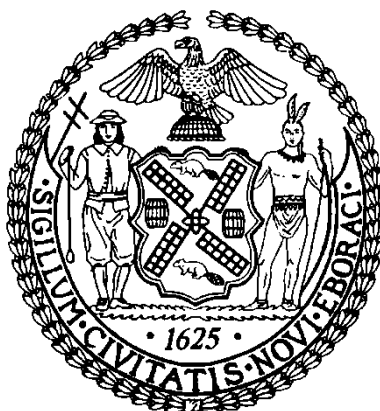


CITY OF NEW YORK OFFICE OF THE COMPTROLLER

**John C. Liu
COMPTROLLER**

FINANCIAL AUDIT

**Tina Kim
Deputy Comptroller for Audit**



Follow-Up Audit Report on the Compliance of Fitmar Management, LLC with Its License Agreement

FM11-138F

April 19, 2012



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

John C. Liu
COMPTROLLER

April 19, 2012

To the Residents of the City of New York:

My office has audited Fitmar Management, LLC (Fitmar) to determine whether the concessionaire implemented the recommendations made in the previous audit, *Audit Report on the Compliance of Fitmar Management, LLC with Its License Agreement* (Audit No. FM08-104A, issued September 4, 2009). We perform follow-up audits of City concessionaires as a means of ensuring that concessionaires comply with their license agreements and pay the license fees due the City.

The current follow-up audit disclosed that of the 22 recommendations originally made, two were implemented, one was partially implemented, 18 were not implemented, and one recommendation we were unable to determine if Fitmar complied with. Fitmar paid \$22,803 to Parks as recommended in the last audit and, as of May 2011, Fitmar had a computerized point-of-sale (POS) system to record sales at only two of its four revenue points. Additionally, Fitmar intentionally continues to circumvent its internal controls by using cash registers that are not linked to the POS system.

Moreover, Fitmar continues to: 1) underreport its gross receipts to Parks (specifically, Fitmar underreported at least \$123,369 in gross receipts for operating year 2011), 2) inaccurately record gross receipts in its general ledger, 3) not pre-number all of its contracts, 4) not have contracts for all special events, and 5) not have a sub-license agreement for the karate studio and real estate management company to operate within the facility. In addition since the prior audit, Fitmar officials have incorporated yet another company using the Paerdegat Athletic Club address and have done so without requesting a properly authorized sub-license agreement from Parks. Furthermore, Fitmar currently owes the City \$177,736 in unpaid license fees and continues to fall far short of expending the required minimum amounts for capital improvements, and does not maintain the premises in a safe and sanitary condition. In addition, Parks has not fully exercised its responsibility to ensure that Fitmar complied with all the terms and conditions of the agreement.

The audit recommends that Parks issue a "Notice to Cure" to Fitmar requiring that it immediately remit the \$177,736 in unpaid license fees and late charges due the City and terminate the agreement.

The results of the audit have been discussed with Fitmar and Parks officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov.

Sincerely,



John C. Liu

Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	2
Audit Recommendation.....	3
Agency Response	3
INTRODUCTION.....	4
Background	4
Objective	4
Scope and Methodology Statement.....	4
Discussion of Audit Results	5
RESULTS OF THE FOLLOW-UP AUDIT.....	7
OTHER ISSUES	23
\$177,736 in Unpaid License Fees	23
Inadequate Parks Enforcement.....	23
RECOMMENDATION	25
DETAILED SCOPE AND METHODOLOGY.....	26
APPENDIX I Paerdegat Athletic Club Special Event Advertisements	
APPENDIX II Conditions Observed at Paerdegat Athletic Club on July 12, 2011	
APPENDIX III Conditions Observed at Kidsports Area on February 6, 2012	
ADDENDUM I Fitmar Response	
ADDENDUM II Parks Response	

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

**Follow-Up Audit Report on the
Compliance of Fitmar Management, LLC
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FM11-138F

AUDIT REPORT IN BRIEF

This follow-up audit determined whether the 22 recommendations made in the previous audit entitled *Audit Report on the Compliance of Fitmar Management, LLC With Its License Agreement* (Audit No. FM08-104A, issued September 4, 2009) were implemented. Twelve of those recommendations were made to Fitmar Management, LLC (Fitmar) and 10 were made to the New York City Department of Parks and Recreation (Parks).

The previous audit determined whether Fitmar accurately reported its gross receipts, properly calculated the license fees due the City, paid its license fees on time, and complied with certain major non-revenue terms of the license agreement (i.e., completing required capital improvements, maintaining the required security deposit, carrying the required insurance, submitting the required reports, and paying its water and sewer charges).

The previous audit found that Fitmar's management of the Paerdegat Athletic Club was rife with internal control weaknesses and deficiencies, and its flagrant disregard for accountability and transparency resulted in a litany of abuses, which contributed to employee theft and prevented us from determining the full extent to which gross receipts were underreported and City fees underpaid. Fitmar failed to ensure that basic accounting records were in place for tracking daily business transactions and substantiating reported receipts. In addition, Fitmar did not accurately record all gross receipts in its general ledger and did not use a segregated bank account for depositing gross receipts. Based on the limited documentation available, we were able to calculate that, at a minimum, Fitmar underreported at least \$585,879 in gross receipts for operating years 2005 through 2007. As a result, Fitmar owed the City \$68,689 in additional fees and late charges.

Additionally, Fitmar did not expend required minimum amounts for capital improvements, did not maintain the premises in a safe and sanitary condition, had unpaid water and sewer charges totaling \$17,997 (which were subsequently paid), failed to submit timely monthly gross receipts statements to Parks, and allowed unauthorized businesses to operate from the premises. Finally, there was insufficient documentation to determine whether Fitmar

conducted required background checks for all its Kidsports employees as required under the New York State Social Services Law.

Audit Findings and Conclusions

Fitmar's management of the Paerdegat Athletic Club continues to be rife with internal control weaknesses and deficiencies, and its flagrant disregard for accountability and transparency results in a litany of abuses, which prevented us from determining the full extent to which gross receipts were underreported. Fitmar's continued failure to comply with the terms of the license agreement, including operating the facility in an unsafe and unsanitary manner as well as not properly maintaining its books and records, leads us to strongly recommend that Parks terminate this license agreement.

This follow-up audit determined that of the 22 recommendations originally made (12 recommendations to Fitmar and 10 recommendations to Parks), two were implemented, one was partially implemented, 18 were not implemented, and one recommendation we were unable to determine if Fitmar complied with. Fitmar paid \$22,803 to Parks as recommended in the last audit. As of May 2011, Fitmar had a computerized point-of-sale (POS) system to record sales at only two of its four revenue points. However, the POS system had gaps in the receipt numbers. Additionally, Fitmar intentionally continues to circumvent its internal controls by using cash registers that are not linked to the POS system at two of its four revenue points. Therefore, we have no assurance that Fitmar's current system for recording revenue is any better in capturing all revenue earned than the old system. Having a POS system that has gaps in receipt numbers and using standalone cash registers shows poor internal controls and suggests the possibility of improprieties.

Fitmar continues to: 1) underreport its gross receipts to Parks (specifically, Fitmar underreported at least \$123,369 in gross receipts for operating year 2011), 2) inaccurately record gross receipts in its general ledger, 3) not pre-number all of its contracts, 4) not have contracts for all special events, and 5) not have a sub-license agreement for the karate studio and real estate management company to operate within the facility. In addition, since the prior audit, Fitmar officials have incorporated yet another company, Harmony Outreach, LLC, using the Paerdegat Athletic Club address, and have done so without requesting a properly authorized sub-license agreement from Parks.

