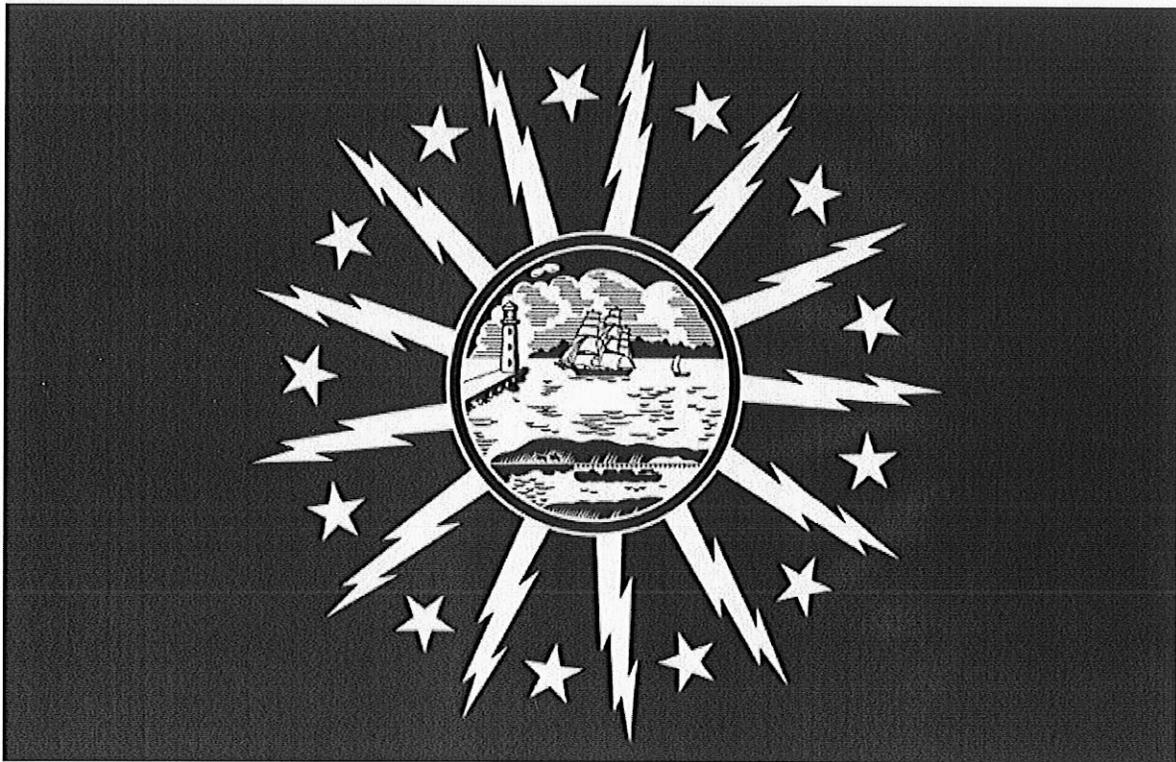


**CITY OF BUFFALO
DEPARTMENT OF AUDIT AND CONTROL**

**AUDIT REPORT
CONTRACT FOR OPERATION OF ERIE BASIN
MARINA FOR THE YEARS 2008 - 2012**

**MARK J.F. SCHROEDER
COMPTROLLER**



**ANNE FORTI-SCIARRINO
FIRST DEPUTY COMPTROLLER**

**KEVIN J. KAUFMAN, CPA
CITY AUDITOR**

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Preface

The City of Buffalo (the "City") constructed the Erie Basin Marina located at 329 Erie Street on Buffalo's waterfront in 1974. The Marina consists of a boat harbor, marina and multi-purpose recreational and food service facility for use by the general public. After a Request-for-Proposal in 2001 the City entered into a lease agreement with Brand-On Services, Inc. (the "Operator") to operate the Marina.

Summary of Lease Agreement

The lease agreement (the "Contract") between The City of Buffalo and Brand-On Services, Inc. requires rental payments from the Operator to the City based on sales at Erie Basin Marina (the "Marina"). The Rental Amount is calculated by the Operator and is submitted to the City annually. The Rental Calculation is based on three categories of sales:

1. **Base Sales** – defined as sale of food, beverages, sundry items, transient slip rental and sewage pump out. The Operator is to pay rent between 7 – 13% of sales, escalating as Base Sales increase.
2. **Fuel Sales** – The Operator shall pay the City 10% of all fuel sales, net of taxes.
3. **Gross Marina Revenue** – The Operator is to pay the City between 40 – 55% of revenue from slip rental, dry storage of boats, daily and seasonal boat launch fees, Miss Buffalo and Moondance dock rental fees. Additionally the lease allows for installation of floating docks at the Operator's expense. The City is to receive 5% of the gross rentals from these docks in the 4th through 10th seasons after installation.

