engineering backgrounds.

The Department must obtain approval for its concessions from the City's Franchise and Concession Review Committee (FCRC). The FCRC was established pursuant to §373 of the New York City Charter. One of the Charter-mandated members is the Comptroller. The Comptroller's representative to the FCRC was not involved in conducting this audit or in writing or reviewing this report.

The scope of this audit covered concession agreements that were in effect July 1, 2009 and that required capital improvement expenditures of at least \$100,000. We obtained a list of 403 concessionaires from the Department, 95 of which required concessionaires to make capital improvements.¹ In 56 cases, concessionaires were required to expend at least \$100,000. The amount of the required minimum expenditures for capital improvements for the 56 concessions totaled \$87,190,130 over the entire period covered by the agreements.

¹ The license agreement for one of the Department's 90 concessionaires (Go-Green Realty Corp.) covered concessions at six separate locations. Accordingly, there were 90 concessionaires and 95 concessions.

We conducted reliability tests of the Department's files to assess the accuracy and completeness of the number of concession agreements, and compared the list of agreements with that maintained by the Comptroller's Office of Contract Administration. We excluded three concessions from our sample because the improvements did not have to be completed before 2010. In addition, we included one concession whose term was renewed and therefore did not appear in the Department's list of concessions. Accordingly, our review covered 54 concessions.

Nine of the 54 concessions were in effect during Fiscal Year 2003, the scope period for Comptroller's Audit No. EW03-136A (Audit Report on Department of Parks and Recreation Oversight of Capital Improvements by Concessionaires) that examined the Department's oversight of concessionaire capital improvements. For these nine agreements, we ascertained whether the concessionaires had completed: 1) any outstanding improvements that were previously cited as being incomplete, and; 2) any improvements that were to be completed during our current scope period. We also examined five additional concessions that were cited for incomplete work in audit no. EW03-136A but whose minimum expenditure requirements were not specified. Thus, we examined a total of 14 concessions that were cited in the previous audit.

To understand the Department's internal controls for overseeing concession agreements we reviewed the provisions for each of the sampled license agreements pertaining to work scopes, the dollar amounts to be spent, and the time frame to complete the work. We interviewed officials from the Department's revenue division, capital projects division, and engineering-audit office about departmental internal controls, and also conducted walkthroughs of the methods by which the Department oversees concessionaire license agreements.

To determine whether the Department effectively monitors concessionaires to ensure that they comply with the capital improvement provisions of their agreements, we evaluated the Department's project tracking system, and reviewed various records, including concessionaire proposals, status and inspection reports, design documents, and other related documentation. We documented our understanding of these in written descriptions.

To determine whether concessionaires have made capital improvements as required by the concession agreements, we inspected the sampled facilities. (See Appendix II for a list of the concessions inspected.) Our inspections were limited to visual observations of completed work because we were unable to inspect underground, in-wall, or other construction work that was covered by finishing materials. We conducted field inspections of the concession capital improvements between October 2009 and December, 2009, and determined the status of work that should have been completed up to that time.² The purpose of our inspections was to ascertain whether the appropriate capital improvements were performed in accordance with requirements of the agreement, whether the quality of the work was satisfactory, and whether the required improvements were completed. Using cost information from the concessionaires' proposals, Department records, and construction industry sources such as R.S. Means Cost Data, we estimated the value of the capital improvements not yet completed.

² Additionally, we conducted inspections in June 2009 of five of the nine concessions that were previously cited for incomplete work in audit No. EW03-136A.

To ascertain whether the concessionaires had paid design review fees and expended the minimum required funds to complete the capital improvements, and whether the Department verified these expenditures, we reviewed invoices, cancelled checks, cash receipts, and other supporting documentation submitted by the concessionaires for a random selection of 19 of the 54 concessions. We also reviewed files for 14 additional concessions for which Department records indicated that substantiating documentation was not required. (See Appendix III for a list of the 19 concessions.).

Because each concession is unique and has different operational needs and capital improvement requirements, the field observations and invoice review results cannot be projected to all concessions. However, the results are generally indicative of whether the Department is adequately monitoring its concessionaires to ensure that they comply with their capital improvement requirements.

Discussion of Audit Results

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials on May 12, 2010, and discussed at an exit conference held on May 26, 2010. On June 4, 2010, we submitted a draft report to Department officials with a request for comments. We received written comments from the Department on June 18, 2010.

In its response, the Department stated, "Oversight of all aspects of concession management and operations is a priority for Parks, and therefore, in light of the acknowledged improvements we have made, we were disappointed that the Report did not find that we have the necessary oversight of capital improvement work by our concessionaires. Parks disagrees with this finding and we will further detail in the body of this letter our strong oversight of concessionaire capital work."

Department officials agreed with or contended that it was already complying with all 12 recommendations. The Department's specific comments and our rebuttals are contained in the relevant sections of this report and in Appendix I. The Department's full response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Since the publication of Comptroller's Audit No. EW03-136A in 2004, the Department has taken several recommended steps in establishing a project management system for monitoring concessionaires to ensure that they comply with the capital improvement provisions of their agreements. These steps include employment of an additional architect to oversee concession projects; deployment of a tracking system to monitor the progress and status of the improvements; and development of a method to substantiate expenditures submitted by concessionaires.

But despite these noteworthy efforts, the Department still needs to bolster its management system to make it more effective. Our current audit concluded that problems continue to beset the Department's management system that precludes it, in many cases from adequately monitoring concessionaires to ensure that they comply with the capital improvement provisions of their agreements. As a result, capital improvements totaling nearly \$10 million were not completed at 33 of the 54 sampled concessions. Moreover, the failure to undertake capital improvements resulted in a loss to the City of at least \$37,531 in concessionaire fees from improvements that would have generated revenue.

Furthermore, the Department did not assess liquidated damages in 11 cases totaling \$640,100 when capital improvements were not completed on time, as the agreements permit. The audit also noted that although the Department receives invoices and canceled checks from concessionaires to substantiate capital improvement work performed, the Department does not always adequately review the documentation submitted. Finally, we found poor conditions at 15 of the 54 concessions that require correction.

Table 1 on page 8, lists the 54 concessions visited. The table also includes the following information: capital improvements not completed, poor conditions noted, concessionaire schedule required, and liquidated damages provision.

Table 1
54 Concessions Visited and Status of Capital Improvements,
Conditions, and Key Requirements of Agreements

Concession	Capital Improvements Not Completed	Poor Conditions Noted	Concessionaire Schedule Required	Liquidated Damages Provision
Bensonhurst Indoor Tennis		X		X
Dyker Beach Golf Course	X		X	X
Marine Park Golf Course				X
Prospect Park Indoor Tennis				
6 Parkway Gas Stations (Shore Parkway)	X	X	X	X
Mill Basin Marina				
Nellie Bly Amusement Park	X	X		X
Abe Stark Ice Rink	X			
Cyclone Roller Coaster	X			X
Paerdegat Athletic Club	X		X	
Battery Park Restaurant				X
Battery Park Snack Bars			X	X
79th Street Boat Basin	X	X	X	
Central Park Tennis	X			X
Wollman & Lasker Rinks		X		X
Loeb Boathouse Restaurant				X
Conservatory Waters Snack Bar				X
Central Park Carousel (Friedsam Memorial)		X		X
Fort Tryon Park Cloister Café		X		X
Madison Square Park Snack Bar			X	
Queensboro Oval Tennis			X	X
Pier I Café	X			X
Alley Pond Indoor Tennis	X			
Alley Pond Driving Range	X		X	X
Clearview Golf Course			X	X
Forest Park Golf Course	X			X
Cunningham Tennis Center	X		X	X
6 Parkway Gas Stations (Cunningham)	X	X	X	X
Kissena Park Golf Course	X			X
6 Parkway Gas Stations (Grand Central - WB)	X	X	X	X
6 Parkway Gas Stations (Grand Central - EB)	X	X	X	X
Terrace on the Park Restaurant	X	X	X	
World's Fair Marina Restaurant	X	X		
Flushing Meadows Ice Rink	X		X	X
Flushing Meadows Golf Course				X
Douglaston Golf Course			X	X
Clove Lakes Restaurant	X			X
La Tourette Golf Course	X		X	X
Pars and Strikes	X	X		X
Silver Lake Golf Course	X		X	X
South Beach Restaurant			X	
Lemon Creek Marina	X	X		
South Shore Golf Course	X		X	X
South Shore Country Club	X		X	X
Pelham Bay Stable	X			X
Pelham / Split Rock Golf Courses			X	X
Turtle Cove Golf	X	X	X	
Keltch Wendy's	X			X
Van Cortlandt Golf Course	X		X	X
Van Cortlandt Park Stables				X
Hutchinson Parkway Restaurant				X
6 Parkway Gas Stations (Major Deegan - NB)	X		X	X
6 Parkway Gas Stations (Major Deegan - SB)	X		X	X
Locust Point Marina				
Total =	33	15	26	41

The Department Does Not Adequately Monitor Capital Improvement Work

We identified various problems with the Department's project management system for monitoring whether its concessionaires complete the capital improvements required by their agreements. After the publication of our previous audit, the Department took several steps in establishing a project management system that included: employment of an additional architect to oversee concession projects; deployment of a tracking system to monitor the progress and status of the improvements; and the development of a method to substantiate expenditures submitted by concessionaires. But despite these noteworthy efforts, the Department still needs to bolster its management system to make it more effective. Thus, we found that the Department does not adequately carry out the following aspects of a project management system:

- Tracking the progress of capital improvements against start and completion dates prescribed in the agreements;
- Conducting an adequate number of inspections and documenting the status of the required improvements;
- Developing written policies and procedures for conducting inspections;
- Adequately reviewing invoices, canceled checks, and other related documentation submitted by contractors;
- Obtaining drawings and warranties of completed projects;
- Maintaining all supporting documentation in project files.