Furthermore, Fitmar currently owes the City \$177,736 in unpaid license fees and continues to fall far short of expending the required minimum amounts for capital improvements, and does not maintain the premises in a safe and sanitary condition, while still being given the privilege of operating on City property.

In addition, Parks has not fully exercised its responsibility to ensure that Fitmar complied with all the terms and conditions of the agreement. The widespread deficiencies cited in this report lead us to conclude that Fitmar continues to breach its license agreement in material respects. Parks has fallen short of its fiduciary duty of monitoring the performance of this

concessionaire and ensuring its compliance with the terms of the license agreement. Accordingly, Parks needs to revisit the position and consider the matters discussed herein.

Audit Recommendation

Based on the findings of this audit, Fitmar has a total disregard for adhering to the terms of its license agreement and continues to be in serious breach. Therefore, we recommend that Parks issue a "Notice to Cure" to Fitmar requiring that it immediately remit the \$177,736 in unpaid license fees and late charges due the City and terminate the agreement.

Agency Response

In their response, Fitmar officials agreed with most of the report's findings and stated that "[o]ur goal is to do a much better job following your recommendations in the future and be 100% compliant with the terms [of] our license agreement with [the] NYC Department of Parks & Recreation and to be in full compliance for future audits by your department."

Parks stated in its response that it "has informed Fitmar of the Department's intent to re-solicit this concession". In addition, "Parks will insist that Fitmar repay the \$177,736 in outstanding fees, as endorsed by the Report."

INTRODUCTION

Background

On December 11, 2004, Parks signed a 20-year license agreement with Fitmar to operate, maintain, and manage a state-of-the-art athletic facility and two snack bars at the Paerdegat Athletic Club (licensed premises) in Brooklyn. Fitmar also operates a children's center, Kidsports, at the licensed premises that provides infant care, day schooling, after-school programs, and day camps.

Under the terms of the agreement, Fitmar is required to pay the City the greater of either a minimum annual fee or 7 percent of its gross receipts derived from the operation of the licensed premises. On or before the first day of each month, Fitmar is required to pay one-twelfth of the minimum annual fee. A 2 percent late charge is applied if fees are 10 days overdue, plus an additional charge of 2 percent of the total of such fees and arrears shall be charged each month.

In addition, Fitmar is required to complete capital improvements costing a minimum of \$2,850,902 during the 20-year term of the license agreement, maintain a \$73,750 security deposit with the City, maintain certain types and amounts of insurance coverage, submit monthly statements of gross receipts and an annual income and expense statement, and pay water and sewer charges and applicable taxes.

For May 2011, Fitmar reported \$195,758 in gross receipts and paid \$6,000 in license fees to the City.

Objective

The objective of this follow-up audit was to determine whether the 22 recommendations made in the previous report entitled *Audit Report on the Compliance of Fitmar Management, LLC With Its License Agreement* (Audit No. FM08-104A, issued September 4, 2009) were implemented.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. 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.

The scope period of this follow-up audit was May 2011. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with Fitmar and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Fitmar and Parks officials and discussed at exit conferences held on January 18 and January 25, 2012. We also conducted subsequent testing of additional information provided at the exit conferences and conducted an additional engineering field inspection at the facility on February 6, 2012. The results of these post-exit conference audit procedures have been considered in the preparation of this report. On February 23, 2012, we submitted a draft report to Fitmar and Parks officials with a request for comments. We received written responses from Fitmar and Parks on March 7, 2012, and March 8, 2012, respectively.

In their response, Fitmar officials agreed with most of the report's findings and stated that ~~to~~ur goal is to do a much better job following your recommendations in the future and be 100% compliant with the terms [of] our license agreement with [the] NYC Department of Parks & Recreation and to be in full compliance for future audits by your department." Fitmar also asked that we change our recommendation that Park's terminate this agreement requesting: ~~to~~recommending that the parks department require us to pay all outstanding fees, but give us 60 days to comply with the auditor's findings of all outstanding issues. If we don't comply substantially with the outstanding compliance issues, then recommending termination of our agreement." Fitmar was given ample time to implement the recommendations made in the previous audit. Fitmar was also given several opportunities during this follow-up audit to provide sufficient, reliable documentation to indicate that the findings from the previous audit were corrected. We closely reviewed Fitmar officials' response and have concluded that they have not provided any additional information that would make us reconsider our recommendation.

In response to the audit's finding that \$93,934 spent on repairs and equipment should be disallowed, Fitmar's president stated that ~~to~~ disagree with the findings that \$93,934 worth of these items should be disallowed and know [sic] have proved that the majority of the capital improvements in question were done, were paid for, and were accurately reported as capital improvements." Fitmar's contention that the \$93,934 should be allowed as capital improvements is without merit. The claimed expenditures were for routine repair and maintenance items such as repairs to light fixtures and skylights, items that were clearly not capital improvements. Therefore, the \$93,934 in erroneously claimed capital improvements should be disallowed.

Fitmar's president further stated that ~~to~~with regard to the amount that was supposedly underreported (\$10,462.00) I would need to know how it is you arrived at this figure and through what process in order to best explain the discrepancy noted." Auditors met with Fitmar's president, Fitmar's bookkeeper, and a Parks representative to discuss and explain in detail the breakdown and our calculation of the \$10,462 underreported amount. At that meeting, Fitmar's president stated that he understood our explanation.

Parks stated in its response that it ~~has~~ made a demonstrated effort to increase Fitmar's compliance with its License. Parks staff has established frequent and steady oversight presence at Fitmar and has taken numerous steps to provide Fitmar with opportunities to correct

deficiencies.” Parks further stated that “[t]hese efforts notwithstanding, Parks recognizes the difficulties Fitmar still faces in complying with its License. Consequently Parks has informed Fitmar of the Department’s intent to re-solicit this concession. On February 24, 2012, Parks issued a 40-day Community-Board/ Borough President Memorandum notifying the community surrounding PAC of a forthcoming solicitation for a new operator.” In addition, “Parks will insist that Fitmar repay the \$177,736 in outstanding fees, as endorsed by the Report.”

The full texts of the responses received from Fitmar and Parks are included as addenda to this report.

RESULTS OF THE FOLLOW-UP AUDIT

Fitmar's management of the Paerdegat Athletic Club continues to be rife with internal control weaknesses and deficiencies, and its flagrant disregard for accountability and transparency results in a litany of abuses, which prevented us from determining the full extent to which gross receipts were underreported. Fitmar's continued failure to comply with the terms of the license agreement, including operating the facility in an unsafe and unsanitary manner as well as not properly maintaining its books and records, leads us to strongly recommend that Parks terminate this license agreement.

This follow-up audit determined that of the 22 recommendations originally made (12 recommendations to Fitmar and 10 recommendations to Parks), two were implemented, one was partially implemented, 18 were not implemented, and one recommendation we were unable to determine if Fitmar complied with. Fitmar paid \$22,803 to Parks as recommended in the last audit. As of May 2011, Fitmar had a computerized point-of-sale (POS) system to record sales at only two of its four revenue points. However, the POS system had gaps in the receipt numbers. Additionally, Fitmar intentionally continues to circumvent its internal controls by using cash registers that are not linked to the POS system at two of its four revenue points. Therefore, we have no assurance that Fitmar's current system for recording revenue is any better in capturing all revenue earned than the old system. Having a POS system that has gaps in receipt numbers and using standalone cash registers shows poor internal controls and suggests the possibility of improprieties.

