



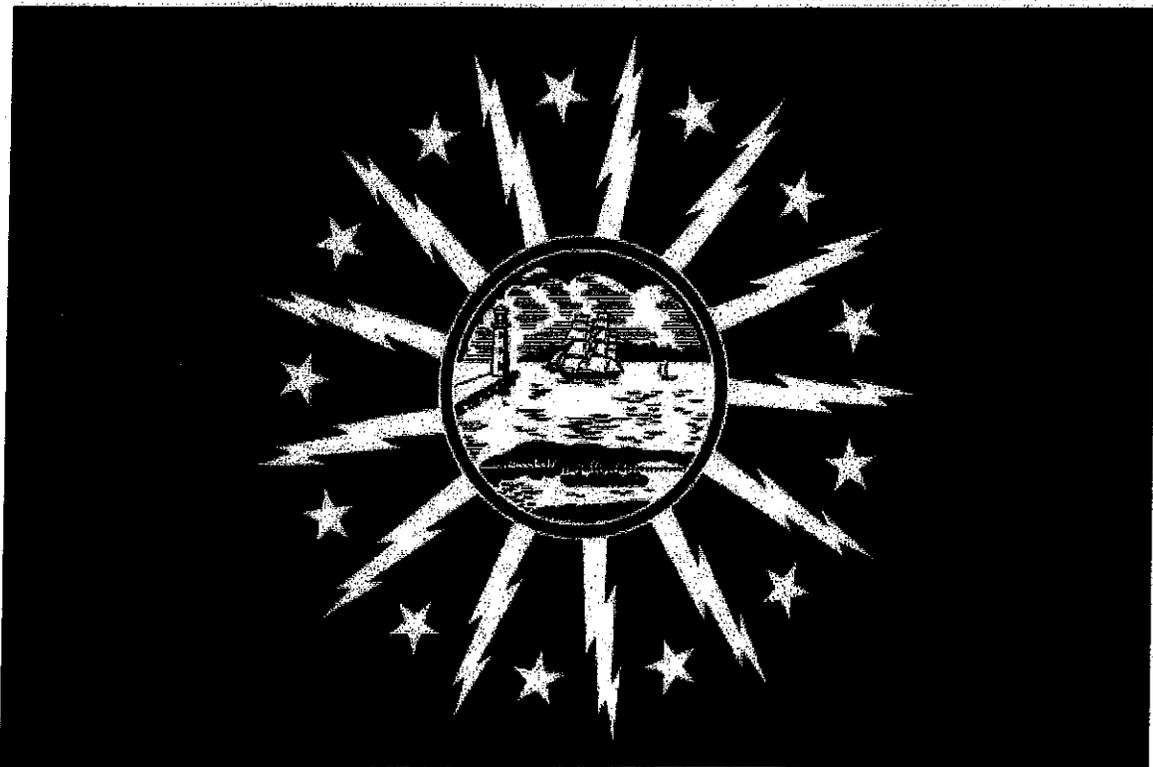
**CITY OF BUFFALO  
DEPARTMENT OF AUDIT AND CONTROL**

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**AUDIT REPORT  
CONTRACT FOR OPERATION OF ERIE BASIN  
MARINA FOR THE 2013 SEASON**

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**MARK J.F. SCHROEDER  
COMPTROLLER**



**ANNE FORTI-SCIARRINO  
FIRST DEPUTY COMPTROLLER**

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

**DECEMBER 2013**

## 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 ("RFP") 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 rentals 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 4<sup>th</sup> through 10<sup>th</sup> seasons after installation.

Rent due related to Base Sales plus Fuel Sales is subject to a guaranteed minimum rent payment of \$80,000. Rent due related to Gross Marina Revenue is subject to a guaranteed 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 additional reduction in rent. In accordance with the Contract the following must be approved by the Common Council, "all matters involving expenditure of City funds; increases or reductions in rental income; abatement of rentals; construction of additions to the facilities; amendments to the Rules and Regulation for the operation of the Marina; and any other matters affecting City policy with respect to the use of the Marina."

The guaranteed minimum annual rent due to the City for the Marina is \$108,000 (\$80,000 guaranteed base and fuel sales + \$115,000 guaranteed gross marina revenue - \$87,000 maintenance credit).

The Contract term ran through the 2013 season with a two year renewal option if agreed by both parties. The renewal option was not exercised and the Contract was terminated on November 20, 2013 by the City.