As a result of these problems with the Department's project management system, as discussed in the following section, many concessionaires have not completed the required capital improvements.

Recommendation

1. The Department should strengthen the project management system for monitoring the progress of concessionaires in completing required capital improvements. In that regard, the Department should:
 - track the progress of capital improvements against start and completion dates prescribed in the agreements;
 - conduct an adequate number of inspections and document the status of the required improvements;
 - develop written policies and procedures for conducting inspections;

- adequately review invoices, canceled checks, and other related documentation submitted by contractors;
- obtain as-built drawings and warranties of completed projects;
- maintain all supporting documentation in project files.

Department Response: “Parks agrees and as standard practice Parks already follows the vast majority of tasks described in Recommendation 1, but we will make specific enhancements to further improve our project management system.”

Auditor Comment: If the Department were already following the “vast majority” of these project management tasks, we would not have concluded the City to have been deprived of almost \$10 million through incomplete capital improvement work at 33 concessions as reported below. In any case, the fact that the Department is willing to make enhancements to improve its management system is a step in the right direction.

Capital Improvements Not Completed

We found that 33 (61%) of the 54 concessions that we visited did not complete approximately \$9,602,592 of capital improvements.³ (See Appendices IV and V for a list of those concessionaires who have not completed the required capital improvements.) For example, the Alley Pond Golf Group, LLC was required to construct a new clubhouse, a miniature golf course, and undertake other improvements at the Alley Pond Driving Range in Queens. These improvements, which were included in the license agreement and which the concessionaire agreed to complete between October 1, 2007, and April 30, 2009, had an estimated cost of at least \$2,623,000. However, as of November 5, 2009, construction of most of these improvements had not been started. (See photographs #1 and #2 in Appendix VI.) Department officials informed us on March 11, 2010 that it was terminating the agreement with Alley Pond Golf Group, LLC “due to the concessionaire’s failure to complete the capital improvements specified in the license agreement.”

In another example, the Go-Green Realty Corp. was required to construct Dunkin Donuts stores and undertake other improvements at gas stations on the Major Deegan Expressway in the Bronx, the Belt Parkway in Brooklyn, and the Grand Central Parkway in Queens. These improvements, which were included in the license agreement and which the concessionaire agreed to complete by June 30, 2009, had an estimated cost of at least \$1,250,000. However, as

³ This figure included \$477,990 for five of the nine concessions that we cited for incomplete work in audit No. EW03-136A. Additionally, five concessionaires whose minimum expenditure requirements were not specified and that were cited for incomplete work in audit No. EW03-136A did not complete approximately \$99,248 of capital improvements. (See Appendix V.) Furthermore, we lacked sufficient information to ascertain whether appropriate expenditures were made for improvements at two concessions that were also previously cited for incomplete work (i.e., irrigation work totaling \$50,638 at Forest Park Golf Course and a roof addition totaling \$2,300,000 at Terrace on the Park).

of November 6, 2009, construction of these improvements had not been started. (See photographs #3 and #4 in Appendix VI.)

In a third example, Pars & Strikes of NY, Inc. was required to construct a new miniature golf course and undertake other improvements at the Richmond Avenue amusement center in Staten Island. These improvements, which were included in the license agreement and which the concessionaire agreed to complete by June 30, 2009, had an estimated cost of at least \$387,000. However, as of November 18, 2009, when we inspected the premises, construction of most of these improvements had not been started.⁴ Moreover, during our inspection we found that the concessionaire had abandoned the premises and certain fixtures (i.e., kitchen equipment, fiberglass figurines, and a “Himalaya” ride) had been removed from the premises.⁵ (See photographs #5, #6, and #7 in Appendix VI.)

We notified the Department in writing on December 2, 2009, about the results of our inspection of the premises. In its December 8, 2009 response, the Department stated that “The security deposit of Pars and Strikes of NY, Inc. will be seized and the matter has been referred to the New York City Law Department to assess further legal action.”

As a final example, the Central Park Tennis Center was required to renovate four hard surface courts at Central Park Tennis in Manhattan. These improvements, which were included in the license agreement and which the concessionaire agreed to complete by April 1, 2009, had an estimated cost of at least \$100,000. However, as of October 29, 2009, these improvements had not been started. (See photograph #8 in Appendix VI.)

We should note that based on the concessionaires’ revenue estimates that were included in their proposals, improvements to two of these concessions (i.e., Alley Pond Golf Group, LLC and Pars & Strikes of NY, Inc.), if completed, would have resulted in at least \$37,531 in additional fees to the City between the dates that the improvements should have been completed and the extended completion dates.⁶

Recommendation

2. The Department should issue Notices-to-Cure to concessionaires who have not completed the capital improvements required by their agreements. If concessionaires do not comply, the Department should take appropriate action (such as imposing

⁴ In fact, documentation submitted by the concessionaire and approved by the Department indicates that only \$60,622 of \$387,000 was expended.

⁵ The previous agreement with Pars & Strikes required the construction of a laser tag arena at the Richmond Avenue Amusement Center. As noted in audit No. EW03-136A, the Department permitted the concessionaire to substitute a movable amusement ride (i.e., Himalaya Ride) for the laser tag arena—a fixed asset that would have been more difficult to remove from the premises.

⁶ The improvements to the two concessions included upgrading miniature golf courses, an instructional studio, and a snack bar that would have generated additional revenue of about \$159,843 for the concessionaires, thereby resulting in the additional fees to the City.

liquidated damages) to compel concessionaires to complete required improvements. If concessionaires do not complete the required improvements, the Department should seek to terminate their agreements and recoup minimum required expenditures and forgone fees.

Department Response: “Parks agrees and will continue to issue notices to concessionaires who have not completed capital improvements in accordance with their required schedules. To draw upon an example cited in the Report, Parks followed this exact model in its oversight of the operator of the Alley Pond Park driving range. After several meetings with the operator and an exchange of correspondence, Parks threatened to assess liquidated damages related to substantial delays in the progress of capital work. Once we determined that the operator was unable to fulfill its capital commitment, Parks made arrangements to terminate the license agreement. Further, the termination was arranged in a manner that provided a continuity of service to the public, so there was no break in operation or the payment of license agreement fees while the City issued a competitive solicitation to identify a new operator for the concession.”

Auditor Comment: Issuing Notices-to-Cure without taking appropriate follow-up action may not be a sufficient measure for compelling concessionaires to complete required improvements. Although the Department sent Notices-to-Cure to 14 concessions we cited for incomplete work, the improvements were still not completed at the time of our audit inspections.

This problem was recognized by the Department’s own auditors in internal audit report (No. AP-08-009, dated June 16, 2009) on the compliance of Fair Promotions, Inc., which was a sampled concessionaire that we cited for not completing wrought-iron fencing at the Nellie Bly Amusement Park in Brooklyn. The Department’s audit found that “replacement of the chain-link fence around the perimeter of the site was expected to be replaced with a wrought-iron fence during the first year of the license agreement. However, *this work was not completed, despite a Notice-to-Cure* issued by DPR [the Department] on December 4, 2006. [Emphasis added.] No further action was taken by DPR to ensure that this work was completed.”

We note that in the case of Alley Pond Golf Group, LLC, the Department did not “threaten” the concessionaire liquidated damages until July 29, 2009—three months after all the improvements should have been completed.

Problems with Conducting Inspections

Routine, timely inspections of concession facilities are important to ascertain whether concessionaires are carrying out required improvements in accordance with scheduled timeframes. Despite this stipulation, our review indicated that inspections at 50 (93%) of 54 concessions were not conducted periodically. Inspections at 23 (43%) concessions were not conducted within the scheduled timeframes. In fact, in 14 of these cases, inspections were not conducted until after the scheduled timeframes had elapsed. Moreover, inspection reports lacked sufficient information to ascertain the status of specific required improvements.

Accordingly, if periodic inspections had been conducted, the Department would have been able to identify more expeditiously those concessionaires that failed to undertake required improvements. For example, as previously noted, the Alley Pond Golf Group, LLC was required to complete various improvements at the Alley Pond Driving Range in Queens between October 1, 2007, and April 30, 2009. However, the Department did not inspect the premises until January 23, 2009—8 months and 24 days after the first phase of improvements were to have been completed on April 30, 2008. The Department subsequently extended to November 2, 2009, and March 31, 2011, the timeframe during which the improvements were to be completed. However, the Department did not provide any explanation to justify the time extension.

In another case noted previously, the Go-Green Realty Corp. was required to construct Dunkin Donuts stores and undertake other improvements at gas stations on the Major Deegan Expressway in the Bronx, the Belt Parkway in Brooklyn, and the Grand Central Parkway in Queens by June 30, 2009. However, the only Department inspection of the premises did not occur until May 29, 2009—32 days before all the improvements were to have been completed.

In a third case noted previously, Pars & Strikes of NY, Inc. was required to construct a new miniature golf course and undertake other improvements at the Richmond Avenue amusement center in Staten Island by December 31, 2008. However, the only Department inspection of the premises did not occur until March 16, 2009—75 days after the improvements were to have been completed.

As a final case noted previously, the Central Park Tennis Center was required to renovate four hard surface courts at Central Park Tennis in Manhattan by April 1, 2009. However, the Department did not undertake any inspections of the premises. As of the date of our visit October 29, 2009—211 days had elapsed since the improvements were to have been completed.