Fitmar continues to: 1) underreport its gross receipts to Parks (specifically, Fitmar underreported at least \$123,369 in gross receipts for operating year 2011), 2) inaccurately record gross receipts in its general ledger, 3) not pre-number all of its contracts, 4) not have contracts for all special events, and 5) not have a sub-license agreement for the karate studio and real estate management company to operate within the facility. In addition, since the prior audit, Fitmar officials have incorporated yet another company, Harmony Outreach, LLC, using the Paerdegat Athletic Club address, and have done so without requesting a properly authorized sub-license agreement from Parks.

Furthermore, Fitmar currently owes the City \$177,736 in unpaid license fees and continues to fall far short of expending the required minimum amounts for capital improvements and does not maintain the premises in a safe and sanitary condition, while still being given the privilege of operating on City property.

In addition, Parks has not fully exercised its responsibility to ensure that Fitmar complied with all the terms and conditions of the agreement. The widespread deficiencies cited in this report lead us to conclude that Parks has fallen short of its fiduciary duty of monitoring the performance of this concessionaire and ensuring its compliance with the terms of the license agreement.

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

Previous Finding: –Significant Internal Control Weaknesses”

Previous Recommendation #1: Immediately remit the remaining \$22,803 in additional license fees and late charges.

Previous Fitmar Response #1: –We do not feel we should have to pay any late fees especially 2% plus 2% or 4% per month. Since we have paid approximately \$1,000,000 in base rent plus additional fees to the NYC parks department since November 2004, it is unreasonable to charge us late fees at 4% per month especially with the current market conditions and the current economic climate. We have paid the Parks department approximately \$976,000 in the past 4 years.”

Current Status: IMPLEMENTED

Fitmar paid the remaining \$22,803 in additional license fees and late charges to Parks.

Previous Recommendation #2: Hire a reputable outside consultant to implement the necessary internal controls that would conform to the requirements of the license agreement. These controls should include, but not be limited to:

- a) Installing a computerized point-of-sale system (POS) to record all revenue (i.e., athletic center, Kidsports, and snack bar) whereby terminals are situated at all revenue points, each terminal is interconnected to one centralized system, and all cash, checks, and credit card transactions are processed by the POS system. The POS system should eliminate the need for a manual system of records.
- b) Pre-numbering all documents (e.g., membership contracts, registration forms, and guest checks) and issuing them sequentially.
- c) Maintaining sequentially pre-numbered written contracts and a completed calendar book for all special events and space rentals.
- d) Depositing all gross receipts, including cash, into one bank account under the Fitmar name and ceasing the commingling of funds from affiliated businesses.
- e) Accurately recording all gross receipts in one general ledger under the Fitmar name.

Previous Fitmar Response #2: –This is not necessary. We have implemented the controls as listed below as requested by the comptroller’s office and the NYC parks department. With additional parks oversight coupled with the controls now in place, there will be no need for an outside consultant.

- a. **Touch screen front desk cash receipt register system:** In addition to the sequentially pre-numbered reco sheets, reco receipts, registration forms, booking contracts, and all enrollment agreements; we have implemented a new touch

screen cash receipt register system that ties into our general ledger. This will further insure that our income is accurately reported on a timely basis. This will also give 100% connection between point of sales, general ledger, deposits into the bank (only one account), and income reported to the parks department. Our new system will assure future auditors full transparency for all of our gross receipts and for all of our membership and children's programs. We have implemented this system at our point of sale front desk and kidsports check in areas as well.

- b. **Pre-number all documents:** The distribution of all pre-numbered program registration forms, all pre-numbered reco type income sheets and reco receipts, and pre-numbered membership contracts are all now controlled so there is no possibility of any theft or the illegal floating around of these financial control tools.
 - a. They are signed out by the selling manager or membership coordinator and must be cosigned by either the general manager or our membership service director. All receipts numbers are sequential and are now accurately listed on the pre-numbered reco sheets and the point of sale system. The same goes for all program registration forms. This was implemented during the audit and was expanded to include all of our aforementioned forms to complete the implementation of a strong financial control system.
 - b. Additionally, all program registrants must check into the computer so if anyone has an illegal registration form they will be caught at the reception area. This system of checks and balances will assure that our entire adult and children members will have multiple points of administration awareness. This translates into the fact that it is now almost impossible for any staff member to insert a child or adult into program and us not catching on immediately.
- c. **Deposit of all Gross receipts:** We are depositing 100% of all point of sale gross receipts and almost all licensed program gross receipts into one account instead of two. We will have only one account in the next few months and will no longer co-mingle any income. The reason for this is that we have to finalize renewing our licenses under the Fitmar Management name.
- d. **All Gross receipts will be recorded under the Fitmar name only."**

Previous Parks Response: Parks partially agrees with this Recommendation, and has required Fitmar to implement all of the above-described internal controls. However, Parks has decided not to require Fitmar to hire an outside consultant to implement these controls. Parks will hold Fitmar accountable for the effective operation of their concession and the implementation of the necessary internal controls. While Parks would look favorably upon a decision by Fitmar to seek outside technical assistance, we are not requiring it to do so. Parks will increase its own oversight of Fitmar's internal controls to ensure that the new procedures fully address this Report's Recommendations. This

includes requiring Fitmar to submit more detailed monthly statements of gross receipts, performing site visits to review their implementation of internal controls and conducting a follow-up internal audit.”

Current Status: NOT IMPLEMENTED

- a) Fitmar did not install computerized POS system terminals at all of its revenue points. Although terminals have been installed at the athletic center and Kidsports area, Fitmar did not install terminals at either of its two snack bars. The snack bars still continue to operate using basic cash registers that have no direct connection to the POS system. The continuous use of basic cash registers does not address the intent of the previous recommendation for a more transparent system of reporting gross receipts from all revenue points.

Furthermore, during our observation, Fitmar was found simultaneously using both the POS system and its old system of manual Reco sheets in the Kidsports area. One of the reasons for installing a POS system was to eliminate the need for a manual system of records. Moreover, Fitmar does not record all of its revenue in the POS system. Specifically, \$2,027 in vending machine and advertising commissions were not recorded in the POS system. Therefore, this further raises the question of whether all gross receipts are properly recorded and being accurately reported to Parks. **NOT IMPLEMENTED**

- b) We could not determine whether all of the documents that Fitmar provided were pre-numbered or issued sequentially. Specifically, Fitmar provided us with a “Sales by Product” report, which indicates all of the receipts generated by the POS system for May 2011. The receipt numbers were not in sequential order and had wide distributions on a daily basis with various missing receipt numbers. For example, the report shows that on May 15, 2011, the receipt numbers began at two and ended at 1343 for a total of 1,342 receipts. Following the exit conference, Fitmar provided us with additional documentation indicating that on May 15, 2011, there were 1,190 total transactions, 1,168 on the “EFT Payment Journal” and 22 on the POS report. However, the Sales by Product report indicated a total of 1,342 receipts—for a difference of 152 receipts that could not be identified.

Moreover, Fitmar uses seven different types of contracts and four different types of registration forms to run its operation. Following the exit conferences, we reviewed Fitmar’s inventory of contracts and registration forms to determine whether they were properly pre-numbered. Our review found an open box of contracts with duplicate pre-numbering. In addition, Fitmar provided us with an invoice from its printing company, which indicated that a second set of contracts with duplicate pre-numbering had also been sent to Fitmar. (The second set of contracts was not available during our review.) Finally, the printing company and another company owned by Fitmar’s president, Metro J&B Contracting, LLC (Metro), share the same address. In addition, Metro’s phone calls are being answered by the printing company’s employees.¹ Based on the above information, we cannot rely on Fitmar’s method for pre-numbering its contracts and registration forms.