Rent due related to Base Sales plus Fuel Sales is subject to a minimum rent payment of \$80,000. Rent due related to Gross Marina Revenue is subject to a minimum rent payment of \$115,000. An annual deduction from rent of \$87,000 is allowed as the Operator has assumed the responsibility of maintaining the entire Marina including the lawn and garden areas. This reduction in rent was approved by the Common Council on March 30, 2004 (Item No. 70 CCP Mar 30, 2004). The Contract requires approval from the Common Council for any reduction in rent. The minimum annual rent due to the City for the Marina is \$108,000 (\$80,000 + \$115,000 - \$87,000).

The Contract term runs through the 2013 season with a two year renewal option that can be exercised upon mutual agreement of both parties extending the term through 2015.

Audit Objectives

The audit objective is to verify the proper amount of rent was paid to the City for the 2008 – 2012 seasons in accordance with the terms of the Contract. In order to accomplish this, the following procedures were performed:

- Verify mathematical accuracy of the Rental Calculation.
- Verify proper amounts recorded as Base Sales on Rental Calculation by vouching amounts to supporting documentation, including daily sales summaries and cash register receipts listing food, beverage and sundry sales.
- Verify proper amounts recorded as Fuel Sales by vouching gallons of fuel sold on Rental Calculation to letter received from fuel distributor confirming gallons of fuel delivered.
- Verify proper amount recorded as Gross Marina Revenue on Rental Calculation by vouching amounts to supporting documentation, including slip rental schedules, slip rental contracts and boat launch tickets.
- Verify payments on Rental Calculation agree to amounts received by the City.

Summary of Audit Results

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>Total</u>
Rent Payable Per Operator	\$ 233,022	\$ 219,340	\$ 222,847	\$ 231,249	\$ 249,454	\$1,155,912
Rent Payable Per Audit	<u>262,908</u>	<u>234,556</u>	<u>239,228</u>	<u>267,402</u>	<u>270,686</u>	<u>1,274,780</u>
Errors in Calculation of Rent	29,886	15,216	16,381	36,153	21,232	118,868
Credits against Rent per Operator	(233,022)	(104,148)	(110,791)	(114,334)	(120,997)	(683,292)
Credits against Rent per Audit	<u>(102,880)</u>	<u>(87,299)</u>	<u>(89,102)</u>	<u>(89,688)</u>	<u>(89,946)</u>	<u>(458,915)</u>
Excess Credits Deducted from Rent	<u>130,142</u>	<u>16,849</u>	<u>21,689</u>	<u>24,646</u>	<u>31,051</u>	<u>224,377</u>
Amount Due to City per Audit	<u>\$ 160,028</u>	<u>\$ 32,065</u>	<u>\$ 38,070</u>	<u>\$ 60,799</u>	<u>\$ 52,283</u>	<u>\$ 343,245</u>

Several errors were discovered in the Rental Calculation provided by the Operator resulting in an underpayment of rent of \$343,245 for the five years under audit. The three most significant errors were related to calculation of rent due on Base Sales, Fuel Sales and amounts deducted from rent not allowed under the terms of the Contract. First, rent due related to Base Sales was calculated by the Operator using a rate lower than agreed to in the Contract and certain sales were omitted from the calculation. Second, rent due on Fuel Sales was calculated by the Operator at a rate of \$0.10 per gallon as opposed to the contractual rate of 10% of sales and certain sales were not included in the calculation. Third, amounts were subtracted from rent for maintenance costs incurred by the Operator. The Contract does not

allow for deductions in rent without approval from the Common Council. No proof of approval by Common Council was provided to justify the deductions from rent.

Other errors of lesser cost to the City were found related to the reporting of slip rental fees, boat launches and other credits deducted from rent. Insufficient documentation was provided by the Operator to verify amounts recorded on the Rental Calculation as transient slip rental.

Audit Findings

1. Errors in Reporting of Base Sales in Rental Calculation

In accordance with the contract, Base Sales are defined as gross sales of food and beverages, along with sundry items from the ship store. Base Sales also include sales from vending, food carts, additional food or ice cream stands, transient slip rentals and sewage pump out. The Operator provided a daily sales summary of these items and the corresponding cash register tapes verifying the sales. The cash register tapes were compared to the daily sales summary to verify the accuracy of the daily sales summary. Then the daily sales summary sheets were totaled and compared to the Rental Calculation. The totals from the daily sales summaries did not agree to amounts recorded on the Rental Calculation resulting in Base Sales being understated on the Rental Calculation by \$107,407. The differences were not adequately explained by the Operator. The Operator stated \$48,064 of 2008 and \$8,785 of 2009 unreported Base Sales were attributable to "Cash over/short." Further explanation was not provided.

Transient slip rentals of \$56,796 were not included in Base Sales as specified in the Contract, these sales were erroneously included in Gross Marina Revenue in the Rental Calculation. This error resulted in an overpayment of rent to the City and was adjusted in the Auditor Rental Calculation, see Appendix A for further detail.

Rent due on Base Sales was not calculated using the proper rates. The Contract requires payment of rent on Base Sales at rates varying between 7 – 13 % depending on volume of Base Sales. The Operator was calculating rent due at rates between 7 - 10%. In a letter from the Operator's Accountant this error was acknowledged and it was agreed that amounts related to this miscalculation would be repaid at the conclusion of the 2013 season. The repayment amount proposed by the Operator is \$24,510.