We attribute problems with conducting inspections to the Department's lack of written guidelines to prescribe the frequency of inspections and the content of inspection reports. Although Department officials informed us that "the frequency of inspection is determined by the level of construction activity at the site and frequency of milestone and completion date as stipulated in the contract," there were no corresponding guidelines in Department files. Accordingly, as shown in the cited examples, many inspections are not being carried out in a timely manner and, consequently, concessionaires are not completing many of the required improvements.

Recommendations

The Department should:

3. Conduct routine inspections and prepare inspection reports that provide sufficient information about the status of required capital improvement work.

Department Response: "In response to Recommendations 3 and 4, Parks already conducts routine inspections to monitor the progress of concessionaire capital improvements. As previously mentioned in our response to Recommendation 1, Parks is

in the process of further strengthening these activities by finalizing written guidelines to prescribe the frequency of inspections and the content of inspection reports.”

Auditor Comment: The Department’s assertion that it already conducts routine work inspections is belied by the spotty record of inspection reports that were contained in Department files. Had the Department actually conducted routine inspections as recommended, many of the problems with ensuring that concessionaires comply with the capital improvement provisions of their agreements could have been avoided.

4. Prepare written guidelines to prescribe the frequency of inspections and the content of inspection reports.

Department Response: See response to Recommendation No. 3.

Problems with Tracking Progress

License agreements generally state that “Within one week of Parks’ [the Department’s] notification to Licensee that it may commence capital work, Licensee shall provide the Department, for its review and approval, a schedule for all work and the installation of the improvements required under this license.” However, of 26 sampled agreements that contained this stipulation, only two concessionaires submitted the required schedules. Moreover, there was no evidence to indicate that the Department attempted to compel the concessionaires to submit the schedules.

We note that of the previously cited cases of uncompleted work, the license agreement required the Alley Pond Golf Group, LLC and Go-Green Realty Corporation to submit the required schedules. However, there was no evidence to indicate that the schedules were submitted or that the Department made efforts to compel their submission. As noted, both concessionaires failed to complete the required improvements.

In another case, the American Golf Corporation was required to construct a new catering facility at the LaTourette Golf Course in Staten Island. This improvement, which was included in the license agreement and which the concessionaire agreed to complete by October 2006, had an estimated cost of at least \$3.3 million. However, as of November 4, 2009, this improvement had not been started.

According to a September 18, 2009 memorandum, the Department acknowledged that the required improvement had to be cancelled because of community opposition and was negotiating an “equitable adjustment” with the concessionaire. But documentation indicates that the Department and concessionaire did not submit their proposal for the facility to the Community Board Two until February 6, 2007—3 months and 6 days after the improvement was to have been completed. Notwithstanding the Department’s eventual recognition that the construction of the catering facility needed to be abandoned, the excessive time lag is another indication of the Department’s deficiencies with properly tracking the progress of concessionaire capital improvements.

We should note that the catering facility improvements, if completed, would have generated revenue for the concessionaire, thereby resulting in additional fees to the City. Moreover, the concessionaire was also required to expend at least \$3,324,973 for the new catering facility. Given that the Department is apparently negotiating an equitable adjustment with the concessionaire, the Department should consider this information about potential fees and required capital improvement expenditures in negotiating an agreement.

Recommendations

5. The Department should enforce license agreement provisions requiring the submittal of work schedules from concessionaires. Furthermore, the Department should require that all concessionaires—particularly those that must carry out major improvements—submit timely work schedules.

Department Response: “Parks actively tracks the progress of all required capital improvements based on the schedule laid out in Exhibit D of the license agreement, and will continue to request updated work schedules as needed throughout the design and construction process.”

Auditor Comment: Of 24 concessionaires that did not submit required work schedules, 18 did not complete required improvements. Therefore, we question the Department’s statement that it actively tracks the progress of all required capital improvements.

6. The Department should use the information provided in this audit about lost revenue from the LaTourette catering facility in undertaking equitable adjustment negotiations with the concessionaire.

Department Response: “Parks will consider the information provided in the Report regarding lost revenue from the LaTourette catering facility as it negotiates with the operator for an equitable adjustment to required capital improvements. Like the Comptroller, we too want to establish the best financial deal possible for the City while respecting the wishes of the community affected by each concession.”

Minimum Expenditures Not Attained

Our review indicated that project files for 13 (68%) of 19 sampled concessions lacked evidence to substantiate that the concessionaires had expended all required minimum amounts to complete capital improvement work. The amount of the unexpended funds totaled \$1,483,681, which represented 9.5 percent of \$15,568,680 in required minimum expenditures. We noted that files lacked critical information, such as detailed invoices or cancelled checks, which are required to substantiate that appropriate funds were actually expended by the concessionaires. Furthermore, we found that the files for an additional 14 concessions should have contained certain substantiating documentation although Department records indicated that documentation was not required. (See Appendix III.)

Also, some of the expenditures were for items such as chair covers, the purchase of draperies, maintenance work to clean a blocked sewer, a service charge to repair a furnace, and design review fees that were clearly not capital improvements as defined by the agreements. We note that in these cases, the Department improperly permitted the concessionaires to claim these as authorized expenditures.

License agreements generally stipulate minimum amounts that concessionaires must expend to complete specific capital improvements at the licensed premises, and that “the total cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets and such other supporting documents or other data as the Commissioner may require.” Moreover, the agreements state, “In the event Licensee performs all Capital Improvements for less than the amount listed . . . any excess monies shall be remitted to the City as additional license fees within thirty days following the Commissioner’s determination of Final Completion.”

Recommendations

The Department should:

7. Ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed. The Department should carefully review the documentation to ensure that claimed expenditures for capital improvement work conforms to the requirements of concession agreements.

Department Response: “Parks agrees and will continue to ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed. Indeed, Parks has a staff person dedicated to carefully reviewing this documentation and ensuring that the concessionaire’s submissions conform to the requirements of the agreements.”

Auditor Comment: The Department improperly permitted concessionaires to claim as authorized expenditures \$108,474 for items that did not constitute capital improvements. Therefore, the Department should instruct appropriate staff in identifying and excluding all noncompliant items, such as chair covers, draperies, maintenance work, and service charges, that were clearly not capital improvements.

8. Determine whether any of the \$1,483,681 in unexpended funds noted in this report should be recouped from the concessionaires.

Department Response: “In nearly all cases, the capital funds cited in Recommendation 8 were already invested or will be invested by our concessionaires. For example, this Recommendation includes over \$500,000 in unexpended funds for the ‘Picnick’ snack bar in Battery Park, reflecting documentation that has not been submitted by the concessionaire. Although Parks has requested additional documentation from the concessionaire, it is clear from one visit to the facility that the capital requirement was in fact met. In another example, our gas station operator is cited for unexpended funds in

the amount of roughly \$100,000. Parks is working in good faith with the concessionaire, who, to date, has verified \$1,169,237 in capital expenditures (out of a \$1,250,000 commitment), to verify additional capital expenditures. We anticipate that the concessionaire will easily exceed their capital commitment once all expenditures are verified.

“Further, it is important to note that approximately \$300,000 of the unexpended funds is attributable to Pars and Strikes, which was abandoned by its operator without notice to Parks.

“Parks will review other instances of unexpended funds noted in the Report and will take appropriate action.”

Auditor Comment: Notwithstanding the Department’s belief about funds invested by the concessionaires, file documentation consisting of invoices, time sheets, and other supporting data indicates that more than \$1.4 million was not substantiated. Thus, The Battery Conservancy, Inc. was required to invest \$537,885 in capital funds at the Battery Park City Snack Bar. However, Department staff substantiated only \$30,000 of this amount. In another cited case, Go-Green Realty was required to invest \$1,250,000 in capital funds for six parkway gas stations. File documentation indicates that Department staff substantiated \$1,169,238, which was \$80,762 less than the minimum required expenditure. However, our review found that of the substantiated amount, the Department should not have validated \$23,211 for items that were not capital improvements (e.g., espresso machine, wastebasket, cup holders). Accordingly, the concessionaire fell \$103,973 short (\$80,762 plus \$23,211) of substantiating the total required expenditure amount. Finally, Pars & Strikes of NY, Inc. was required to invest \$550,000 in capital funds at the Richmond Avenue Amusement Center, of which \$387,000, according to the concessionaire’s proposal, was to have been expended by June 30, 2009—almost four months before the concessionaire abandoned the facility. However, Department staff substantiated only \$60,622 of the \$387,000 expenditure.

Liquidated Damages Not Assessed

License agreements generally state that “in the event the Licensee fails to Finally Complete a particular improvement by the date specified for Final Completion . . . Licensee may be required to pay the City liquidated damages . . . until the outstanding improvement is completed.” Department files did not indicate whether concessionaires were assessed liquidated damages as allowed for by license agreements when their capital improvements were not completed on time. We calculated that the Department could have assessed at least \$640,100 in liquidated damages for at least 11 concessionaires, as shown in Table 2 on page 18.⁷

⁷ There were 41 concessions for which license agreements contained provisions for assessing liquidated damages. At the time of our visits, work at 16 of the 41 concessionaires was either completed or not yet scheduled to be completed. Of the remaining 25 concessionaires, we determined that the magnitude of noncompliance on concession operation at the above noted 11 concessions warranted the imposition of liquidated damages.