¹ Metro was identified in the prior report as an affiliated contracting company that had performed a sizable amount of capital improvement work at the Paerdegat Athletic Club.

Also, because Fitmar officials informed us that the snack bars were closed for the month of May 2011, we reviewed guest checks for June 29, June 30, and July 1, 2011, when the snack bars were open. The guest checks provided appear to be issued in sequential order. However, we were not provided with a guest check for every transaction listed on the cash register ~~“X”~~ tapes for the snack bars for those three days. **NOT IMPLEMENTED**

- c) Fitmar did not maintain sequentially pre-numbered written contracts or a complete calendar book for all special events. Although a calendar book was provided to us, it only indicates names and time slots and does not include all events. Our review of its contracts to the calendar book found that several events were not recorded.

Furthermore, Fitmar was unable to provide us with written contracts for all of its special events. We met with Fitmar’s president and requested all supporting documentation regarding special events. However, Fitmar’s president insisted that no special events were held at the premises. Despite Fitmar’s initial contention that special events were not held at the facility, we found that Fitmar hosted at least three events (e.g., promoter dance parties) between July and September 2011 (see Appendix I). As a result, the revenue from these special events may not be reported in the gross receipts statements submitted to Parks. Therefore, it is very possible that the facility was being used for other events and the corresponding payments were not being recorded by Fitmar and reported to Parks. **NOT IMPLEMENTED**

- d) Based on our review of Fitmar’s bank statement, credit card statement, and POS system transactions report for May 2011, we determined that cash, check, and credit card charges were deposited to one bank account. However, we do not attest that all receipts were deposited into this one account. **IMPLEMENTED**
- e) Fitmar did not accurately record all gross receipts in its general ledger. Our review of the general ledger found that Fitmar simultaneously uses both the cash and accrual accounting methods, a practice that could result in a misstatement of its revenues. For example, our review of Fitmar’s general ledger, bank statement, and POS system transactions report for May 2011 indicates that Fitmar only records in its general ledger the amount it deposits in the bank and not the total amount of gross receipts which is actually collected. In addition, American Express charges and a portion of the Electronic Fund Transfers are recorded on the general ledger a month later. **NOT IMPLEMENTED**

Previous Recommendation #3 Maintain for at least six years the required source documentation to support the gross receipts reported to the City.

Previous Fitmar Response #3: Fitmar did not respond to this recommendation.

Current Status: UNABLE TO DETERMINE

Based on the timeframe from the initial audit and this current audit, only four years have elapsed. Consequently, we could not hold Fitmar accountable for maintaining records for a

period of six years. Therefore, we were unable to determine whether all source documentation was retained.

Previous Recommendation #4 Estimate the total revenue lost to the City resulting from the employee theft that occurred at the licensed premises, and pay appropriate additional fees to Parks.

Previous Fitmar Response #4: —The amount of employee theft was minimal and caught in a timely manner. It should not be required to guess at this amount and pay the city for revenue that Fitmar Management did not collect.”

Previous Parks Response: —Parks agrees and has required Fitmar to comply with Recommendations 3 and 4 and pay for amounts related to employee theft. Additionally, Parks addressed these Recommendations in a prior NTC [Notice-to-Cure] sent to Fitmar on June 5, 2008 which resulted in a payment to the City of \$14,604 for Fitmar’s Silver Sneakers program.”

Current Status: NOT IMPLEMENTED

Fitmar has not taken any action to estimate the total revenue lost to the City resulting from the employee theft that occurred at the licensed premises and to pay appropriate additional fees to Parks. Therefore, we consider this recommendation to be not implemented.

Previous Finding: \$380,450 in Expenditures for Capital Improvement Work Not Done

Fitmar did not comply with the license agreement’s requirement to expend at least \$654,301 in capital improvements for operating years 2005 to 2007.

Previous Recommendation #5 Coordinate with Parks and develop a needs assessment of capital improvements to help determine how the \$380,450 in unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.

Previous Fitmar Response #5: —The comptroller’s office, along with the parks department, made numerous inspections to view all of our stated and approved capital improvements. None were disqualified as far as being performed.

- We made them and they were correctly priced.
- We went over all of the capital improvement items that with the parks dept. The parks department inspected our facility many times and looked at all of the capital improvement jobs that we had reported.
- The parks department approved most and disapproved a few of these items. As a result the parks department submitted to us a final reported amount of capital improvements that were approved for the calendar years of 2005, 2006, and 2007.

- The type of furniture items such as fitness equipment is very heavy and would become the property of the parks department if and when we leave the premises. Therefore, like attached equipment such as basketball back boards, sinks, and faucets; this is equipment that will last 10 to 15 years and should count as credit in our capital expenditure budget. As the parks department has already signed off on these items in the past, they should stay as a contributing factor to our capital expense budget. These items were all purchased to make the club a top notch club.
- We are not aware that any of our ‘approved capital expenditures’ should be reclassified as repair and maintenance items since we went thru all of these items and received approval in the past from the parks department.
- **Installed floor and pool marble dusting:** As far as the questions raised by the comptroller’s office regarding the pools and the floors on pages [15 & 16], we explained how these invoices were calculated and showed the amount charged were at or below market rates. As for the pools, the invoices were for two of the three outdoor pools. As for the floor; one invoice was for the removal of the old floor, preparation of the floor sub base, and the installation of the brand new floor; the other floor invoice was for purchasing the actual flooring and adhesive costs.”

Previous Parks Response: –Parks agrees with this Recommendation, and has requested that Fitmar develop a needs assessment of capital improvement to help determine how and under what timetable unexpended capital improvements amounts will be spent for operating years 2005 through 2007. However, we are still reviewing the Comptroller’s extensive capital analysis and issues related to the affiliated contractor, Metro J and B, in order to determine the extent we agree with the amount of unexpended capital calculated in the Report.”

Current Status: NOT IMPLEMENTED

Fitmar has not developed a needs assessment of capital improvements to help determine how the \$380,450 in unexpended capital improvements should be used nor has it developed a specific timetable to complete each improvement.

Previous Recommendation #6: Repair and maintain the licensed premises in good working order, at its sole cost and expense, and discontinue claiming as capital improvements routine maintenance and repair items and equipment purchases.

Previous Fitmar Response #6: Fitmar did not respond to this recommendation.

Previous Parks Response: –Parks will continue to require Fitmar to keep the licensed premises in good working order, and will not accept routine maintenance toward Fitmar’s capital commitment.”

Current Status: NOT IMPLEMENTED

Fitmar continues to claim routine maintenance, repair items, and equipment purchases as capital improvements. We reviewed the capital improvement expenditures submitted to Parks for the period covering November 2008 to October 2010 (operating years 2009 and 2010). Fitmar did not comply with the license agreement's requirement to expend at least \$206,588 in capital improvements for operating years 2009 to 2010. Although Fitmar claimed to have expended \$213,343 in improvements during these years, we could not substantiate \$90,556 of that amount, as shown in Table I.

Table I
Schedule of Capital Improvements
Operating Years 2009 to 2010

Amount of Required Capital Improvements			\$206,588
Amount of Submitted Capital Improvement Invoices		\$213,343	
Disallowances:			
Repairs and Equipment	\$93,934		
Overcharged Sales Tax Amount	<u>3,377</u>		
Total Amount of Disallowances		<u>(97,311)</u>	
Amount of Capital Improvements Allowed			<u>116,032</u>
Total Unexpended Amount of Capital Improvements			<u>\$90,556</u>

Some of the claimed expenditures totaling \$93,934 were for items such as a swimsuit water extractor, a fax machine, and repairs to light fixtures that were clearly not capital improvements as defined by the agreement. These disallowances were similar to those expenses previously noted in *Audit No.* FM08-104A. As a result, the amount of unexpended capital improvements for operating years 2009 and 2010 totals \$90,556.

