



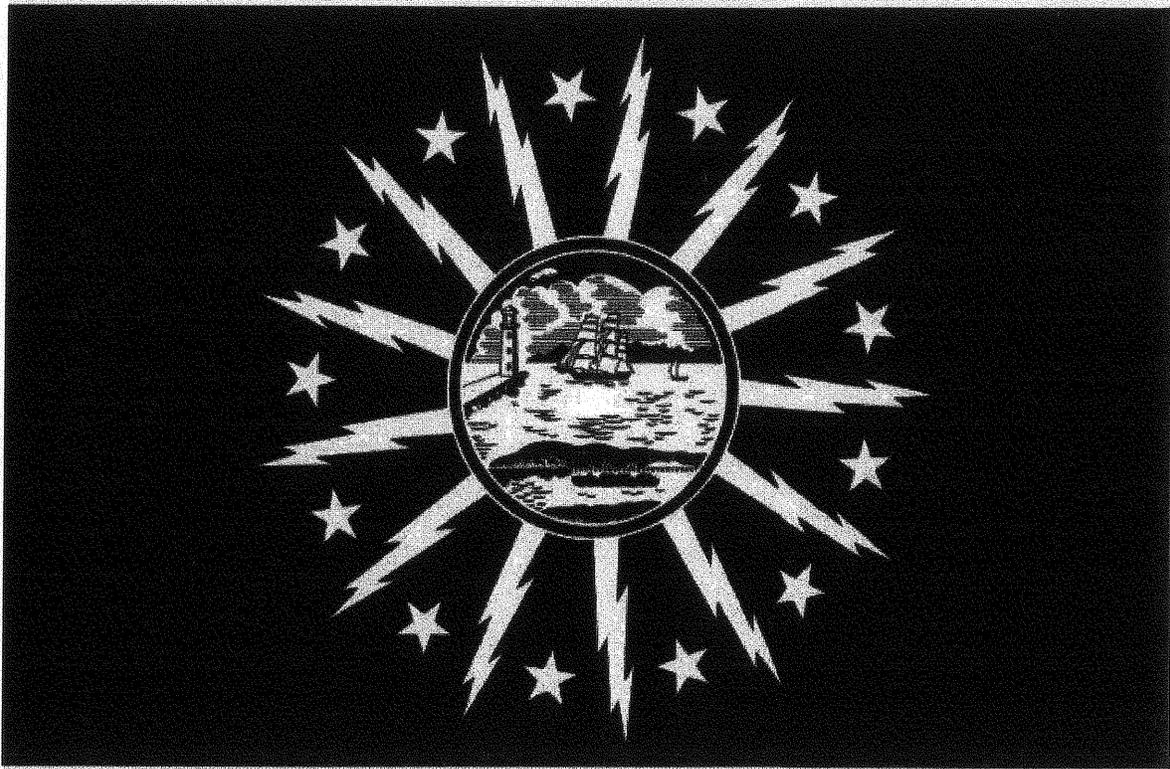
CITY OF BUFFALO  
DEPARTMENT OF AUDIT AND CONTROL

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**AUDIT REPORT**  
**CONTRACT FOR OPERATION OF THE HATCH**  
**RESTAURANT AT ERIE BASIN MARINA FOR THE**  
**2014 SEASON**

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**MARK J.F. SCHROEDER**  
**COMPTROLLER**



**ANNE FORTI-SCIARRINO, CPA**  
**FIRST DEPUTY COMPTROLLER**

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

**APRIL 2015**

**Preface**

In accordance with the goals set forth in the Annual Audit Plan, we conducted an audit of the contract for operation of the Hatch Restaurant at Erie Basin Marina for the 2014 season. The audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

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 restaurant, boat harbor, marina and multi-purpose recreational facility for use by the general public. The City issued a Request-for-Proposal (“RFP”) in 2014 to find a new operator for the restaurant at Erie Basin Marina (the Hatch). After reviewing the responses to the RFP the City entered into a lease agreement with MollyWorld, LLC (the “Operator”) to operate the Hatch Restaurant.

**Summary of Lease Agreement**

The lease agreement (the Contract) between MollyWorld, LLC and the City of Buffalo requires rental payments from the Operator to the City based on sales at the Hatch. The contract requires payment of the greater of, a guaranteed minimum payment of \$60,000 or a percentage of gross sales as defined below:

		<b>Rent due on</b>	
		<b>Rent due on</b>	<b>Alcohol</b>
<b>Gross Sales</b>		<b>Food Sales</b>	<b>Sales</b>
\$ -	\$ 1,600,000	12%	15%
\$ 1,600,001	\$ 2,400,000	13%	15%
\$ 2,400,001	\$ 3,200,000	14%	15%
\$ 3,200,001	and above	15%	15%

The rental calculation and rent payments are due monthly on the 15<sup>th</sup> day of following month. As part of the contract the Operator agreed to fund \$200,000 in facility improvements at start up. The contract is a five-year agreement beginning with the 2014 Season and concluding at the end of the 2018 season. The agreement allows for two, two-year renewal options upon mutual agreement of both the City and the Operator. The Operator is subject to an outside audit every two years at a cost incurred by the Operator not to exceed \$10,000.