Table 2
Schedule of Liquidated Damages Not
Assessed by the Department

Concessionaire	Location	Damages Per Day	Scheduled Completion Date	No. of Days Late as of 12/31/09	Amount to be Assessed through 12/31/09
Go-Green Realty	Gas Station at Belt Parkway	\$250	06/30/09	184	\$46,000
Go-Green Realty	Gas Station at Major Deegan NB	\$250	06/30/09	184	\$46,000
Go-Green Realty	Gas Station at Major Deegan SB	\$250	06/30/09	184	\$46,000
Go-Green Realty	Gas Station at Grand Central Pkwy EB	\$250	06/30/09	184	\$46,000
Go-Green Realty	Gas Station at Grand Central Pkwy WB	\$250	06/30/09	184	\$46,000
Go-Green Realty	Gas Station at Cunningham	\$250	06/30/09	184	\$46,000
North Shore Golf Group, Inc.	Alley Pond Driving Range *	\$100	04/30/08	610	\$61,000
Bronx Equestrian Center	Pelham Bay Stables	\$100	06/01/09	213	\$21,300
Fair Promotions Inc.	Nellie Bly Amusement Park	\$250	12/31/07	731	\$182,750
Pars & Strikes of NY, Inc.	Richmond Avenue Amusement Center **	\$250	12/31/08	365	\$91,250
Cunningham Sports Center,	Cunningham Tennis Center	\$100	10/14/09	78	\$7,800

Total = \$640,100

* Includes tee line extension, instructional studio and target greens listed in Phase I

** includes mini-golf

Accordingly, the Department should assess liquidated damages in order to safeguard the City's interests, or alternatively, document the reasons that damages should not be assessed.

Recommendations

- The Department should assess liquidated damages when concessionaires fail to complete capital improvements in accordance with their agreements.

Department Response: "In response to Recommendation 9 and 10, Parks will consider assessing liquidated damages on a case by case basis. We use our right to assess liquidated damages as a tool to compel concessionaires to complete the capital work required in their license agreements. We cite the potential for liquidated damages in the notices we send to concessionaires. In most cases the capital work is completed, and liquidated damages are not pursued. For example, in a July 2009 written notice, Parks threatened to assess liquidated damages in the amount of \$116,500 against Fair Promotions, Inc. for its failure to install a wrought-iron fence around the perimeter of its licensed premises. After receiving this notice, Fair Promotions subsequently installed the wrought-iron fence. However, in cases where capital work is not completed, Parks may assess liquidated damages or pursue other means to compensate the City for its lost capital improvements."

Auditor Comment: Notwithstanding the Department's contention about Fair Promotions, Inc., the concessionaire did not install all required wrought-iron fencing. (See photograph #12 in Appendix VI.) The improvement, which was included in the license agreement and was granted an extension by the Department to complete by October 18, 2009, had an estimated cost of at least \$165,000. However, as of November 13, 2009,

construction of this improvement was not completed. Accordingly, the Department must assess liquidated damages in this instance, and in the case of the other cited concessions.

10. The Department should determine whether liquidated damages totaling \$640,100 should be assessed for the 11 cases noted in this report.

Department Response: See response to Recommendation No. 9.

Other Issues

Non-Capital Improvements Included as Required Work

In another matter, we note that the “Maintenance, Sanitation and Repairs” section of the license agreements specifies that “Licensee shall, at its sole cost and expense, and to the satisfaction of Commissioner, put, keep, repair and preserve in good order the Licensed Premises.” Despite this stipulation, for 23 (43%) of the 54 concessions, our examination found that capital improvement requirements contained repair or maintenance items that should have been excluded from the list of capital improvements.

Had the Department excluded these items, the repair work would have been carried out by the concessionaires at their own expense—not as part of the required capital improvement expenditures specified under license agreements Exhibit D. The repair items included roofing, shingles and gutter repairs at the Central Park Carousel in Manhattan and the South Shore Country Club in Staten Island, repairing cracked pavement at gas stations in the Bronx, Brooklyn, and Queens, and repaving and restriping parking lots at the Richmond Avenue Amusement Center in Staten Island.

Recommendation

11. The Department should ensure that all repair and maintenance work be excluded from license agreement provisions that require concessionaires to expend funds for capital improvements.

Department Response: “Parks agrees and will work to ensure that future requests for proposals, and their subsequent license agreements, include language that ensures that repair and maintenance work is not included as part of a concessionaire’s required capital improvements.”

Poor Conditions at Certain Concessions

We found the following conditions at 15 concessions, some of which may pose a risk to the public:

- Mats and nets stored inside electrical rooms at Bensonhurst Indoor Tennis in Brooklyn (see photograph #1 in Appendix VII).
- Cracks and deteriorated concrete pavement at three gas stations on the Grand Central parkway in Queens and one gas station at the Belt Parkway in Brooklyn (see photograph #2 in Appendix VII).
- Improperly installed roof membrane at Nellie Bly Amusement Park in Brooklyn (see photograph #3 in Appendix VII).
- Deteriorated, uneven, and excessively sloped ramps; water leakage at cracked, flaking, stonework; and missing and stained tiles in women's restroom at the West 79th Street Boat Basin Café in Manhattan (see photograph #4 in Appendix VII).
- Water leaks in main area, water accumulation in the electrical room, and a main fire alarm control panel that was blocked by rolling lockers at Wollman Rink in Manhattan (see photograph #5 in Appendix VII).
- Water damaged soffits at parapet walls along outdoor roof patio, and cracked and spalled concrete canopy at outdoor roof patio at the Lasker Rink in Manhattan (see photograph #6 in Appendix VII).
- Unpainted wood in ceiling and peeling paint on roof tower and vent area at the Central Park Carousal in Manhattan (see photograph #7 in Appendix VII).
- Uneven octagon walkway pavers creating a potential tripping hazard at the Fort Tryon Park Cloister Café in Manhattan.
- Water damaged panels at exterior soffit of Terrace in the Park in Queens (see photograph #8 in Appendix VII.)
- Portions of discolored and waterlogged ceiling plaster at the World's Fair Marina Restaurant in Queens.
- Exposed electrical wiring, overflowing garage containers, boat basin not drained, and bumper boats inadequately protected at Pars and Strikes Amusement Center in Staten Island (see photographs #9 and #10 in Appendix VII).
- Deteriorated wood platform at the Lemon Creek Marina in Staten Island (see photograph #11 in Appendix VII).

- Deteriorated parking lot at Turtle Cove Golf in the Bronx (see photograph #12 in Appendix VII).

We should note that these conditions would have been addressed had the required capital improvements been completed or the improvements been properly maintained after being completed.

Recommendation

12. The Department should issue Notices-to-Cure requiring that the concessionaires correct the conditions noted in this report.

Department Response: “Parks will review the conditions noted in the report on a case by case basis and will take appropriate action.”

**ADDITIONAL AUDITOR COMMENTS TO ADDRESS
DEPARTMENT'S WRITTEN RESPONSE**

Department Response: “Parks respectfully disagrees with the Report’s findings that approximately \$9.6 million in concessionaire capital work was incomplete due to the need for more oversight.

- “\$2.4 million of the \$9.6 million cited is from the Van Cortlandt Golf Course clubhouse. The License Agreement gave the concessionaire the option of spending \$3 million on both the clubhouse restoration and a new banquet facility, or to opt not to construct a banquet facility and spend \$3 million on the clubhouse throughout the license term. The concessionaire opted to not build the banquet facility and Parks has worked closely with the concessionaire to find the best possible design solution for a full restoration of the historic clubhouse. While the design approvals have taken longer than anticipated, Parks fully expects that the \$3 million will be completed within the timeframe permitted in the license agreement.”

Auditor Comment: According to license agreement Exhibit D, even with the deletion of the new banquet facility, Van Cortlandt Golf, LLC was still required to expend \$3,000,000 to undertake Clubhouse/Snack Bar and Pro Shop improvements at Van Cortlandt Golf Course in the Bronx. Phase I of the improvements (i.e., replace windows, rooting wood, restore building to its original color and texture, restore wood roof shingles, create ADA compliant lobby, pro shop, restrooms) were to be completed by December 31, 2009. However, as of November 6, 2009, construction of these improvements—which we estimated to cost \$2,400,000—had not taken place. (See photograph #14 in Appendix VI.)

In addition, the concessionaire is required to undertake “as needed” annual improvements between January 1, 2010, and December 31, 2016, after the time period covered in our audit. We estimated the cost of these improvements to be \$600,000, an amount that we excluded from our estimate of incomplete improvements because the concessionaire was not required to expend these funds during the audit scope. Clearly, the Department failed to ensure that the concessionaire completed the required Phase I improvements by December 31, 2009.

Department Response:

- “\$2.4 million of the \$9.6 million cited is from Alley Pond Driving Range and Pars and Strikes. Parks terminated Alley Pond in the best interest of the City for failure to complete capital improvements, released a new RFP and anticipates that the incoming concessionaire will complete extensive capital improvements at the facility. As mentioned earlier, the operator of Pars and Strikes abandoned this concession without notice to Parks. We have released a new RFP and are actively seeking a new concessionaire.”

Appendix I (continued)

Auditor Comment: To its credit, the Department eventually took action and terminated the agreement with the Alley Pond Golf Group, LLC, which was required to complete various improvements between October 1, 2007, and April 30, 2009. But deficiencies in the Department's oversight of the concessionaire improvements were apparent before the Department terminated the concessionaire on March 11, 2010—more than ten months after the improvements were originally scheduled to be completed.⁸ The project management deficiencies included:

- Inadequate tracking of the progress of the capital improvements against start and completion dates prescribed in the agreements. Thus, the Department did not instruct the concessionaire to submit a schedule until April 28th, 2009—two days before all improvements were to have been originally completed.
- Inadequate number of inspections or documentation about the status of the required improvements. In fact, only one inspection of the premises took place on January 23, 2009—8 months and 24 days after the first phase of improvements were to have been completed on April 30, 2008.
- Failure to obtain drawings from the concessionaire. In fact, although the Department on June 23 and July 29, 2009 instructed the concessionaire to submit drawings and related information, the concessionaire failed to do so, and the Department did not invoke liquidated damages or take any additional steps to compel submission.