Previous Recommendation #7: Establish a preventive maintenance schedule that includes, but is not limited to, the periodic replacement of air conditioning filters as well as painting and repairs throughout the licensed premises.

Previous Fitmar Response #7: Fitmar did not respond to this recommendation.

Current Status: NOT IMPLEMENTED

According to Fitmar's president, "We do not have a schedule as we perform preventive maintenance everyday with our dedicated staff." Therefore, we consider this recommendation to be not implemented.

Previous Finding: "Unsafe and Unsanitary Conditions"

Fitmar has not maintained the premises in a "first class condition" as required by license agreement §11.8.

Previous Recommendation #8: Maintain the facility in a clean, neat, and litter-free condition at all times, as required by the license agreement.

Previous Fitmar Response #8: Fitmar did not respond to this recommendation.

Current Status: NOT IMPLEMENTED

Fitmar has again failed to maintain the facility in a clean, neat, and litter-free condition at all times as required by the license agreement. The Department of Health and Mental Hygiene (DOHMH) conducted inspections of the snack bars on July 11, July 28, and August 11, 2011, and issued Fitmar 42, 23, and 33 violation points, respectively. Among other things, DOHMH identified ~~–~~evidence of mice or live mice present in facility's food and/or non-food areas." Subsequently, on August 19, 2011, DOHMH gave Fitmar a ~~–B~~" grade.

Additionally, we observed other conditions in portions of the facility that may pose a potential safety hazard to the members and children who use the facility. These conditions include an exposed electrical outlet, a ramp covering exit stairs, an unsanitary sink, and damaged ceiling panels at the basketball court (see pictures in Appendix II).

Furthermore, on February 6, 2012, we conducted another visit and found conditions that may pose a potential safety hazard to the children who use the Kidsports area. Specifically, we observed damage throughout the indoor jungle gym, including exposed metal edges, torn gymnastic mats, and filthy carpeting. In an effort to remedy some of the damage to the jungle gym and prevent the protective foam padding from moving and exposing the metal piping underneath, Fitmar attached zip ties to the damaged areas rather than repairing it (see pictures in Appendix III). The results reveal similar conditions which were reported in the previous audit report.

Previous Recommendation #9: Submit accurate monthly gross receipts statements to Parks within 30 days after the end of each month.

Previous Fitmar Response #9: Fitmar did not respond to this recommendation.

Current Status: NOT IMPLEMENTED

Although Fitmar submitted its May 2011 monthly gross receipts statement to Parks within 30 days after the end of the month, the accuracy of the submitted monthly gross receipts is questionable. Based on the limited documentation available, we were able to calculate that, at a minimum, Fitmar underreported at least \$10,462 in gross receipts for May 2011. There were discrepancies among the amounts recorded on the POS report, the Electronic Funds Transfer report, the general ledger, and the amounts reported on the gross receipts statement submitted to Parks.

Following our exit conferences, we expanded our scope and performed a limited review of reported receipts during operating year 2011 (December 1, 2010, to November 30, 2011) to

determine if there were any additional underreported gross receipts. Based on the limited documentation available, we were able to calculate that, at a minimum, Fitmar underreported an additional \$112,907, for a total of at least \$123,369 in gross receipts for operating year 2011. Although Fitmar did underreport its revenues by at least \$123,369, no additional fees are due because Fitmar did not surpass the minimum that would require it to pay the percentage-based fees to the City.

In addition, as previously mentioned in recommendation 2b, Fitmar provided us with the cash register “X” tape for July 1, 2011, which indicates that there were snack bar sales in that month. However, Fitmar failed to report any snack bar sales on its July 2011 monthly gross receipts statement submitted to Parks.

Furthermore, Fitmar failed to submit its monthly gross receipts statements to Parks within 30 days after the end of each month. Specifically, Fitmar submitted its August and September 2011 monthly gross receipts statements to Parks 59 and 29 days late, respectively.

Previous Finding: “Unauthorized Use of Premises to Conduct Other Businesses”

Fitmar permitted several unrelated businesses to operate at the premises, thus violating license agreement §1.1, which prohibits Fitmar from providing any services at the premises other than those required to operate, maintain, and manage a state-of-the-art athletic facility and two snack bars. Despite this prohibition, our review found evidence that a real estate management company owned by Fitmar’s principals and a privately operated karate studio were using the licensed premises at the Paerdegat Athletic Club to conduct private business.

Previous Recommendation #10: Obtain written approval from Parks to enter into a written sublicense agreement with the private operator of the karate studio, and any other sub-licensees.

Previous Fitmar Response #10: Fitmar did not respond to this recommendation.

Previous Parks Response: “Parks agrees and has required Fitmar to comply with Recommendations 7 through 10. Indeed, these recommendations were addressed in NTCs sent to Fitmar on June 5, 2008 and January 5, 2009 which required Fitmar to ‘...ensure the facility is cleaned daily...’ ‘...ensure that gross receipts are accurately reported...’ and to ‘...submit for approval proposed sublicense agreements.’”

Previous Recommendation #11: Obtain written approval from Parks to enter into a separate license agreement for the unrelated entities (affiliated real estate management businesses) to operate at the licensed premises. If Parks approves that the unrelated entities may continue to operate at the licensed premises, then Fitmar in conjunction with Parks, should determine a fair market rent that should be paid retroactively to the inception of the license agreement.

Previous Fitmar Response #11: Fitmar did not respond to this recommendation.

Previous Parks Response: –Parks does not approve of the one unrelated entity (an affiliated real estate management business) being run out of the licensed premises, and has instructed Fitmar to identify an alternative off-premises location from which to operate its real estate management business.”

Current Status: Recommendations #10 and #11 are NOT IMPLEMENTED

According to Fitmar’s president, –We do not have a sub license with the karate studio.” During the previous audit, a sub-license agreement was developed. However, it expired on September 1, 2010, and was never renewed. Therefore, the karate studio has been operating at the facility for over a year without a sub-license agreement approved by Parks.

Furthermore, Fitmar continues to operate its real estate management business from the facility and has not obtained written approval from Parks to enter into a separate license agreement for the unrelated entity to operate at the licensed premises. In addition, since the prior audit, Fitmar officials have incorporated yet another company, Harmony Outreach, LLC, using the Paerdegat Athletic Club address, and have done so without requesting a properly authorized sub-license agreement from Parks.

Although Parks originally agreed with our recommendation, it has since altered its position and now approves the operation of the real estate management business at the licensed premises. However, the approval granted by Parks is not in writing. Any changes to the license agreement should be documented by an amendment. Therefore, we consider recommendations #10 and #11 to be not implemented.

Previous Finding: Lack of Criminal Background Records

Six (13.6 percent) of 44 files lacked documentation to indicate that Kidsports employees had been properly screened for criminal backgrounds, as required by the New York State Social Services Law.

Previous Recommendation #12: Perform background checks of all employees, as required by the New York State Social Services Law.

Previous Fitmar Response #12: –We explained to the comptroller’s office that all licensed program employees that worked directly with children all did have the proper background checks. They have asked that administration staff have the background checks as well. Although this is not required by the state for licensed children’s programs, we will comply with the comptrollers request in this matter.”

Previous Parks Response: –Parks agrees and has required Fitmar to comply with Recommendation 12.”