The amount of Rent on Base Sales understated by the Operator is as follows:

	2008	2009	2010	2011	2012	5 Year Total
Understated Rent on Base Sales	\$8,315	\$6,180	\$4,801	\$12,097	\$12,648	\$44,041

For the period under audit rent due related to Base Sales was understated by \$44,042 and Base Sales of \$164,204 were unreported by the Operator.

2. Errors in Reporting of Fuel Sales in Rental Calculation

The Contract states “The Operator shall pay the City 10% of all fuel sales, net of taxes.” The Operator’s Rental Calculation uses a rate of \$0.10 per gallon on fuel sales to calculate rent due on fuel sales. On March 7, 2006 a letter was written by the Operator to then Commissioner of Public Works Joseph Giambra. The letter states a conversation took place between the two parties and it was agreed to change from the 10% rate stated in the Contract to the rate used in the Rental Calculation of \$0.10 per gallon. No further documentation of this conversation was provided. The Contract states that only the Common Council can approve matters involving reductions in rent, therefore the change in the calculation is not valid.

The fuel supplier provided a letter confirming the number of gallons of fuel supplied to the Operator. This was obtained to verify an accurate number of gallons of fuel sold were reported in the Rental Calculation. The number of gallons sold in the Rental Calculation was 20,689 gallons lower than the number of gallons delivered by the fuel supplier for the period under audit.

As a result of the unauthorized change in the calculation of rent due on Fuel Sales and unreported fuel sales, rent due on fuel sales was understated as follows:

	2008	2009	2010	2011	2012	5 Year Total
Understated Rent on Fuel Sales	\$23,251	\$11,779	\$10,710	\$17,165	\$20,018	\$82,923

3. Errors in Reporting of Gross Marina Revenue in Rental Calculation

The Gross Marina Revenue is composed of rental of boat slips, boat launches at the boat ramp, dry dock storage of boats and dock rental to the Miss Buffalo and Moondance. Rent of 40 – 55% of gross revenue is due based on these sales. Also included in Gross Marina Revenue are amounts from Floating Docks purchased and installed by the Operator. The rent due on these docks is at a rate of 5% of gross rentals for the 4th through 10th seasons after installation. The docks were installed prior to the 2005 and 2007 seasons therefore rent is due beginning with the 2008 and 2010 seasons, respectively.

Several errors were noted in reviewing the Rental Calculation related to Gross Marina Revenue, including minor understatement of amounts for boat slip rental and boat launching fees. Also improperly included in Gross Marina Revenue were Transient Slip Rentals. In accordance with the contract Transient Slip Rentals are to be recorded as Base Sales. All

amounts were adjusted in the Auditor's Rental Calculation in Appendix A. After the adjustments Rent on Gross Marina Revenue was overpaid by the operator as follows:

	2008	2009	2010	2011	2012	5 Year Total
(Over)understated Rent on Gross Marina Revenue	\$ (1,680)	\$ (2,743)	\$ 870	\$ 6,891	\$(11,434)	\$ (8,096)

The Operator recorded \$6,793 more in rent than was due related to Gross Marina Revenue.

4. Unauthorized Deductions from Rent

In accordance with the Contract deductions from rent must be approved by the Common Council. The Operator received approval from the Common Council for a credit of \$87,000 for performance of maintenance services at the Marina (Item No. 70 CCP Mar 30, 2004). In the Rental Calculation under the title "City Maintenance Charges" amounts have been deducted from the rent due in addition to the \$87,000 credit approved. No documentation was provided demonstrating Common Council authorization of these additional maintenance credits. Thus the deductions are not allowable in accordance with the Contract.

Additionally, miscellaneous credits for security, construction of a patio and dock bumper turning (required maintenance related to docks needed to be performed each spring and fall) were deducted from rent. No approval from Common Council for these miscellaneous deductions was provided by Operator, therefore the amounts are not allowable deductions from rent.

Unauthorized deductions from rent are as follows:

	2008	2009	2010	2011	2012	5 Year Total
Unauthorized Maintenance Credits	\$110,216	\$15,224	\$21,689	\$20,556	\$28,551	\$196,236
Unauthorized Miscellaneous Credits	19,926	1,625	-	4,090	2,500	28,141
Total Unauthorized Credits deducted from Rent	\$130,142	\$16,849	\$21,689	\$24,646	\$31,051	\$224,377

The Operator stated in a letter dated July 12, 2013 "we were instructed by Commissioner of Public Works Joseph Giambra and the City of Buffalo Harbor Master to perform city maintenance items which should be deducted from the rent." It should be noted Mr. Giambra has not been Commissioner since December 2006. No documentation of these instructions were provided. Additionally no record of necessary approval from the Common Council on

matters involving reductions in rent was provided. Therefore these are unauthorized deductions from rent and the amount of \$224,377 is immediately payable to the City.