As far as Pars and Strikes is concerned, similar deficiencies beset the Department's management of the concession improvements long before the concessionaire abandoned the premises on October 26, 2009. Thus, the Department conducted only one inspection on March 16, 2009, and did not request documentation attesting that required capital improvement funds were expended until February 26, 2009—16 months after the concessionaire was required to complete the first phase of capital improvements.

Department Response:

- “\$3.1 million of the \$9.6 million cited is work that Parks is carefully tracking and fully expects will be completed in a timely manner.
- \$530,000 of the \$9.6 million cited are capital improvements that are complete.”

Auditor Comment: The Department did not provide any evidence to substantiate its claim that \$530,000 of the \$9.6 million in incomplete improvements is in fact “complete.” Indeed, the Department's disclosure that \$3.1 million of the incomplete improvements “will be completed in a timely manner” buttresses our finding that many capital improvements are not being completed as required by concessionaire agreements.

⁸ We estimated the cost of the incomplete improvements at the Alley Pond Driving Range to be \$2.08 million (see Appendix IV), not \$2.4 million as the Department stated.

Appendix II

Concessionaire Facilities Inspected

No.	Permit No.	Concessionaire	Concession	Location
1	B7-IT	NY Tennis at Bridgeview, LLC	Bensonhurst Indoor Tennis	9000 Bay Parkway
2	B28-H-GC	American Golf	Dyker Beach Golf Course	86th Street and 7th Avenue
3	B57-A-GC	Marine Park Seaside Links, LLC	Marine Park Golf Course	2280 Flatbush Avenue
4	B68-IT	Prospect Park Alliance	Prospect Park Indoor Tennis	Corner of Coney Island and Parkside Avenues
5	B166-D-GS	Go Green Realty Corp.	Gas Station at Belt Parkway	Shore Parkway (Center Mall) near Exit 11s
6	B166-D-M	Dimeglio	Mill Basin Marina	Avenue Y & East 69th Street
7	B280-AP	Fair Promotions, Inc.	Nellie Bly Amusement Park	1824 Shore Parkway
8	B335--A-IS	City Ice Sports, Inc.	Abe Stark Ice Rink	Coney Island Boardwalk and West 19th Street
9	B369-O	Cyclone Coasters, Inc.	Cyclone Roller Coaster	834 Surf Avenue
10	B406-O	Fitmar Management, LLC	Paerdegat Athletic Club	1500 Paerdegat North
11	M5-F-R	Battery Wave, LLC	Battery Park Restaurant	1 Battery Park Plaza
12	M5-SB	The Battery Conservancy, Inc.	Battery Park Snack Bar	Battery Park
13	M10-TP	Central Park Tennis Center	Central Park Tennis	93d Street near the West Drive
14	M10(5)-A-IS	Wollman Rink Operations, LLC	Wollman/Lasker Rinks	Center Drive at 63rd Street
15	M10(14)-BR,SB,R	Central Park Boathouse, LLC	Loeb Boathouse Restaurant	East 72nd Street & Park Drive North
16	M10(15)-SB	Knish Nosh	Conservatory Waters Snack Bar	Between 72 & 75 Streets, East Drive and Fifth Avenue
17	M10(37)-C-CL	New York One, LLC	Central Park Carousel	Approximately 65th Street and the Center Drive
18	M29-R	New York Restoration Enterprise	Fort Tryon Park Cloister Café	1 Margaret Corbin Drive
19	M52-SB	Madison Square Park Conservancy	Madison Square Park Snack Bar	Near Madison Avenue and East 23rd Street
20	M70-IT	York Avenue Tennis, LLC	Queensboro Oval Tennis	488 East 60th Street
21	M71-70-SB	Pier I Café	Pier I Café	West 70 Street near Pier I
22	Q1-A-SB-IT	Hemco, Inc.	Alley Pond Indoor Tennis	79-20 Winchester Boulevard
23	Q1-DR	Alley Pond Golf Group, LLC	Alley Pond Driving Range	232-01 Northern Boulevard
24	Q10-GC	American Golf	Clearview Golf Course	202-12 Willets Point Boulevard
25	Q15-GC	Forest Golf Corp.	Forest Park Golf Course	101 Forest Park Drive
26	Q21-A-IT	Cunningham Sports Center, Inc.	Cunningham Tennis Center	196-00 Union Turnpike
27	Q21-B-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway	Grand Central Parkway Center Mall at Cunningham Park
28	Q24-GC	Kissna Golf, LLC	Kissena Golf Course	165-14 Booth Memorial Avenue
29	Q84-A-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway WB	Grand Central Parkway (Westbound), at 106th Street
30	Q84-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway EB	Grand Central Parkway (Eastbound), at 104th Street
31	Q99C-R	Crystal Ball Group, Inc.	Terrace on the Park	52-11 111th Street
32	Q99-GR	Food Craft, INC.	World's Fair Marina Restaurant	1 World's Fair Marina
33	Q99-IS	World Ice Arena, LLC	Flushing Meadow Ice Rink	Flushing Meadows Park Perimeter Road
34	Q99J-G	Flushing Golf Corporation, Inc.	Flushing Meadow Golf Course	100 Flushing Meadows Park
35	Q411-R-GC	Douglaston Golf, LLC	Douglaston Golf Course	6320 Marathon Parkway
36	R5-SB,BR,R	Lakeside Restaumat Corp.	Clove Lakes Restaurant	1150 Clove Road
37	R13-B-GC	American Golf	La Tourette Golf Course	1001 Richmond Hill Road
38	R17-BA	Pars & Strikes Of NY, Inc.	Pars and Strikes Amusement Center	855 Arthur Kill Road and Richmond Avenue
39	R22-GC	The Golf Center Of S.I., Inc.	Silver Lake Golf Course	915 Victory Boulevard
40	R46-R	SBR & C LLC	South Beach Restaurant	300 Father Capodanno Boulevard
41	R79-M	Lemon Creek Mariners, Inc.	Lemon Creek Marina	500 Seguin Avenue
42	R104-A-GC	American Golf	South Shore Golf Course	200 Huguenot Avenue
43	R104-R	United Caterers, Corp.	South Shore Country Club	200 Huguenot Avenue
44	X39-B-ST	Bronx Equestrian Center, Inc.	Pelham Bay Stable	9 Shore Road
45	X39-F-GC	American Golf	Pelham/Split Rock Golf Courses	870 Shore Road
46	X39-O	PBE Golf, Inc.	Turtle Cove Golf	1 City Island Road
47	X58-R	BXC Products, Inc.	Keltch Wendy's	19 West 170th Street
48	X92-2-GC	Van Cortland Golf, LLC	Van Cortlandt Golf Course	115 Van Cortlandt Park South
49	X92-D-ST	Catango Corp.	Van Cortlandt Park Stables	West 254th Street & Broadway
50	X101-O-R	Hutchinson North QSR Corp.	Hutchinson Parkway Restaurant	1320 Hutchinson River Parkway
51	X150-A-GS	Go Green Realty Corp.	Gas Station at Major Deegan NB	Major Deegan Expy. near East 233rd Street exit
52	X150-GS	Go Green Realty Corp.	Gas Station at Major Deegan SB	Major Deegan Expy. near East 233rd Street exit
53	X310-M	Hammond Cove Marina, Inc.	Locust Point Marina	145 Reynolds Avenue
54	M71(79)R	Sunny Days in the Park	West 79th Street Boat Basin Café	Rotunda at the West 79 Street Marina

Appendix III

Sample of Concessionaire Invoices Reviewed

No.	Permit No.	Concessionaire	Concession	Location
1	B28-H-GC	American Golf	Dyker Beach Golf Course	86th Street and 7th Avenue
2	B68-IT	Prospect Park Alliance	Prospect Park Indoor Tennis	Corner of Coney Island and Parkside Avenues
3	B166-D-GS	Go Green Realty Corp.	Gas Station at Belt Parkway	Shore Parkway (Center Mall) near Exit 11s
4	B166-D-M	Dimeglio	Mill Basin Marina	Avenue Y & East 69th Street
5	B335-A-IS	City Ice Sports, Inc.	Abe Stark Ice Rink	Coney Island Boardwalk and West 19th Street
6	M5-F-R	Battery Wave, LLC	Battery Park Restaurant	1 Battery Park Plaza
7	M5-SB	The Battery Conservancy, Inc.	Battery Park Snack Bar	Battery Park
8	M52-SB	Madison Square Park Conservancy	Madison Square Park Snack Bar	Near Madison Avenue and East 23rd Street
9	Q1-A-SB-IT	Hemco, Inc.	Alley Pond Indoor Tennis	79-20 Winchester Boulevard
10	Q21-B-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway	Grand Central Parkway Center Mall at Cunningham Park
11	Q84-A-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway WB	Grand Central Parkway (Westbound), at 106th Street
12	Q84-GS	Go Green Realty Corp.	Gas Station at Grand Central Parkway EB	Grand Central Parkway (Eastbound), at 104th Street
13	Q99-GR	Food Craft, INC.	World's Fair Marina Restaurant	1 Worlds Fair Marina
14	R17-BA	Pars & Strikes Of NY, Inc.	Pars and Strikes	855 Arthur Kill Road and Richmond Avenue
15	R104-R	United Caterers, Corp.	South Shore Country Club	200 Huguenot Avenue
16	X150-A-GS	Go Green Realty Corp.	Gas Station at Major Deegan NB	Major Deegan Expy. near East 233rd Street exit
17	X150-GS	Go Green Realty Corp.	Gas Station at Major Deegan SB	Major Deegan Expy. near East 233rd Street exit
18	X310-M	Hammond Cove Marina, Inc.	Locust Point Marina	145 Reynolds Avenue
19	M71-(79)R	Sunny Days in the Park	W.79th Street Boat Basin Café	Rotunda at the West 79 Street Marina