Current Status: NOT IMPLEMENTED

Fitmar still has not performed background checks on all of its employees as required by the New York State Social Services Law. According to section 47.19a of the New York City Health Code, these requirements shall apply to any person who has, will have, or has the potential for unsupervised contact with children in a child care service, and shall include, but not be limited to: individual owners, partners, members, and shareholders who are the owners or operators of the service; educational, administrative, and maintenance employees; school bus drivers; and other persons providing services to the child care service.

Section 47.19c further states that ~~“A~~ permittee shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the Statewide Central Register of Child Abuse and Maltreatment (hereinafter ~~“SCR”~~) for all prospective employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.”

Although Fitmar’s owners provided us with documentation indicating that as of January 20, 2012, they are not on the New York State Sex Offender Registry, Fitmar’s president did not provide us with documentation indicating that the two owners had performed State-approved background checks as required by the law. Therefore, we consider this recommendation to be not implemented.

Recommendations for Parks

Previous Recommendation #13: Issue a Notice-to-Cure to Fitmar requiring that it pay the remaining \$22,803 in additional license fees and late charges.

Previous Parks Response #13: ~~“Parks~~ agrees and has issued the NTC requiring the additional payment of \$22,803.”

Current Status: IMPLEMENTED

Parks issued a Notice to Cure to Fitmar on March 19, 2009, addressing all of the recommendations cited in our previous report, including remitting the \$22,803 in additional license fees and late charges. Therefore, we consider this recommendation to be implemented.

Previous Recommendation #14: Ensure that Fitmar complies with all the recommendations in this report.

Previous Parks Response #14: ~~“We~~ have already issued NTCs covering a number of issues in the Report. Parks will issue further NTCs in accordance with Parks’ determinations with respect to the Report’s Recommendations.”

Current Status: NOT IMPLEMENTED

Parks has not ensured that Fitmar complied with 11 of the 12 recommendations from our prior report. Because Fitmar has only implemented one of the 12 prior report's recommendations, we consider this recommendation to be not implemented.

Previous Recommendation #15: Determine whether Fitmar underreported any income for operating years 2005, 2006, and 2008.

Previous Parks Response #15: –Parks will audit Fitmar's manual logs used for recording daily gross receipts (Reco Sheets) and determine whether Fitmar underreported income for 2005, 2006 and 2008.”

Current Status: NOT IMPLEMENTED

At a meeting with Parks officials, we were told that, in 2009, Parks had conducted an internal review of Fitmar's records. However, Parks was unable to determine whether Fitmar had underreported any income for operating years 2005, 2006, and 2008.

Previous Recommendation #16: Review Fitmar's estimates of revenue lost to the City resulting from the special events and from the employee theft that occurred at the licensed premises, determine the amount of additional fees and late charges, and request payment from Fitmar.

Previous Parks Response #16: –In accordance with Recommendation 4, Parks will review Fitmar's estimates of revenues. If Fitmar's estimate should be increased, Parks will require Fitmar to make additional payments to the City inclusive of late charges.”

Current Status: NOT IMPLEMENTED

Parks officials told us that Fitmar did not provide them with any estimates of revenue lost to the City resulting from special events or the employee theft. Although Parks did conduct an internal review of Fitmar's records, Parks was unable to determine an estimate of revenue lost to the City. Therefore, we consider this recommendation to be not implemented.

Previous Recommendation #17: Revise the capital improvements schedule with specific capital improvements that would make the licensed premises a state-of-the-art athletic facility. In addition, develop a specific timetable and cost estimate to complete each improvement.

Previous Parks Response #17: –In accordance with the language in Recommendation 5 Parks will require Fitmar to _...develop a needs assessment of capital improvements to help determine how the...unexpended capital improvements for operating years 2005 through 2007 should be used, and develop a specific timetable to complete each improvement.‘ Parks will revise the capital improvements schedule prepared by Fitmar as

necessary, in order to ensure that Fitmar undertakes the most useful physical improvements at the licensed premises, on the most appropriate timetable.”

Current Status: NOT IMPLEMENTED

Parks officials provided us with notices, which were sent to Fitmar over a two-year period ranging between May 14, 2009, and May 31, 2011, requesting Fitmar to provide a revised detailed capital improvement schedule. To date, Fitmar continues to ignore Parks’ requests. Therefore, we consider this recommendation to be not implemented.

Previous Recommendation #18: Annually review all capital improvement invoices submitted for each operating year and disallow any invoices that relate to equipment and general repair and maintenance items that are not listed specifically on the capital improvements schedule.

Previous Parks Response #18: –Parks will continue to review all capital improvement invoices submitted to us by Fitmar. Prior to the commencement of this audit in 2008, Parks had already disallowed over \$85,000 in capital submissions. However, given the serious nature of some of the Comptroller’s findings related to capital, Parks will undertake enhanced review of Fitmar’s submissions, and will disallow any submissions that we believe are general repair and maintenance and are not specifically listed on the revised capital improvement schedule discussed in Recommendation 17.”

Current Status: NOT IMPLEMENTED

Our review of the capital commitment invoices and checks submitted to Parks for operating years 2009 and 2010 indicated that Parks still performs a superficial review when reviewing invoices submitted to it. Conversely, a review of the invoices by a Comptroller’s Office engineer disclosed that Parks is still accepting general repair and maintenance items as capital improvements. These items included service calls and light bulbs. Specifically, Parks accepted \$168,349 of the \$213,343 (79 percent) in submitted capital improvements as shown in Table II. However, our review determined that only \$116,032 of the \$213,343 (54 percent) should have been allowed, a difference of \$52,317 from Parks’ evaluation. Therefore, we consider this recommendation to be not implemented.

Table II
Schedule of Allowed and Disallowed Capital Improvements
for Operating Years 2009 to 2010

	Parks	Comptroller	Difference
Amount of Capital Improvements Allowed	\$168,349	\$116,032	\$52,317
Amount of Capital Improvements Disallowed	44,994	93,934	(48,940)
Overcharged Sales Tax Amount	0	3,377	(3,377)
Total Amount of Submitted Capital Improvement Invoices:	\$213,343	\$213,343	0

Previous Recommendation #19: Consider instituting §10.1 of the license agreement whereby Fitmar would be required to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.

Previous Parks Response #19: –Parks will consider requiring Fitmar to post a construction security bond equal to the cost of the capital improvements stated in the license agreement.”

Current Status: NOT IMPLEMENTED

At a meeting with Parks officials, we were informed that Parks considered the option of posting a construction security bond, but decided not to require it from Fitmar. However, we were not provided with any documentation to indicate that this option was considered and the reason for Parks’ decision. Therefore, we consider this recommendation to be not implemented.

Previous Recommendation #20: Conduct periodic unannounced site inspections and perform an annual site inspection of the licensed premises. Document results and immediately notify Fitmar of needed repairs and of any noncompliance with the license agreement.

Previous Parks Response #20: –Parks has already instituted a rigorous plan for unannounced site inspections in 2009 by Inspectors from both our Revenue Division and our Office of Management and Planning. Moreover, we have already performed two inspections in February 2009, and will continue indefinitely.”

Current Status: PARTIALLY IMPLEMENTED

Since the release of the prior audit, Parks conducted inspections of the facility on December 21, 2009; March 24, May 26, August 6, October 20, December 3, December 12, and December 14, 2010; and February 28, March 3, May 18, and July 1, 2011. Parks provided us with inspection reports and notices, which indicated that the results of the inspections were documented and that Fitmar was notified of the items in need of repair. However, Fitmar still does not maintain the facility in a clean, neat, and litter-free condition as discussed earlier.