5. Other Findings

The contract was awarded to Brand-On Services, Inc. The spouse of the Company President was an employee of the City when the contract was executed. The employee worked in the Department of Public Works, the department that awarded the Contract. The employee retired from the City in 2012. Also, the son of the President is a current employee of the City of Buffalo in the Department of Public Works. These factors suggest a conflict of interest may have existed at the time of execution of the contract and may still exist.

There was inadequate support provided to document revenue related to Transient Boat Slip Rental. No further audit procedures were performed on amounts recorded as Transient Boat Slip Rental as it was determined the resources needed to perform further testing would exceed the expected results of the testing.

Audit Recommendations

1. Request for Immediate Payment of Amount Due

An Invoice should be sent immediately by the Department of Public Works to the Operator for the total amount due to the City of \$343,245. If the amount due cannot be paid immediately further action should be taken by Corporation Counsel to ensure collection of this debt.

2. Termination of Contract at end of Season

In accordance with the terms of the Contract the Common Council must approve any matters involving a deduction in rent. This procedure was followed to receive an \$87,000 credit for performing additional maintenance at the marina, but was not followed to reduce the amount paid to the City for fuel sales or for taking additional credits against rent. The terms of the Contract have been violated at the expense of the taxpayer. If immediate corrective action is not taken, including payment of amounts due to the City, the Common Council should not approve the additional two year extension of the lease.

3. Strategic Review of Marina Use and Operation

A strategic review of the Marina should be conducted to determine how to maximize both economic return on Marina assets and enjoyment to the taxpayers. It should be determined if the Marina is best operated by one vendor or if restaurant and marine services would be best handled by separate vendors. Also it should be determined if public ownership of the entire Marina is in the best interest of the taxpayer or if selling the restaurant to a private entity could create a better return on assets to the taxpayer.

**Eric Basin Marina
Rental Calculation
For the 2008 Season**

Calculation from Operator

Audit Results

Calculation from Operator				Audit Results			
Base Sales							
Ships Store	69,686			44,626			
Transient Slip Rental				6,720			
Ice Cream	256,732			258,065			
Beverages	139,333			-			
Food	340,974			570,817			
	<u>806,725</u>			<u>880,228</u>			
Base Sales Rental Calculation							
	350,000	7%	24,500	350,000	7%	24,500	
	100,000	8%	8,000	100,000	8%	8,000	
	100,000	9%	9,000	100,000	9%	9,000	
	256,725	10%	25,673	100,000	10%	10,000	
	-	13%	-	230,228	13%	29,930	
	<u>806,725</u>		<u>67,173</u>	<u>880,228</u>		<u>81,430</u>	
Fuel Sales							
Total Gallons Delivered	72,308			82,434			
Less:							
Sales to City Buffalo	(153)						
Sales to NYS Police	(501)						
Sales to Wolasz Family	(2,800)						
Net Sales (Gallons)	<u>68,854</u>			<u>82,434</u>			
Average Gas Price				3.66			
Rental Calculation	68,854	\$0.10	<u>6,885</u>	301,362	10%	<u>30,136</u>	
Calculated Rent on Base Sales and Fuel Sales			74,058			111,566	
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000	
Rent Due on Base Sales and Fuel Sales			\$ 80,000			\$ 111,566	
Gross Marina Revenue							
Fixed Slip Rental	301,462			300,279			
Transient Slip Rental	6,720						
Miss Buffalo Dockage	4,500			4,500			
Moondance Dockage	-			-			
Dry Dock Rental	3,750			4,500			
Launch Tickets	11,087			15,141			
	<u>327,519</u>			<u>324,420</u>			
Gross Marina Rent Calculation							
	150,000	40%	60,000	150,000	40%	60,000	
	50,000	45%	22,500	50,000	45%	22,500	
	50,000	50%	25,000	50,000	50%	25,000	
	77,519	55%	42,635	74,420	55%	40,931	
	<u>327,519</u>		<u>150,135</u>	<u>324,420</u>		<u>148,431</u>	
Floating Docks C&D	54,975		-	54,975		-	
Floating Docks F&G	57,738	5%	<u>2,887</u>	58,225	5%	<u>2,911</u>	
Rent Due on Gross Marina Revenue			153,022			151,342	
Total Rent Payable			\$ 233,022			\$ 262,908	
Credits deducted from Rent							
Gas Purchased - City of Buffalo			(579)			(579)	
Construction of Patio - Year 4 of 4			(21,129)				
Additional Construction - Year 3 of 4			(1,625)				
City Maintenance Charges			(110,216)				
Landscaping Credit			(87,000)			(87,000)	
6% of Dock B - W - Rebate of Overcharge			(15,301)			(15,301)	
Security Payroll 10/16/08 - 10/31/08			(5,068)				
Total Credits Deducted from Rent			\$ (240,918)			\$ (102,880)	
Net Rent Due to (from) the City of Buffalo			\$ (7,896)			\$ 160,028	
Payments made to City of Buffalo			\$ -			\$ -	
Balance Due			\$ (7,896)			\$ 160,028	