### **Audit Objectives**

The audit objective is to verify the proper amount of rent was paid to the City for the 2013 season 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.
- Review supporting documentation for deductions from rent to verify if allowable in accordance with Contract.
- Verify payments on Rental Calculation agree to amounts received by the City.

### **Summary of Audit Results**

Several errors were discovered in the 2013 Rental Calculation provided by the Operator (see Appendix A) resulting in an underpayment of rent of \$45,808. The most significant errors were related to calculation of rent due on Fuel Sales and amounts deducted from rent not permissible under the terms of the Contract.

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 fuel sales were omitted from the calculation. This resulted in Rent due related to Fuel Sales being understated by \$17,705.

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

approval by Common Council was provided to justify the deductions from rent. This resulted in unauthorized deductions from rent due of \$28,103.

### **Audit Findings**

#### **1. 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 continues to use a rate of \$0.10 per gallon to calculate rent due on fuel sales. The difference in recording fuel at \$0.10 per gallon as opposed to the contract mandated 10% of net fuel sales resulted in an underpayment of rent of \$17,126 for the 2013 season.

The fuel supplier provided a letter confirming the number of gallons of fuel supplied to the Operator. This was obtained to verify the accuracy of number of gallons reported in the Rental Calculation. The number of gallons supplied was used by auditors in calculating fuel sales, as inventory figures were not provided for the last audit and the inventory figures originally provided for this audit were grossly inaccurate as they listed inventory in excess of storage capacity of the fuel tanks. On November 20, 2013 accurate inventory records were provided. There is a fuel measuring system on the fuel tanks that provides a detail of gallons in each tank. This report was not provided to us in our prior audit, therefore we were forced to calculate fuel sales based on the assumption there was no change in inventory. To account for the change in inventory an adjustment was made in the current Rental Calculation. It is labeled "Fuel Inventory Adjustment". The adjustment results in an increase in rent due of \$579. This is in addition to the approximately 20,000 gallons in fuel sales not reported by the Operator in the prior audit.

The miscalculation of rent due on fuel sales and inventory adjustment result in an underpayment related to fuel sales of \$17,705.

#### **2. Unauthorized Deductions from Rent**

In the Rental Calculation under the title "City Maintenance Charges" \$24,803 was deducted from the rent. Additionally under the title "Median Lawn & Debris Care" \$3,300 was deducted from rent. No documentation was provided demonstrating Common Council authorization for these credits. Thus the deductions are not allowable in accordance with the Contract. A total of \$28,103 was improperly deducted by the Operator in the Rental Calculation resulting in an underpayment of rent in that amount.

### **3. Other Findings**

Transient Boat Slip Revenue decreased significantly from the prior year and the number of transient boats docked by month was not as expected. More transient boats were docked in the Marina in August than the rest of the summer combined. According to the Operator the decrease is transient slip revenue is weather related.

Base Sales defined as sales of food, beverages and sundry items were down 20% from the prior year. The Operator stated that the decrease was due to construction ongoing at the Hatch throughout the summer and poor weather during the 2013 season. The actual sales recorded were traced to the daily cash register receipts therefore it is believed that these responses from the Operator are accurate.

### **Audit Recommendations**

#### **1. Request for Immediate Payment of Amount Due**

An invoice for \$45,808 should be sent immediately to the Operator for underpayment of rent for the 2013 Season. Additionally the Operator owes the City \$343,245 as a result of the audit of the 2008 – 2013 Seasons. The Operator's representative informed the Audit Department that amounts due to the City for the 2005 – 2007 seasons were never calculated. The Audit Department has calculated that the Operator underpaid rent in the amount of \$126,243 for those seasons and has issued an invoice to the Operator to remedy this oversight. Therefore the total amount due to the City is \$515,296. 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 / Request for Proposals**

The Operator has withheld a total of \$515,296 from the City in rental payments. As recommended in the prior audit the contract was terminated. Separate RFP's for the Restaurant operation and Marina operation have been issued.