Sample of Concessionaire Files That Lacked Documentation

No.	Permit No.	Concessionaire	Concession	Location
1	B7-IT	NY Tennis at Bridgeview, LLC	Bensonhurst Indoor Tennis	9000 Bay Parkway
2	B57-A-GC	Marine Park Seaside Links, LLC	Marine Park Golf Course	2280 Flatbush Avenue
3	B280-AP	Fair Promotions, Inc.	Nellie Bly Amusement Park	1824 Shore Parkway
4	M10-TP	Central Park Tennis Center	Central Park Tennis	93d Street near the West Drive
5	M10-(15)-SB	Knish Nosh	Conservatory Waters Snack Bar	Between 72 & 75 Streets, East Drive and Fifth Avenue
6	M29-R	New York Restoration Enterprise	Fort Tryon Park Cloister Café	1 Margaret Corbin Drive
7	M70-IT	York Avenue Tennis, LLC	Queensboro Oval Tennis	488 East 60th Street
8	M71-70-SB	Pier I Café	Pier I Café	West 70 Street near Pier I
9	Q1-DR	Alley Pond Golf Group, LLC	Alley Pond Driving Range	232-01 Northern Boulevard
10	Q21-A-IT	Cunningham Sports Center, Inc.	Cunningham Tennis Center	196-00 Union Turnpike
11	Q24-GC	Kissena Golf, LLC	Kissena Golf Course	165-14 Booth Memorial Avenue
12	Q99-IS	World Ice Arena, LLC	Flushing Meadow Ice Rink	Flushing Meadows Park Perimeter Road
13	R22-GC	The Golf Center Of S.I., Inc.	Silver Lake Golf Course	915 Victory Boulevard
14	X39-B-ST	Bronx Equestrian Center, Inc.	Pelham Bay Stable	9 Shore Road

Appendix IV

**Capital Improvements Contractually Valued at
More Than \$100,000 Not Completed**

Permit No.	Concessionaire	Location	Missing or Incomplete Work	Cost
M10-TP	Central Park Tennis Center	Central Park Tennis	1. 4 hard courts not renovated	\$100,000
M-71(79)R	Sunny Days in the Park	West 79th Street Boat Basin Café	1. Floor tiles, slate, concrete and blacktop repairs. 2. Work in restrooms (Included in above #)	\$14,411
M71-(70)-SB	Pier I Café, Inc.	Pier I Café	1. Café 2. Restrooms 3. Expansion	\$24,171 \$63,291 \$90,997
X39-B-ST	Bronx Equestrian Center, LLC	Pelham Bay Stables	1. Renovate restrooms 2. Install fans 3. Replace tack room doors 4. Replace fence	\$15,000 \$1,250 \$1,500 \$1,000
X58-R	BCX Products, Inc.	Keltch Wendy's	1. New lintels not installed 2. Remove and replace roofing 3. Replace damaged brick	\$3,700 \$6,960 \$120
X92-2-GC	Van Cortlandt Golf, LLC	Van Cortlandt Golf Course	1. Clubhouse improvements 2. Maintenance Building 3. Cart Storage Area 4. Halfway House	\$2,400,000 \$50,000 \$35,000 \$25,000
Q99-GR	Food Craft Inc.	World's Fair Marina Restaurant	1. Repair and reinstate fountain/pool	\$3,257
Q1-A-SB-IT	Hemco, Inc.	Alley Pond Indoor Tennis	1. Standing seam sloped metal roof	\$25,000
Q1-DR	Alley Pond Golf Group, LLC.	Alley Pond Driving Range	1. Tee line enclosure 2. Video analysis equipment (Included in above #) 3. Instructional studio and launch monitor 4. 27 hole miniature golf course 5. Demolish existing clubhouse and reconstruct w/snack bar 6. Landscaping (Include in above #)	\$1,000,000 \$100,000 \$350,000 \$638,000
Q21-A-IT	Cunningham Sports Center, Inc.	Cunningham Tennis Center	1. Renovation of 10 non-bubbled courts 2. Installation of new liners for bubbles 3. Sewer, drainage, and telecom repairs/upgrades	\$30,000 \$100,000 \$30,000
Q24-GC	Kissena Golf, LLC	Kissena Park Golf Course	1. Clubhouse improvements 2. Parking lot improvements 3. Storage building improvements	\$35,000 \$8,000 \$25,000
Q99-IS	World Ice Arena, LLC	Flushing Meadows Ice Rink	1. 2-3 Birthday rooms not constructed	\$155,700
B28-H-GC	American Golf Corp.	Dyker Beach Golf Course	1. Cart path is 5 feet wide instead of 8 feet wide	\$59,314
B280-AP	Fair Promotions Inc.	Nellie Bly Amusement Park	1. Parking lot repair and striping 2. Replacement fence with wrought iron	\$164,000 \$165,000
B-335-A-IS	City Ice Rink Inc.	Abe Strak Ice Rink	1. Sign at the entrance to the parking lot on Surf Avenue	\$5,000
B369-O	Cyclone Coasters Inc.	Cyclone Roller Coaster	1. Cameras not installed 2. New awnings on souvenir and photo booths	\$1,875 \$6,000
B406-O	Fitmar Management, LLC	Paerdegat Athletic Club	1. Interior renovation and HVAC pool exhaust. 2. Landscaping and interior renovation	\$32,470 \$89,443
R13-B-GC	American Golf Corp.	La Tourette Golf Course	1. Parking lot improvements	\$357,867
R22-GC	The Golf Center of S.I., Inc.	Silver Lake Golf Course	1. Replace park benches 2. Cart barn with electricity and water 3. Turf block parking field 4. Relocate flag pole & landscape 5. Reseal and restripe parking lots 6. Expand and raise 22 tees 7. Maintenance building - renovate	\$4,000 \$86,000 \$202,500 \$17,500 \$43,500 \$126,500 \$92,000
R79-M	Lemon Creek Mariners, Inc.	Lemon Creek Marina	1. LCBA bulkhead maintenance and repair 2. LCBA structural maintenance and repairs	\$28,125 \$3,333

Appendix IV(continued)

Permit No.	Concessionaire	Location	Missing or Incomplete Work	Cost
R104-A-GC	American Golf Corp.	South Shore Golf Course	1. New cart path not installed	\$5,208
			2. Cart path is 5 feet wide instead of 8 feet wide	\$42,160
R104-R	United Caterers Corp.	South Shore Country Club	1. Roof, gutters and leader repairs	\$37,480
			2. Waste compactor not installed	\$20,000
			3. South parking lot repaving and restriping	\$40,000
R17-BA	Pars & Strikes of NY, Inc.	Richmond Ave. Amusement Center	1. Equipment for attractions	\$15,000
			2. Repaint existing structures and fiberglass animals	\$20,000
			3. Parking lot not repaved and restriped (Included in above #)	
			4. Repave Go-cart track and install canvas covering (Included in above #)	
			5. Additional lighting at Himalaya ride (Included in above #)	
			6. Repaint restaurant interior	\$19,248
			7. New miniature golf course, lighting, and landscaping	\$275,000
			8. Entrance sign	\$5,000
X150-A-GS	Go Green Realty Corp.	Major Deegan Gas Station, NB	1. Construct Dunkin Donuts and/or convenience store	\$424,348
			2. New 5 ton energy star condenser/air handler (Included in above #)	
			3. Emergency backup generator	\$42,691
			4. Solar panels on existing canopies	\$45,000
			5. Bollards not installed	\$2,019
X150-GS	Go Green Realty Corp.	Major Deegan Gas Station, SB	1. Construct Dunkin Donuts and/or convenience store	\$424,348
			2. New 5 ton energy star condenser/air handler (Included in above #)	
			3. Emergency backup generator	\$42,691
			4. Solar panels on existing canopies	\$45,000
			5. Bollards not installed	\$2,019
Q84-GS	Go Green Realty Corp.	Grand Central Gas Station, EB	1. New 5 ton energy star condenser/air handler	\$8,223
			2. Emergency backup generator	\$42,691
			3. Solar panels on existing canopies	\$45,000
			4. Bollards not installed	\$2,019
			5. Pavement repairs	\$243
Q84-A-GS	Go Green Realty Corp.	Grand Central Gas Station, WB	1. New 5 ton energy star condenser/air handler	\$8,223
			2. Emergency backup generator	\$42,691
			3. Solar panels on existing canopies	\$45,000
			4. Bollards not installed	\$2,019
			5. Pavement repairs	\$243
Q21-B-GS	Go Green Realty Corp.	Grand Central Mall Gas Station	1. Emergency backup generator	\$42,691
			2. Solar panels on existing canopies	\$45,000
			3. Bollards not installed	\$2,019
			4. Pavement repairs	\$243
B166-D-GS	Go Green Realty Corp.	Belt Parkway Gas Station	1. Construct Dunkin Donuts and/or convenience store	\$424,348
			2. New 5 ton energy star condenser/air handler (Included in above #)	
			3. Emergency backup generator	\$42,691
			4. Solar panels on existing canopies	\$45,000
			5. Bollards not installed	\$2,019
			6. Pavement repairs	\$243