Eric Basin Marina
Rental Calculation
For the 2009 Season

	Calculation from Operator			Audit Results		
Base Sales						
Ships Store	69,958			34,783		
Transient Slip Rental	-			8,929		
Ice Cream	258,853			250,983		
Beverages	140,484			-		
Food	344,099			570,591		
	<u>813,394</u>			<u>865,286</u>		
Base Sales Rental Calculation						
	350,000	7%	24,500	350,000	7%	24,500
	100,000	8%	8,000	100,000	8%	8,000
	100,000	9%	9,000	100,000	9%	9,000
	263,394	10%	26,339	100,000	10%	10,000
	-	13%	-	215,286	13%	27,987
	<u>813,394</u>		<u>67,839</u>	<u>865,286</u>		<u>79,487</u>
Fuel Sales						
Total Gallons Delivered	70,457			80,995		
Less:						
Sales to City Buffalo	(103)					
Sales to NYS Police	(146)					
Sales to Wolasz Family	(3,283)					
Net Sales (Gallons)	<u>66,925</u>			<u>80,995</u>		
Average Gas Price				2.28		
Rental Calculation	66,925	\$0.10	6,693	184,721	10%	18,472
Calculated Rent on Base Sales and Fuel Sales			74,532			97,959
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000
Rent Due on Base Sales and Fuel Sales			\$ 80,000			\$ 97,959
Gross Marina Revenue						
Fixed Slip Rental	272,915			275,915		
Transient Slip Rental	8,929					
Miss Buffalo Dockage	4,500			4,500		
Moondance Dockage	-			-		
Dry Dock Rental	4,500			4,500		
Launch Tickets	11,608			12,551		
	<u>302,452</u>			<u>297,466</u>		
Gross Marina Rent Calculation						
	150,000	40%	60,000	150,000	40%	60,000
	50,000	45%	22,500	50,000	45%	22,500
	50,000	50%	25,000	50,000	50%	25,000
	52,452	55%	28,849	47,466	55%	26,106
	<u>302,452</u>		<u>136,349</u>	<u>297,466</u>		<u>133,606</u>
Floating Docks C&D	54,975		-	55,000		-
Floating Docks F&G	59,825	5%	2,991	59,825	5%	2,991
Rent Due on Gross Marina Revenue			139,340			136,597
Total Rent Payable			\$ 219,340			\$ 234,556
Credits deducted from Rent						
Gas Purchased - City of Buffalo			(299)			(299)
Additional Construction - Year 4 of 4			(1,625)			-
City Maintenance Charges			(15,224)			-
Landscaping Credit			(87,000)			(87,000)
						-
						-
Total Credits Deducted from Rent			\$ (104,148)			\$ (87,299)
Net Rent Due to (from) the City of Buffalo			\$ 115,192			\$ 147,257
Payments made to City of Buffalo			\$ 115,192			\$ 115,192
Balance Due			\$ -			\$ 32,065

Erie Basin Marina
Rental Calculation
For the 2010 Season

Calculation from Operator

Audit Results

Calculation from Operator				Audit Results			
Base Sales							
Ships Store	36,406			40,810			
Transient Slip Rental				7,713			
Ice Cream	260,170			259,648			
Beverages	113,957			-			
Food	435,578			546,584			
	<u>846,111</u>			<u>854,755</u>			
Base Sales Rental Calculation							
	350,000	7%	24,500	350,000	7%	24,500	
	100,000	8%	8,000	100,000	8%	8,000	
	100,000	9%	9,000	100,000	9%	9,000	
	296,111	10%	29,611	100,000	10%	10,000	
	-	13%	-	204,755	13%	26,618	
	<u>846,111</u>		<u>71,111</u>	<u>854,755</u>		<u>78,118</u>	
Fuel Sales							
Total Gallons Delivered	69,663			71,371			
Less:							
Sales to City Buffalo	(611)						
Sales to NYS Police	(129)						
Sales to Wolasz Family	(2,091)						
Net Sales (Gallons)	<u>66,832</u>			<u>71,371</u>			
Average Gas Price				2.44			
Rental Calculation	66,832	\$0.10	6,683	173,930	10%	17,393	
Calculated Rent on Base Sales and Fuel Sales			77,794			95,511	
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000	
Rent Due on Base Sales and Fuel Sales			\$ 80,000			\$ 95,511	
Gross Marina Revenue							
Fixed Slip Rental	282,133			282,251			
Transient Slip Rental	7,713						
Miss Buffalo Dockage	4,500			4,500			
Moondance Dockage	-			-			
Dry Dock Rental	5,500			5,550			
Launch Tickets	8,983			13,104			
	<u>308,829</u>			<u>305,405</u>			
Gross Marina Rent Calculation							
	150,000	40%	60,000	150,000	40%	60,000	
	50,000	45%	22,500	50,000	45%	22,500	
	50,000	50%	25,000	50,000	50%	25,000	
	58,829	55%	32,356	55,405	55%	30,473	
	<u>308,829</u>		<u>139,856</u>	<u>305,405</u>		<u>137,973</u>	
Floating Docks C&D	55,050		-	55,050	5%	2,753	
Floating Docks F&G	59,825	5%	2,991	59,825	5%	2,991	
Rent Due on Gross Marina Revenue			142,847			143,717	
Total Rent Payable			\$ 222,847			\$ 239,228	
Credits deducted from Rent							
Gas Purchased - City of Buffalo			(2,102)			(2,102)	
						-	
						-	
City Maintenance Charges			(21,689)			(87,000)	
Landscaping Credit			(87,000)			-	
						-	
Total Credits Deducted from Rent			\$ (110,791)			\$ (89,102)	
Net Rent Due to (from) the City of Buffalo			\$ 112,056			\$ 150,126	
Payments made to City of Buffalo			\$ 112,056			\$ 112,056	
Balance Due			\$ -			\$ 38,070	