## Audit Objectives

The audit objective is to verify the proper amount of rent was paid to the City for the 2014 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 Gross Sales on Rental Calculation by vouching amounts to supporting documentation, including daily sales summaries and cash register receipts listing food and beverage sales.
- Verify payments on Rental Calculation agree to amounts received by the City.
- Verify facility improvements made by vouching amounts recorded to supporting documentation.
- Five-year comparison of sales at the Hatch

## Audit Findings

### **1. Mathematical Accuracy of the Rental Calculation**

The rental calculation is attached as exhibit 1. The accuracy of the calculation was tested by the auditor, all amounts were recalculated. The calculation was determined to be accurate.

### **2. Recording Proper Amounts as Gross Sales**

Amounts recorded as Gross Sales on the Rental Calculation were traced and agreed to supporting cash register receipts and daily sales total reports. Amounts recorded as Gross Sales on the Rental Calculation agreed to supporting documentation.

### **3. Rental Calculation and Rent Payments**

The rental calculation and rent payments are due monthly on 15th day of following month. The amount recorded as rent due on the rental calculation was paid in full, but payments were not timely. The first rental was due on June 15, 2014 and final rental payment for the season was due on November 15. The first payment was received on August 1, 2014 and final payment was received on February 20, 2015.

### **4. Facility Improvements**

The vendor in accordance with the terms of the contract was to spend \$200,000 on Facility improvements at start up. The definition of facility improvement was not included in the contract. It was defined by the auditors as an expenditure with a useful life greater than one year. Using this definition invoices totaling \$200,000 in facility improvements were reviewed. The review confirmed Facility improvements met the terms of the contract.

## 5. Hatch Restaurant Sales and Rent

<b>Year</b>	<b>Hatch Sales</b>	<b>Rent Due</b>	<b>Annual Change in Rent</b>	<b>Percent Change</b>	<b>Rent as Percent of Sales</b>
2014	961,110	118,970	51,833	77%	12.38%
2013	770,287	67,137	(23,923)	-26%	8.72%
2012	954,305	91,060	(4,029)	-4%	9.54%
2011	985,301	95,089	23,279	32%	9.65%
2010	806,232	71,810	(1,995)	-3%	8.91%

The table above represents the Hatch Restaurant performance. It does not include the marina, gas dock or ship store. The new contract effective for the 2014 season provides the City a higher percentage of gross revenues. It requires rent of 12 - 15% of gross revenue whereas the old contract required rental payments of 7 - 13% of gross revenue.

### Audit Recommendations

#### 1. Timely Payment of Rent

The rental calculation and rent payment should be delivered by the operator to the City by the 15<sup>th</sup> of each month. It should be communicated to the vendor that payments need to be timely. If payment is not timely, collection procedures should be taken.



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



BYRON W. BROWN  
MAYOR

May 28, 2015

STEVEN J. STEPNIAK  
COMMISSIONER

PETER J. MERLO, P.E.  
CITY ENGINEER

Attn: Kevin J. Kaufman, CPA, City Auditor  
City of Buffalo  
Department of Audit and Control  
1225 City Hall  
Buffalo, NY 14202

Re: Draft Audit Report - Contract for Operation of the Hatch Restaurant at Erie Basin Marina for the 2014 Season

Dear Mr. Kaufman:

Thank you for your letter dated April 28, 2015, together with the enclosed audit report (the "Audit").

A review of our records indicated some rent payments for the operation of The Hatch, from its operator Mollyworld, LLC, were delayed and can report that written and oral communication has occurred notifying the vendor of its obligations under the Agreement between the City of Buffalo and The Hatch since the date of the Audit.

During these discussions, the City and Mollyworld, LLC, identified challenges due to the new agreement and the start of a new business to be the root cause of these delays. Both parties believe these issues to be resolved.

Attached for your reference is the most recent correspondence sent to Mollyworld, LLC, reminding the operator of its obligation to remit payment for rent, financial reports and insurance renewal requirements in a timely manner per the agreement between the operator and the City of Buffalo.

We believe that through ongoing communication and all action taken to date, that there will be no further concern regarding this matter.

Thank you for your assistance, and please do not hesitate to contact me at any time should you have any questions or require further clarification on any matter.

  
Steven J. Stepniak  
Commissioner

cc: Michael J. Finn, P.E., Acting-City Engineer  
Rishawn Sonubi, Deputy Commissioner of Buildings & Energy Mgt.  
Andrew Rabb, Deputy Commissioner of Parks & Recreation  
Jason Shell, Administrator -- DPW



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



BYRON W. BROWN  
MAYOR

STEVEN J. STEPNIAK  
COMMISSIONER

MICHAEL J. FINN, P.E.  
ACTING-CITY ENGINEER

May 28, 2015

Mollyworld, LLC.  
2192 Niagara Street  
Buffalo, NY 14207

Dear Molly:

A review of our records indicate that financial statements and rent paid for operation of The Hatch were delayed on several occasions last year.