Total = \$9,124,602

Appendix V

**CAPITAL IMPROVEMENTS THAT WERE CITED IN AUDIT NO. EW03-136A
AS NOT COMPLETED**

A. Contractually Valued at More Than \$100,000 Not Completed

No.	Permit No.	Concessionaire	Location	Missing or Incomplete Work	Cost
1	Q15-GC	Forest Golf Corporation	Forest Park Golf Course	1. Gas tank or pump	\$50,000
2	X39-O	PBE Golf Inc.	Turtle Cove Golf	1. Parking lot resurfacing and restriping	\$21,200
				2. (1) heated driving range station	\$3,000
				3. (6) large greens	\$3,000
3	Q1-A-SB-IT	Hemco, Inc.	Alley Pond Indoor Tennis	1. Metal siding at blowers	\$25,000
4	R5-SB, BR, R	Lakeside Restaurant Corp.	Clove Lakes Restaurant	1. Acrylic atrium in place of new glass atrium dining area	\$30,790
5	Q99C-R	Crystal Ball Group	Terrace on the Park	1. Restaurant garden	\$345,000

Total = \$477,990

B. With Contractually Unspecified Amounts Not Completed

No.	Permit No.	Concessionaire	Location	Missing or Incomplete Work	Cost
1	B406(1)M	Hudson River Yacht Club	Paerdegat Basin (Marina 1)	1. Diesel Tank	\$50,000
2	B406(2)M	Midget Squadron Yacht Club	Seaview/Paerdegat Avemies (Marina 2)	1. Refurbish children's park	\$300
3	B406(3)M	Diamond Point Yacht Club	Paerdegat Basin (Marina 3)	1. Modernize heating system	\$8,000
4	B406(4)M	Sebago Canoe Club	Paerdegat Basin (Marina 4)	1. Water and sewer lines not installed	\$25,600
				2. Construct boat ramp	\$548
5	B406(5)M	Paerdegat Squadron Yacht Club	Paerdegat Basin (Marina 5)	1. Install concrete patio pad	\$2,000
				2. Upgrade waste removal system	\$12,800

Total = \$99,248

PHOTOGRAPHS OF CONCESSIONS WITH INCOMPLETE CAPITAL IMPROVEMENTS

Photograph #1. Alley Pond Golf. Tee line enclosure not constructed. Agreement requires concessionaire to “cover all of the hitting stalls, with fans for the summer and heaters for the winter.”



Photograph #2. Alley Pond Golf. New clubhouse not constructed. Agreement requires concessionaire to “tear down existing clubhouse. Construct new Clubhouse and Parking Lot.”



Photograph #3. Go Green Realty. New food store at Belt Parkway gas station not constructed. Agreement requires that “Dunkin’ donuts and/or convenience stores will be constructed in existing buildings.”



Photograph #4. Go Green Realty. New food store at Major Deegan gas station not constructed. Agreement requires that “Dunkin’ donuts and/or convenience stores will be constructed in existing buildings.”



Photograph #5. Pars and Strikes Richmond Avenue Amusement Center. Existing miniature golf course not replaced. Agreement requires “Design and Construction of a new miniature golf course to replace the existing course.”



Photograph #6. Pars and Strikes Richmond Avenue Amusement Center. Parking lot not repaired. Agreement requires concessionaire to “Re-pave and re-stripe parking lot areas as needed.”



Appendix VI

Photograph #7. Pars and Strikes Richmond Avenue Amusement Center. Existing Himalaya ride removed. Agreement states, “Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises shall vest in and thereafter belong to the City.”



Photograph #8. Central Park Tennis Center. Tennis courts not renovated. Agreement requires concessionaire to “perform a thorough renovation of the four hard courts.”



Photograph #9. Hemco Inc., Alley Pond Indoor Tennis. Sloped roof not constructed. Agreement requires concessionaire to “Build a sloping, standing seam metal roof over or in place of the existing flat roof of the clubhouse.”



Photograph #10. Kissena Golf LLC, Kissena Park Golf Course. Storage building not renovated. Agreement requires concessionaire to “Renovate all storage structures and repair roofs, paint buildings, and make structural repairs as needed.”



Photograph #11. Lemon Creek Marina. Bulkhead Maintenance and repairs not done. Agreement states, “Approximately 100 feet of bulkhead to be replaced in kind per year in all boat basins.”



Photograph #12. Fair Promotions Inc., Nellie Bly Amusement Park. Fencing not replaced. Agreement requires “Replacement of the chain-link fencing and entrances, with a wrought-iron fence around the perimeter.”



Photograph #13. Bronx Equestrian Center, LLC. Pelham Bay Stables. Restrooms not renovated. Agreement requires concessionaire to “Renovate and make restrooms handicap accessible.”



Photograph #14. Van Cortlandt Golf LLC, Van Cortlandt Park Golf Course. Clubhouse had only minor repairs. Agreement requires concessionaire to “replace modified windows, replace rotting wood, remove paint, and restore building to its original color and texture; replace entrance door; restore wood shingles for the roof.”



PHOTOGRAPHS OF CONCESSIONS WITH POOR CONDITIONS

**Photograph #1. Bensonhurst Indoor Tennis.
Mats and nets stored inside electrical room.**



**Photograph #2. Grand Central Parkway Gas Station.
Cracks and deteriorated concrete pavement.**



**Photograph #3. Nellie Bly Amusement Park.
Improperly installed roof membrane,**



**Photograph #4. West 79th Street Boat Basin Café.
Deteriorated, uneven, and excessively sloped ramps.**



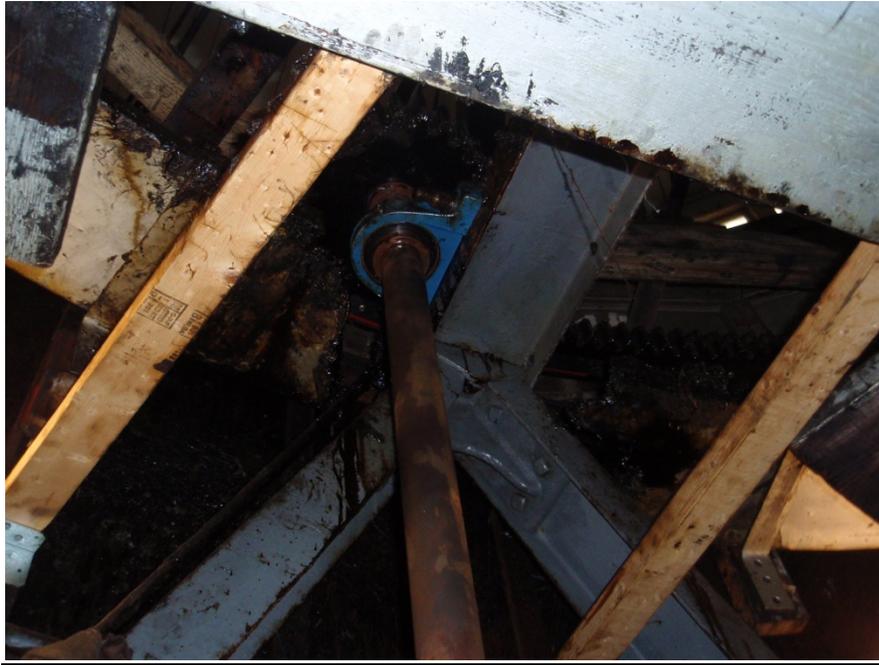
Photograph #5. Wollman Rink. Water accumulation in electrical room.



Photograph #6. Lasker Rink. Water damaged soffits at parapet walls.



Photograph #7. Central Park Carousel. Unpainted wood in ceiling.



Photograph #8. Terrace in the Park. Water damaged panels at exterior soffit.



Photograph #9. Pars and Strikes Amusement Center. Exposed electrical wiring.



Photograph #10. Pars and Strikes Amusement Center. Bumper boats inadequately protected.



Photograph #11. Lemon Creek Marina. Structural support for wood platform in poor condition.



Photograph #12. Turtle Cove Golf. Deteriorated parking lot.





City of New York
Parks & Recreation

Adrian Benepe
Commissioner

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Elizabeth W. Smith
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June 18, 2010

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

Re: Comptroller's Draft Audit Report, FR09-139A
Department of Parks & Recreation's Oversight of Capital Improvements by Concessionaires

Dear Deputy Comptroller Kim:

This letter addresses the findings and recommendations ("Recommendations") contained in the New York City Comptroller's ("Comptroller") Draft Audit Report ("Report"), dated June 4, 2010, on the Department of Parks & Recreation's ("Parks") oversight of capital improvements by concessionaires.

Parks was pleased that the Report acknowledged our comments from the exit conference and some of the many "noteworthy" steps we have taken to further improve our oversight of concessionaires' capital work since the Comptroller's last audit of this capital program, released in 2004. Specifically, Parks hired an additional architect and analyst to expand our oversight of capital improvements by developing a comprehensive tracking system that monitors the status of each concessionaire's capital requirements and tracks their progress toward completing those improvements. In addition, this staff has enabled us to carefully document changes to the schedule and scope of capital improvement requirements to be completed. We have also implemented a system for thoroughly examining capital improvement submissions made by our concessionaires, including invoices and cancelled checks, to verify their expenses. As a result, Parks has successfully managed more than \$100 million in privately funded capital improvements by current concessionaires at more than 120 facilities throughout the City.