**Erie Basin Marina
Rental Calculation
For the 2011 Season**

	Calculation from Operator			Audit Results		
Base Sales						
Ships Store	27,034			28,007		
Transient Slip Rental	-			10,783		
Ice Cream	305,252			304,549		
Beverages	150,397			-		
Food	532,664			680,752		
	<u>1,015,347</u>			<u>1,024,091</u>		
Base Sales Rental Calculation						
	350,000	7%	24,500	350,000	7%	24,500
	100,000	8%	8,000	100,000	8%	8,000
	100,000	9%	9,000	100,000	9%	9,000
	465,347	10%	46,535	100,000	10%	10,000
	-	13%	-	374,091	13%	48,632
	<u>1,015,347</u>		<u>88,035</u>	<u>1,024,091</u>		<u>100,132</u>
Fuel Sales						
Total Gallons Delivered	73,153			69,455		
Less:						
Sales to City Buffalo	(798)					
Brand-On Equipment	(1,250)					
Sales to Wolasz Family	(2,032)					
Net Sales (Gallons)	<u>69,073</u>			<u>69,455</u>		
Average Gas Price				3.47		
Rental Calculation	69,073	\$0.10	6,907	240,718	10%	24,072
Calculated Rent on Base Sales and Fuel Sales			94,942			124,204
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000
Rent Due on Base Sales and Fuel Sales			\$ 94,942			\$ 124,204
Gross Marina Revenue						
Fixed Slip Rental	262,099			279,480		
Transient Slip Rental	10,783					
Miss Buffalo Dockage	4,500			4,500		
Moondance Dockage	-			-		
Dry Dock Rental	5,500			7,200		
Launch Tickets	14,057			13,293		
	<u>296,939</u>			<u>304,473</u>		
Gross Marina Rent Calculation						
	150,000	40%	60,000	150,000	40%	60,000
	50,000	45%	22,500	50,000	45%	22,500
	50,000	50%	25,000	50,000	50%	25,000
	46,939	55%	25,816	54,473	55%	29,960
	<u>296,939</u>		<u>133,316</u>	<u>304,473</u>		<u>137,460</u>
Floating Docks C&D	55,050		-	55,250	5%	2,763
Floating Docks F&G	59,825	5%	2,991	59,500	5%	2,975
Rent Due on Gross Marina Revenue			136,307			143,198
Total Rent Payable			\$ 231,249			\$ 267,402
Credits deducted from Rent						
Gas Purchased - City of Buffalo			(4,278)			(2,688)
City Maintenance Charges			(20,556)			-
Landscaping Credit			(87,000)			(87,000)
Dock Bumper Turning			(2,500)			-
Total Credits Deducted from Rent			\$ (114,334)			\$ (89,688)
Net Rent Due to (from) the City of Buffalo			\$ 116,915			\$ 177,714
Payments made to City of Buffalo			\$ 116,915			\$ 116,915
Balance Due			\$ -			\$ 60,799