Although Parks issues notices requiring Fitmar to correct the problems identified, Parks has not increased its enforcement actions to ensure that problems are corrected. Therefore, we consider this recommendation to be partially implemented.

Previous Recommendation #21: Determine the appropriateness of having an unrelated business operating at the licensed premises. If Parks decides to allow the unrelated business, then it should decide whether a sublicense or separate license agreement should be negotiated and whether the gross receipts of the unrelated business should be included in Fitmar's calculation of gross receipts. If an agreement is reached, Parks, in conjunction with Fitmar, should determine the amount of additional fees that should be paid retroactively to the inception of the license agreement.

Previous Parks Response #21: –Parks does not consider such a use appropriate and has required Fitmar to . . . (See response to Recommendation 11).”

Current Status: NOT IMPLEMENTED

We agree with Parks' original conclusion that the use was not appropriate. However, Parks has informed us that it has altered its position and now approves of the real estate management business operating at the licensed premises. We disagree with Parks' change in its decision and believe that there should be a sub-license for the unrelated business—one that would allow for additional license fees. In addition, although approval was granted by Parks, it is not in writing. Any changes to the license agreement should be documented by an amendment to the agreement. Furthermore, we are concerned with Fitmar's president's current actions. As previously mentioned, Fitmar's president has incorporated another business, Harmony Outreach, LLC, using the Paerdegat Athletic Club address, and has done so without requesting a properly authorized sub-license agreement from Parks.

Consequently, the City has no assurance that either the revenue generated from these businesses or their fair market rental income was included in Fitmar's calculation of gross receipts and that the City is receiving all associated fees. According to license agreement §2.1(l)(iii), –Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement . . . and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions (–Commissions–) received by Licensee in connection with all services provided by Licensee's subcontractors or sub licensees.”

Therefore, we consider this recommendation to be not implemented.

Previous Recommendation #22: Assign a Parks employee to closely monitor Fitmar's operation to ensure that it adheres to the terms of the license agreement. Specifically, Parks should evaluate Fitmar's internal control procedures to ensure that Fitmar maintains an adequate system of internal controls, maintains detailed and accurate books and records, reports all revenue, and pays the appropriate license fees.

Previous Parks Response #22: ~~Parks~~ will continue to closely monitoring Fitmar's overall operation. In early 2009 we began an enhanced monitoring of Fitmar through a combination of unannounced inspections, revised financial reporting, increased requirements for Fitmar's capital submissions and site visits by Parks' staff to review record keeping and internal controls."

Current Status: NOT IMPLEMENTED

Even though Parks has conducted capital inspections (March 24, 2010, August 6, 2010, and December 3, 2010), site inspections (December 14, 2010, and May 18, 2011), and provided us with documentation to show that it has been in contact with Fitmar since our previous audit, we see little improvement. As previously stated, Fitmar's overall management of this facility continues to be poor. Our review determined that Fitmar implemented only one of the 12 recommendations. Therefore, we consider this recommendation to be not implemented.

Other Issues

\$177,736 in Unpaid License Fees

As of February 10, 2012, Fitmar owes the City \$177,736 in unpaid license fees and late charges. On August 13, 2010, Parks agreed to defer Fitmar's license fees, in an amount totaling \$56,250, for the months of August, September, and October 2010, in order to facilitate the replacement of Fitmar's artificial grass soccer field. However, on March 28, 2011, Parks decided to revise Fitmar's deferral schedule by allowing Fitmar to continue forgoing payment of its license fees. As a result, Fitmar owes the City \$177,736. We cannot understand why Parks would agree to delay the payment of license fees as an offset to the cost for the installation of an artificial grass soccer field when Fitmar was already required under the license agreement to make the capital improvement commitment. More importantly, Fitmar is already behind schedule in expending \$471,006 on capital improvements, \$380,450 assessed in the prior audit report plus \$90,556 for the period November 1, 2008, to October 31, 2010.

Inadequate Parks Enforcement

As cited in the previous audit report, Parks still has not fully exercised its responsibility to ensure that Fitmar complied with all of the terms and conditions of its license agreement or with all of the recommendations made in the previous audit report. Although Parks increased its oversight and monitoring of Fitmar, it has not increased its enforcement actions to ensure that Fitmar corrects its deficiencies. Consequently, it is ultimately Parks' inadequate enforcement that has allowed these deficiencies to continue.

We find it troubling that Parks has allowed Fitmar to continue to violate its agreement with the City, circumvent its internal controls, underreport revenue, not expend the total amount

required for capital improvements, and let the premises remain in an unsafe and unsanitary condition. New York City Charter Chapter 14, §365(c) requires the responsible agency (i.e., Parks) to ~~monitor~~ the performance of the grantee and enforce the terms and conditions of any franchise, revocable consent, or concession under its jurisdiction.”

Nevertheless, we strongly suggest that Parks re-evaluate its position regarding the continuation of Fitmar’s license agreement and consider the seriousness of the audit findings. We believe it is not good public policy for the City to do business with organizations that engage in the kind of activities described in this report. Parks should have taken much stronger enforcement to ensure that the terms of the agreement are adhered to as recommended in the prior audit report. Accordingly, Parks should study the results of this audit, reconsider its position, and take action to terminate this agreement.

RECOMMENDATION

Based on the findings of this audit, Fitmar has a total disregard for adhering to the terms of its license agreement and continues to be in serious breach. Therefore, we recommend that Parks issue a ~~“Notice to Cure”~~ to Fitmar requiring that it immediately remit the \$177,736 in unpaid license fees and late charges due the City and terminate the agreement.

Parks Response: Parks stated in its response that it ~~“has~~ made a demonstrated effort to increase Fitmar’s compliance with its License. Parks staff has established frequent and steady oversight presence at Fitmar and has taken numerous steps to provide Fitmar with opportunities to correct deficiencies.” Parks further stated that ~~“t~~hese efforts notwithstanding, Parks recognizes the difficulties Fitmar still faces in complying with its License. Consequently Parks has informed Fitmar of the Department’s intent to re-solicit this concession. On February 24, 2012, Parks issued a 40-day Community-Board/ Borough President Memorandum notifying the community surrounding PAC of a forthcoming solicitation for a new operator.” In addition, ~~“Parks will insist that Fitmar repay the \$177,736 in outstanding fees, as endorsed by the Report.”~~

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. 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.

The scope of this follow-up audit was May 2011 for detailed testing. To ensure whether or not the prior report's recommendations were implemented, we reviewed the prior Fitmar audit report issued by the Office of the Comptroller, entitled *Audit Report on the Compliance of Fitmar Management, LLC With Its License Agreement*, Audit No. FM08-104A, issued September 4, 2009.

To achieve our audit objective, we reviewed the current license agreement between Parks and Fitmar. We reviewed correspondence, revenue reports, and other relevant documents on file with Parks. We also analyzed the Parks concessionaire ledger for the amount of license fees paid to the City during May 2011 and determined whether the payment was received on time. We then determined whether Fitmar submitted its monthly gross receipts statement to Parks on time.

In addition, we:

- interviewed Fitmar's president, bookkeeper, and membership services manager;
- conducted an unannounced observation of the athletic center and Kidsports operations on June 16, 2011;
- conducted a walk-through of the athletic center and Kidsports facilities on June 27, 2011, and with a Comptroller's Office engineer on July 12, 2011, and February 6, 2012; and
- documented our understanding of these operations in written narratives.

To determine the accuracy of the gross receipts reported to Parks for May 2011, we traced the POS system transactions report to the worksheet prepared by Fitmar's bookkeeper (which is used to calculate the amount of gross receipts reported to Parks) to the gross receipts statement submitted to Parks.