Oversight of all aspects of concession management and operations is a priority for Parks, and therefore, in light of the acknowledged improvements we have made, we were disappointed that the Report did not find that we have the necessary oversight of capital improvement work by our concessionaires. Parks disagrees with this finding and we will further detail in the body of this letter our strong oversight of concessionaire capital work. In many cases we have a system of capital oversight checks and balances, including our architects, senior management, project managers, compliance inspectors and others who are actively involved in key aspects—making phone calls, documenting concerns and agreed-upon action in written letters, performing internal compliance reviews and meeting with the concessionaires—of ensuring that capital improvements are completed. Parks regularly reviews the status of each concessionaire's capital improvements, engages in timely dialogues if there are capital improvement issues, and acts to address those issues.



These comments notwithstanding, our goal is to continue to improve our oversight of concessionaires' capital work and the Report offers several useful Recommendations to this end, which Parks intends to implement immediately.

Recommendation 1 – The Department should strengthen the project management system for monitoring the progress of concessionaires in completing required capital improvements. In that regard, the Department should:

- track the progress of capital improvements against start and completion dates prescribed in the agreements;
- conduct an adequate number of inspections and document the status of the required improvements;
- develop written policies and procedures for conducting inspections;
- adequately review invoices cancelled checks and other related documentation submitted by contractors;
- maintain all supporting documentation in project files.

Parks agrees and as standard practice Parks already follows the vast majority of tasks described in Recommendation 1, but we will make specific enhancements to further improve our project management system.

Tracking Improvements – Parks' project tracking sheets currently track the milestone and final completion dates of every capital improvement item listed in our license agreements and use a color coded system to track the progress and completion of each improvement. This system allows us to tell at a glance the overall status of capital improvements for each concession as well as the status of every required capital improvement item for that concession. Furthermore, Parks' project tracking sheets allow us to monitor past inspection dates and dates of incoming and outgoing correspondence with the concessionaire related to capital improvements. Parks is continually working on ways to enhance our system of tracking concessionaire capital improvements and we will refine our project tracking sheets to include the required start dates for each capital improvement item.

Conducting Inspections and Written Procedures – Parks conducts routine inspections of facilities to monitor the progress of concessionaire capital improvements. In fact, Parks conducted more than 250 inspections at facilities with capital improvement requirements in 2009. Parks is currently completing written policies and procedures for conducting capital inspections which we intend to finalize shortly and implement at the beginning of fiscal year 2011. These procedures will include an emphasis on more thoroughly documenting the capital inspections we currently conduct as well as implementing a policy to conduct formal quarterly inspections at all facilities with capital improvement requirements in their contract.

Review of Invoices and File Documentation – Parks will continue to adequately review invoices, cancelled checks and other documentation submitted by concessionaires to substantiate their capital improvement investments. In 2009, Parks reviewed over \$35 million in capital submissions from concessionaires. To manage this review, Parks maintains detailed concessionaire logs that individually list submitted and accepted expenditures for every capital improvement made by a concessionaire. With regard to maintaining supporting documentation, we will continue to maintain all supporting documentation related to our oversight of capital improvements in our capital project files.

Recommendation 2 – The Department should issue Notices-to-Cure to concessionaires who have not completed the capital improvements required by their agreement. If concessionaires do not comply, the Department should take appropriate action (such as imposing liquidated damages) to compel concessionaires to complete required improvements. If concessionaires do not complete the required improvements, the Department should seek to terminate their agreements and recoup minimum required expenditures and forgone fees.

Parks agrees and will continue to issue notices to concessionaires who have not completed capital improvements in accordance with their required schedules. To draw upon an example cited in the Report, Parks followed this exact model in its oversight of the operator of the Alley Pond Park driving range. After several meetings with the operator and an exchange of correspondence, Parks threatened to assess liquidated damages related to substantial delays in the progress of capital work. Once we determined that the operator was unable to fulfill its capital commitment, Parks made arrangements to terminate the license agreement. Further, the termination was arranged in a manner that provided a continuity of service to the public, so there was no break in operation or the payment of license agreement fees while the City issued a competitive solicitation to identify a new operator for the concession.

Recommendation 3 – Conduct routine inspections and prepare inspection reports that provide sufficient information about the status of required capital improvement work.

Recommendation 4 – Prepare written guidelines to prescribe the frequency of inspections and the content of inspection reports.

In response to Recommendations 3 and 4, Parks already conducts routine inspections to monitor the progress of concessionaire capital improvements. As previously mentioned in our response to Recommendation 1, Parks is in the process of further strengthening these activities by finalizing written guidelines to prescribe the frequency of inspections and the content of inspection reports.

Recommendation 5 – Enforce license agreement provisions requiring the submittal of work schedules from concessionaires. Furthermore, the Department should require that all concessionaires—particularly those that must carry out major improvements—submit timely work schedules.

Parks actively tracks the progress of all required capital improvements based on the schedule laid out in Exhibit D of the license agreement, and will continue to request updated work schedules as needed throughout the design and construction process.

Recommendation 6 – The Department should use the information provided in this audit about lost revenue from the LaTourette catering facility in undertaking equitable adjustment negotiations with the concessionaire.

Parks will consider the information provided in the Report regarding lost revenue from the LaTourette catering facility as it negotiates with the operator for an equitable adjustment to required capital improvements. Like the Comptroller, we too want to establish the best financial deal possible for the City while respecting the wishes of the community affected by each concession.

Recommendation 7 – Ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed. The Department should carefully review the documentation to ensure that claimed expenditures for capital improvement work conforms to the requirements of concession agreements.

Parks agrees and will continue to ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed. Indeed, Parks has a staff person dedicated to carefully reviewing this documentation and ensuring that the concessionaire's submissions conform to the requirements of the agreements.

Recommendation 8 – Determine whether any of the \$1,483,681 in unexpended funds noted in this report should be recouped from the concessionaires.

In nearly all cases, the capital funds cited in Recommendation 8 were already invested or will be invested by our concessionaires. For example, this Recommendation includes over \$500,000 in unexpended funds for the "Picnick" snack bar in Battery Park, reflecting documentation that has not been submitted by the concessionaire. Although Parks has requested additional documentation from the concessionaire, it is clear from one visit to the facility that the capital requirement was in fact met. In another example, our gas station operator is cited for unexpended funds in the amount of roughly \$100,000. Parks is working in good faith with the concessionaire, who, to date, has verified \$1,169,237 in capital expenditures (out of a \$1,250,000 commitment), to verify additional capital expenditures. We anticipate that the concessionaire will easily exceed their capital commitment once all expenditures are verified.

Further, it is important to note that approximately \$300,000 of the unexpended funds is attributable to Pars and Strikes, which was abandoned by its operator without notice to Parks.

Parks will review other instances of unexpended funds noted in the Report and will take appropriate action.

Recommendation 9 – Assess liquidated damages when concessionaires fail to complete capital improvements in accordance with their agreements.

Recommendation 10 – Determine whether liquidated damages totaling \$640,100 should be assessed for the 11 cases noted in this report.

In response to Recommendation 9 and 10, Parks will consider assessing liquidated damages on a case by case basis. We use our right to assess liquidated damages as a tool to compel concessionaires to complete the capital work required in their license agreements. We cite the potential for liquidated damages in the notices we send to concessionaires. In most cases the capital work is completed, and liquidated damages are not pursued. For example, in a July 2009 written notice, Parks threatened to assess liquidated damages in the amount of \$116,500 against Fair Promotions, Inc. for its failure to install a wrought-iron fence around the perimeter of its licensed premises. After receiving this notice, Fair Promotions subsequently installed the wrought-iron fence. However, in cases where capital work is not completed, Parks may assess liquidated damages or pursue other means to compensate the City for its lost capital improvements.

Recommendation 11 – The Department should ensure that all repair and maintenance work be excluded from license agreement provisions that require concessionaires to expend funds for capital improvements.

Parks agrees and will work to ensure that future requests for proposals, and their subsequent license agreements, include language that ensures that repair and maintenance work is not included as part of a concessionaire's required capital improvements.

Recommendation 12 – The Department should issue Notices-to-Cure requiring that the concessionaires correct the conditions noted in this report.

Parks will review the conditions noted in the report on a case by case basis and will take appropriate action.

As a final matter, Parks respectfully disagrees with the Report's findings that approximately \$9.6 million in concessionaire capital work was incomplete due to the need for more oversight.

- \$2.4 million of the \$9.6 million cited is from the Van Cortlandt Golf Course clubhouse. The License Agreement gave the concessionaire the option of spending \$3 million on both the clubhouse restoration and a new banquet facility, or to opt not to construct a banquet facility and spend \$3 million on the clubhouse throughout the license term. The concessionaire opted to not build the banquet facility and Parks has worked closely with the concessionaire to find the best possible design solution for a full restoration of the historic clubhouse. While the design approvals have taken longer than anticipated, Parks fully expects that the \$3 million will be completed within the timeframe permitted in the license agreement.
- \$2.4 million of the \$9.6 million cited is from Alley Pond Driving Range and Pars and Strikes. Parks terminated Alley Pond in the best interest of the City for failure to complete capital improvements, released a new RFP and anticipates that the incoming concessionaire will complete extensive capital improvements at the facility. As mentioned earlier, the operator of Pars and Strikes abandoned this concession without notice to Parks. We have released a new RFP and are actively seeking a new concessionaire.
- \$3.1 million of the \$9.6 million cited is work that Parks is carefully tracking and fully expects will be completed in a timely manner.
- \$550,000 of the \$9.6 million cited are capital improvements that are complete.

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

Sincerely,



Elizabeth W. Smith

Cc: Robert L. Garafola, George Davis, Anthony Macari, Chris Farnum