**Eric Basin Marina
Rental Calculation
For the 2012 Season**

Calculation from Operator

Audit Results

Calculation from Operator				Audit Results			
Base Sales							
Ships Store	23,241			23,219			
Transient Slip Rental				22,651			
Ice Cream	319,147			318,277			
Beverages	144,875			-			
Food	491,491			636,028			
	<u>978,754</u>			<u>1,000,175</u>			
Base Sales Rental Calculation							
	350,000	7%	24,500	350,000	7%	24,500	
	100,000	8%	8,000	100,000	8%	8,000	
	100,000	9%	9,000	100,000	9%	9,000	
	428,754	10%	42,875	100,000	10%	10,000	
	-	13%	-	350,175	13%	45,523	
	<u>978,754</u>		<u>84,375</u>	<u>1,000,175</u>		<u>97,023</u>	
Fuel Sales							
Total Gallons Delivered	76,903			78,918			
Less:							
Sales to City Buffalo	(700)						
Brand-On Equipment	(936)						
Sales to Wolasz Family	(2,359)						
Net Sales (Gallons)	<u>72,908</u>			<u>78,918</u>			
Average Gas Price				3.46			
Rental Calculation	72,908	\$0.10	7,291	273,091	10%	27,309	
Calculated Rent on Base Sales and Fuel Sales			91,666			124,332	
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000	
Rent Due on Base Sales and Fuel Sales			\$ 91,666			\$ 124,332	
Gross Marina Revenue							
Fixed Slip Rental	284,450			283,632			
Transient Slip Rental	22,651						
Miss Buffalo Dockage	4,500			4,500			
Moondance Dockage	1,950			1,950			
Dry Dock Rental	8,325			8,175			
Launch Tickets	14,147			11,977			
	<u>336,023</u>			<u>310,234</u>			
Gross Marina Rent Calculation							
	150,000	40%	60,000	150,000	40%	60,000	
	50,000	45%	22,500	50,000	45%	22,500	
	50,000	50%	25,000	50,000	50%	25,000	
	86,023	55%	47,313	60,234	55%	33,129	
	<u>336,023</u>		<u>154,813</u>	<u>310,234</u>		<u>140,629</u>	
Floating Docks C&D	55,000		-	55,000	5%	2,750	
Floating Docks F&G	59,500	5%	2,975	59,500	5%	2,975	
Rent Due on Gross Marina Revenue			157,788			146,354	\$ 146,354
Total Rent Payable			\$ 249,454				\$ 270,686
Credits deducted from Rent							
Gas Purchased - City of Buffalo			(2,946)			(2,946)	
City Maintenance Charges			(28,551)			-	
Landscaping Credit			(87,000)			(87,000)	
Dock Bumper Turning			(2,500)			-	
Total Credits Deducted from Rent			\$ (120,997)				\$ (89,946)
Net Rent Due to (from) the City of Buffalo			\$ 128,457				\$ 180,740
Payments made to City of Buffalo			\$ 128,457				\$ 128,457
Balance Due			\$ -				\$ 52,283



CITY OF BUFFALO
DEPARTMENT OF
PUBLIC WORKS, PARKS & STREETS



BYRON W. BROWN
MAYOR

STEVEN J. STEPNIAK
COMMISSIONER

PETER J. MERLO, P.E.
CITY ENGINEER

September 12, 2013

Hon. Mark J.F. Schroeder
Comptroller
City of Buffalo
65 Niagara Square, 1225 City Hall
Buffalo, NY 14202

Dear Comptroller Schroeder:

The following is the response from the Department of Public Works, Parks and Streets (Public Works) regarding your department's August 2013 Audit Report of the operations contract for the Erie Basin Marina (Marina) for years 2008-2012.

Public Works will follow a format of responding separately to each of the five audit findings. Prior to addressing each finding separately, it must first be noted that:

- **Public Works will issue by October 1, 2013 Requests for Proposals for a new vendor (or vendors) to manage and operate the Erie Basin Marina in 2014.**
- **The Department of Public Works employee previously assigned has been relieved of his duties at the Erie Basin Marina and reassigned pending a review to determine if further action is necessary.**
- **Public Works management will work with the Department of Audit and Control and Law Department to clarify any conflicting or ambiguous language in the new contract to avoid future discrepancies.**

Errors in Reporting of Base Sales in Rental Calculations

Public Works agrees with the findings of the Department of Audit & Control (Audit & Control) that base sales due to the City of Buffalo (City) were not calculated correctly by Brand-On Services. Public Works requests the assistance of Audit & Control and the Department of Law to recuperate money owed to the City by the operator, Brand-On Services (Brand-On), and implement a system that can accurately track sales and revenue (e.g. point of sale terminals). Public Works will make such a system mandatory in an upcoming request-for-proposals (RFP) for the operation of the Hatch Restaurant (Hatch) at the Marina.

As part of Public Works' plans for implementing solutions, a RFP will be issued for a third-party auditor to validate all future expenses. The plan is described further at the end of this response.

Errors in Reporting of Fuel Sales in Rental Calculation

Public Works filed its response to Audit & Control's 2007 "Marina Audit" on July 13, 2009. The response (CCP #31, July 21, 2009) states that the then-Public Works Commissioner recommended the change to the contract due to the sharp increase in gasoline prices. The then-commissioner believed the change was necessary so Marina gasoline prices would remain competitive with nearby marinas.

These recommendations were filed with the Common Council and formal approval is required. Therefore, Public Works will propose, beginning with the next contract submitted for approval, that the City purchases all gasoline for sale at the Marina. This is to ensure that City will be responsible for the distribution of gasoline and benefit directly from gasoline sales. If this is allowed, Public Works requests the assistance of Audit & Control in the design of a check-and-balance mechanism to ensure that gasoline is distributed properly and corresponding revenue is accurate.

Public Works will issue a third RFP for the nautical/recreation operations at the Marina as part of its plan for implementing solutions that are described at the end of this response. This RFP will likely include operation of the Ships Store located in the Marina Lighthouse. The issuance of separate RFPs will change how the City leases the Marina as the Hatch and nautical/recreational operations will not combined in an overall RFP. The rationale for separate RFPs is there may be an increase in potential bidders for the respective operations, and that such potential bidders may be expert in respect to that specific operation.

Errors in Reporting of Gross Marina Revenue in Rental Calculation

Public Works agrees with the findings of Audit & Control that gross Marina revenue due to the City was not calculated properly by Brand-On, and the overage should be subtracted from the balance owed to the City. Public Works believes this instance will likely be minimized, if not eliminated, in the future through the use of the proposed third-party auditor as explained in the plan for implementing solutions at the end of this response.