With the season opening around the corner, this is a reminder that rent and reporting are due on the 15<sup>th</sup> of every month, as per the Exhibit B-1 (Riverfront on the Niagara Amendment – March 19, 2014) of the Agreement between the City of Buffalo and Mollyworld, LLC.

In addition, our review indicates that all required insurances are outdated. Please update all pertinent insurances as per Exhibit C of the Agreement to the attention of Jason Shell, Administrator, 65 Niagara Square, Rm. 511, Buffalo, NY 14202.

Please make any corrections necessary to ensure the City is in receipt of these requirements in a timely manner.

If you have any questions or concerns with complying with this request, you may contact me at (716) 851-5636 to discuss in further detail.

Sincerely,

Steven J. Stepniak  
Commissioner

Cc: Jason C. Shell, Administrator  
Rishawn Sonubi, Deputy Commissioner of Buildings  
Andrew Rabb, Deputy Commissioner of Parks  
Michael Finn, P.E., Acting-City Engineer  
Hon. Mark Schroeder, Comptroller

Smith Boys Buffalo Harbor, Inc.  
**Profit & Loss**  
 January through December 2014

Jan - Dec 14

Ordinary Income/Expense	
Income	
444 · Overages/Shortages	76.82
484 · 484-P&A Counter Retail	16,850.50
484E · 484E-P&A Counter Retail Exempt	1,299.11
489 · 489-P&A Coupons & Discounts	-14.98
491A · 491A-Gas Sales Retail	356,977.99
492 · 492-Pump Outs	2,862.00
500A · 500A-Slip Rent Wet	404,393.00
500B · 500B-Slip Rent Dry	8,390.00
500T · 500T-Transient Dockage	23,759.50
500U · 500U(Unearned) / EarnedSlipRent	0.00
504B · 504B-H&L Ramp	17,980.06
<b>Total Income</b>	<b>832,574.00</b>
Cost of Goods Sold	
684 · C/S P&A Retail	9,863.59
685 · Adjustment P&A Inventory	6.92
687 · Freight & Ticket Charges	28.98
691A · C/S Retail Gas	302,428.22
706S · C/S Shrinkwrap	22.00
<b>Total COGS</b>	<b>312,349.71</b>
<b>Gross Profit</b>	<b>520,224.29</b>
Expense	
021F · 021F-Salaries Supervisor - L&R	80,000.04
022A · 022A-Salaries Clerical - New	40,000.04
022F · 022F-Salaries Clerical - L&R	7,092.50
023F · 023F-Other Wages - L&R	66,796.04
025F · 025F-Taxes Payroll - L&R	14,832.54
026F · 026F-Unemployment Tax - L&R	4,504.88
027F · 027F-Employee Benefits - L&R	28,975.64
028F · 028F-NYS DBL - L&R	74.25
040F · 040F-Management Fees - L&R	60,000.00
051F · 051F-Company Vehicle Exp - L&R	51.72
060F · 060F-Office Supplies - L&R	5,853.46
061E · 061E-Other Supplies - P&A	332.09
061F · 061F-Other Supplies - L&R	22,739.49
063F · 063F-Advertising - L&R	45.03
066F · 066F-Policy - L&R	424.57
068E · 068E-Outside Services Data-P&A	254.99
068F · 068F-Outside Services Data-L&R	852.60
069F · 069F-Outside Services Other-L&R	88,787.72
070F · 070F-Travel & Entertainment-L&R	1,992.53
072F · 072F-Legal Expense - L&R	1,430.00
073F · 073F-Accounting Expense - L&R	6,000.00
074E · 074E-Telephone Expense - P&A	151.74
074F · 074F-Telephone Expense - L&R	1,488.23
078D · 078D-Bk Chrgs/Misc/Contrib-Body	0.00
078F · 078F-Bk Chrgs/Misc/Contrib-L&R	7,746.11
079F · 079F-Postage & Freight - L&R	398.49
080F · 080F-Rent Expene - L&R	2.00
082F · 082F-Repairs L&R	26,466.84
087F · 087F-Utilities - L&R	15,636.29
088F · 088F-Insurance Other - L&R	28,121.64
089F · 089F-Taxes Other - L&R	256.90
090F · 090F-Repairs Equipment - L&R	16,538.28
091F · 091F-Depreciation Equipment-L&R	23,224.92
<b>Total Expense</b>	<b>551,071.57</b>
<b>Net Ordinary Income</b>	<b>-30,847.28</b>
Other Income/Expense	
Other Income	
910 · 910-Interest Income	47.71
960 · 960-Miscellaneous Income	400.74
<b>Total Other Income</b>	<b>448.45</b>
<b>Net Other Income</b>	<b>448.45</b>
<b>Net Income</b>	<b>-30,398.83</b>