**Eric Basin Marina  
Rental Calculation  
For the 2013 Season**

**Calculation from Operator**

**Audit Results**

Calculation from Operator				Audit Results			
<b>Base Sales</b>							
Ships Store	31,105						
Transient Slip Rental	8,398						
Ice Cream	248,029						
Beverages							
Food & Beverages	522,258						
	<u>809,790</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	
	100,000	10%	10,000	100,000	10%	10,000	
	159,790	13%	20,773	159,790	13%	20,773	
	<u>809,790</u>		<u>72,273</u>	<u>809,790</u>		<u>72,273</u>	
<b>Fuel Sales</b>							
Total Gallons Delivered	76,494			73,672			
Less:							
Sales to City Buffalo	(554)						
Brand-On Equipment	(704)						
Fuel Error	(150)						
Sales to Wolasz Family	(2,618)						
Net Sales (Gallons)	<u>72,468</u>			<u>73,672</u>			
Average Gas Price				3.37			
Rental Calculation	72,468	\$0.10	<u>7,247</u>	248,527	10%	<u>24,853</u>	
Calculated Rent on Base Sales and Fuel Sales			79,520			97,126	
Minimum Rent on Bases Sales and Fuel Sales			80,000			80,000	
<b>Rent Due on Base Sales and Fuel Sales</b>			<b>\$ 80,000</b>			<b>\$ 97,126</b>	
<b>Gross Marina Revenue</b>							
Fixed Slip Rental	287,121			287,121			
Miss Buffalo Dockage	4,500			4,500			
Moondance Dockage	1,950			1,950			
Dry Dock Rental	7,275			7,275			
Launch Tickets	12,964			12,964			
	<u>313,810</u>			<u>313,810</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	
	63,810	55%	35,096	63,810	55%	35,096	
	<u>313,810</u>		<u>142,596</u>	<u>313,810</u>		<u>142,596</u>	
Floating Docks C&D	54,340	5%	2,717	54,340	5%	2,717	
Floating Docks F&G	57,363	5%	2,868	57,363	5%	2,868	
<b>Rent Due on Gross Marina Revenue</b>			<b>148,181</b>			<b>148,181</b>	
<b>Total Rent Payable</b>			<b>\$ 228,181</b>			<b>\$ 245,307</b>	
<b>Adjustements to Rent</b>							
Gas Purchased - City of Buffalo			(2,435)			(2,435)	
Median Lawn & Debris Care			(3,300)			-	
City Maintenance Charges			(24,803)			-	
Landscaping Credit			(87,000)			(87,000)	
Fuel Inventory Adjustment						579	
<b>Total Adjustments to Rent</b>			<b>\$ (117,538)</b>			<b>\$ (88,856)</b>	
<b>Net Rent Due to (from) the City of Buffalo</b>			<b>\$ 110,643</b>			<b>\$ 156,451</b>	
<b>Payments made to City of Buffalo</b>			<b>\$ 110,643</b>			<b>\$ 110,643</b>	
<b>Balance Due</b>			<b>\$ -</b>			<b>\$ 45,808</b>	



**CITY OF BUFFALO**  
DEPARTMENT OF  
PUBLIC WORKS, PARKS & STREETS



BYRON W. BROWN  
MAYOR

STEVEN J. STEPNIAK  
COMMISSIONER

PETER J. MERLO, P.E.  
CITY ENGINEER

February 10, 2014

Kevin J. Kaufman, CPA  
City Auditor  
1225 City Hall  
Buffalo, NY 14202

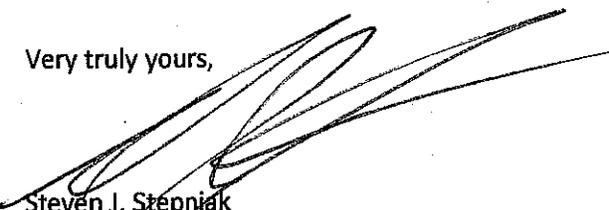
**RE: Audit Report  
Contract for Operation of Erie Basin Marina for the 2013 season**

Dear Mr. Kaufman,

The Department of Public Works, Parks and Streets (DPW) is in receipt of the subject report dated December 2013. The DPW appreciates your Department's assistance of our staff with monitoring the receipt of revenue that is required by the contract.

The DPW, at your office's recommendation, will be sending an invoice to Brand-On services in the amount of \$45,808.00 for the 2013 season. If Brand-On fails to pay the invoice, the matter will be referred to the Corporation Counsel as part of the on-going arbitration process required by the terms of the contract.

Very truly yours,

  
Steven J. Stepniak  
Commissioner Department of Public Works Parks, and Streets

SJS:MJF

cc. Timothy A. Ball, Esq. – Corporation Counsel