Unauthorized Deductions from Rent

The Commissioner of Public Works is in the process of validating the approval of deductions made by Brand-On.

Based on the on-going validation of deductions, \$60,818.62 was used to rectify an unsafe condition at Erie Basin Marina Beach. This item was discussed in 2009. Therefore, Public Works believes this amount should be deducted from the amount calculated as unauthorized by Audit & Control. This brings the balance of that proposed amount as unauthorized down to \$163,558.38.

Public Works requests assistance from Audit & Control to develop a more efficient internal process to formalize any operator requests to the Public Works Commissioner for making improvements/improvements to be deducted from the rent. Public Works will file these Marina-related items with the Common Council on an incremental basis.

Public Works believes there are discrepancies in the agreement as it relates to the source of authorization and if authorization is required in regards to deductions and mandatory maintenance.

- The definition of “City” in the agreement is intended to mean the City of Buffalo Common Council on all matters including, but not limited to, expenditure of City funds, increases or reductions in rental income, abatement of rentals, and construction of addition to the facilities.
- However, the agreement states the following (paraphrased):
 - The premises, all fixtures, and appurtenances must be delivered to the operator in good and useable condition upon occupancy. The operator can repair and replace any such item found in non-satisfactory condition within 30 days of occupancy. The operator may repair or replace said items with the consent of the Public Works Commissioner, not to be unreasonably withheld, and charge the cost against rental payments due.
 - The cost of any major repair (e.g. excavation to uncover utilities) will be negotiated, at time of repair, by the Public Works Commissioner and the operator.
 - The operator has the right, upon notification to the Public Works Department, to make repairs for any utilities due to ordinary wear and tear as may be necessary to minimize the disruption of service. The operator is entitled to charge these costs, if the responsibility of the City, against the rental payment due.
- Public Works believes that Common Council approval is required in the following condition.
 - “Provisions Relating to the Operation of Restaurant”: In the event the operator invests in the restaurant facilities (equipment, structures, and/or operational changes to streamline and improve the functionality of the facility), the operator will provide the Public Works Commissioner with copies of invoices to verify the cost of the approved improvements. The operator shall not begin any improvements without prior approval from the City.

Other Findings

Public Works believes there are no conflicts of interest between the current operator and Public Works. The President of Brand-on (operator) is indeed married to a retired Public Works employee. Their son is a Public Works employee in the Water Division, but this division has minimal effect on daily operations at the Marina. The Water Division may be dispatched to the Marina for routine maintenance issues or in the case of a water-related emergency. Public Works believes it does not have jurisdiction or legal precedent to prohibit a City employee or his/her family member(s) from bidding on City contracts. Public Works will forward this information to the Law Department for its opinion on potential conflicts of interest.

Courses of Action as Proposed (or Completed) by Public Works

Public Works has reassigned the staff member responsible for the Marina pending a review, and will take further action if necessary. The Deputy Commissioner of Public Works for Buildings and Energy Management will oversee Marina operations relating to the Hatch Restaurant and Marina Lighthouse. The Deputy Commissioner of Public Works for Parks and Recreation will oversee Marina operations relating to park space, grounds, and docks.

Public Works requests the assistance of Audit & Control for a joint determination of the actual amount of money due to the City and recuperating said money.

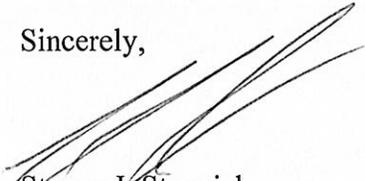
Public Works will push to receive funding through the City budget for daily operations and repairs at the Marina.

The issuance of three RFPs will divide Marina functions (Hatch Restaurant and nautical/recreational operations) and bring independent auditing expertise to maximize City revenue. Tighter controls are needed as the Marina continues to transform as part of the developing waterfront. The RFPs are also beneficial as they will be designed to minimize, if not eliminate, ambiguous/contradictory language in future contracts. Public Works expects to issue the RFPs no later than December 31, 2013.

In 2009, Public Works introduced a committee that focused on Marina operations. Public Works requested representation from Audit & Control, but did not receive such representation. Public Works intends to reconvene this committee to be comprised of, but not limited to, the following: Public Works Commissioner, Deputy Commissioner of Public Works for Buildings and Energy Management, Deputy Commissioner of Public Works for Parks and Recreation, Special Assistant to the Commissioner of Public Works, the operator or operators (dependent on bids awarded), and the third-party auditor (dependent on bid awarded). Public Works requests that Audit & Control be represented at these meetings. Initially, these meetings should be held monthly. It is Public Works' intention to schedule the first meeting shortly after the contract is awarded.

In addition to submission to the attention of the Comptroller, this response will be filed with the Common Council. Public Works believes that the combination of the "Audit Report", the action taken by Public Works articulated in its response, and increased collaboration between the various stakeholders (current and future) will allow the Marina to be an even greater regional asset while maximizing revenue for the City.

Sincerely,



Steven J. Stepniak
Commissioner
Public Works, Parks and Streets