To determine whether Fitmar pre-numbered all of its documents and issued them sequentially, we reviewed the receipt numbers generated by the POS system, inventory of contracts and registration forms, and snack bar guest checks for June 29, June 30, and July 1, 2011. To determine whether Fitmar deposited all of its gross receipts, including cash, into one centralized bank account and accurately recorded all gross receipts in one general ledger, we

reviewed Fitmar's general ledger, bank statement, credit card statement, and POS system transactions report for May 2011.

To determine whether Fitmar expended the required amount of capital improvements, we reviewed invoices that Fitmar submitted to Parks for operating years 2009 and 2010. We also conducted an inspection of the facility with a Comptroller's Office engineer on July 12, 2011. The purpose of the visit was to ascertain whether claimed expenditures were for legitimate capital improvements and whether work was completed.

We also determined whether Fitmar complied with other major non-revenue terms of its agreement (i.e., paid water and sewer charges).

Finally, to determine whether Fitmar performed personnel screenings and background checks as required by the New York State Social Services Law, we asked Fitmar to provide screening documentation for Kidsports employees.

Paerdegat Athletic Club Special Event Advertisements



Conditions Observed at Paerdegat Athletic Club on July 12, 2011



Exposed Electrical Outlet



Ramp Covering Exit Stairs near Soccer Field

Conditions Observed at Paerdegat Athletic Club on July 12, 2011



Unsanitary Sink in Massage Room



Damaged Ceiling Panels at Basketball Court near Soccer Field

Conditions Observed at Kidsports Area on February 6, 2012



Exposed Metal Edges



Filthy Carpeting

Conditions Observed at Kidsports Area on February 6, 2012



Damaged Indoor Jungle Gym



Damaged Indoor Jungle Gym

Conditions Observed at Kidsports Area on February 6, 2012



Damaged Mats in Gymnastics Area



Missing Bar of Indoor Jungle Gym

Conditions Observed at Kidsports Area on February 6, 2012



Damaged Carpeting in Gymnastics Area



Damaged Mats in Gymnastics Area

Fitmar Management LLC

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

March 7, 2012

The City of New York
Office of The Comptroller
New York, N.Y.

Re: Notice To Cure (NTC) Comptrollers Draft Audit Report On the compliance of Fitmar Management, LLC
with its License Agreement FM11-138F

To whom it may concern

I have included our answers to the NYC Office of the Comptroller Financial Audit and ask for them to be considered by you and your department for Fitmar Management LLC. I thank you for the opportunity to address and implement the recommendations that your office have strongly suggested. Our goal is to do a much better job following your recommendations in the future and be 100% compliant with the terms our license agreement with NYC Department of Parks & Recreation and to be in full compliance for future audits by your department.

If you or any of your staff have any questions whatsoever, please call me at 718-209-1010.

Sincerely Yours,



Arnold & Richard Marshel
Fitmar Management LLC

Fitmar Management LLC

ADDENDUM I

Page 2 of 6

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

.....

Response to recommendations

March 6th, 2012:

Fitmar Response to Recommendations

(a) POS system Page 9 paragraph 1

In reference to the POS systems from a gross income perspective we are 98% implemented and have shown that all the food and beverage income is accounted for and shown on our reports to the parks dept. Additionally, we presented to the comptroller's auditors, our food and beverage income reports and these reports illustrate that the income in this area accounts for only around 2% of our gross income.

We have good controls concerning with our food and beverage in place and it was approved by the parks department in the past. We are only open part of the year and use a cash register with tape and pre numbered guest checks as well. All of the income at the end of each shift is put through the POS system at the front desk computer pos system. We keep all the tapes and the pre-numbered guest checks to match up together.

We will add pos to the food and beverage area in the future to alleviate the concerns of the comptroller's office.

Page 9; (a); paragraph 2:

It is true that one of our tennis professionals, who is now a kidsports administrator, was still using the old reco one write system (that we had used for over 25 years) to record transactions even after we implemented the pos system. We also illustrated that these reco sheets were turned over to our controlled area on a daily basis after the transactions were posted into the new pos system. As he stated in his authorized letter that we submitted to the comptroller's office, he was uncomfortable with computers and especially the new pos system. We have also shown the auditors from a good random sampling of transactions on these reco sheets have matched the transactions in the pos system. After much inspection there was no sign of theft. He stopped using the reco sheet system that we had used for over 25 years when he was reminded to and was better instructed to use the new pos system implemented this past summer. It must be noted that this did not create an opportunity of theft, as suggested in the auditor's report, yet we are no longer using the reco style system anymore.

In response to Page 9 paragraph (a) – VENDING COMMISSIONS

Please be advised that in the past the vending checks were not processed through the POS System. When the checks came in they were deposited separately from the receipts of the day and into the general ledger and subsequently deposited into the bank. This income was and still is properly reported to the parks department. **Currently all income from Vending Machines / Advertising are now being processed through the POS as suggested by the audit report.**

Fitmar Management LLC

ADDENDUM I
Page 3 of 6

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

In response to Page 9 paragraph (b)

It must be noted here that we purchased and installed a new POS and software management system that was implemented in June of 2011. There was some difficulty observed when running reports on the new system from information that was keyed in on the old system. We are working with our provider to alleviate this problem. We do not have this problem generating current reports on the new system.

We have been very diligent in that all of our forms are pre-numbered except the personal information forms which were not pre-numbered by an outside company, and it was also shown to the auditors that these contact information forms only serve as back up for the pre-numbered registration forms. While it was observed and shown to us that a box of duplicated pre-numbered forms were discovered. Yes this was one of 20 boxes and was a mistake. We will be more careful in the future. We are very diligent in how we give out the pre-numbered contracts to avoid theft.

Additionally, I have a 25 year relationship with the printer as I have with many vendors that supply goods and services to us. We also gave a corrected invoice to the auditors with a note from the president of the company that does our printing indicating his acknowledgment of this mistake. Our printer is very reliable, but did make a mistake that will be monitored in the future. We know that our system of pre-numbering contracts and registration forms is reliable.

Guest checks: We were told in the auditor's report dated January 4th, 2012 that only two of the food and beverage guest checks were missing. It should be recognized that we did find one of these guest checks and showed it to the auditors at the follow up meeting. So only one guest check might be missing and I must note that our average check is for under \$10. We will be more careful.

In response to Page 10 paragraph (c)

At our exit conference we showed special event income on our pos system's income report by product and showed it was also indicated on the income report submitted to the parks department. Our kidsports parties are not recorded on our "special events calendar" but are properly recorded on the kidsports side in their birthday party contract file and through their own pos system.

Secondly, we don't write special event contracts when the club makes its own parties. I showed that a party being referred to as "not properly recorded" in the auditors findings was a club party that we had planned during labor weekend. I also provided a signed letter from

Fitmar Management LLC

ADDENDUM I

Page 4 of 6

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

one of Fitmar's long term lifeguards and pool operators' indicating our trying to make a party for the club on Saturday of labor day weekend as a team.

All of the income for special events went into our pos system and was subsequently reported to parks.

In response to Page 10 paragraph (e) AMERICAN EXPRESS PAYMENTS

Any payments we receive via American Express Cards are processed through our POS system as are all other credit card payments. However American Express does not deposit the payments into our account until after the report of expected income is generated by American express. It is deposited in our account the following month. As per the auditors request we will now record the credit card segment of our income as it is billed and not as it is collected. Once we do this we will be using an accrual and a cash basis at the same time. Our accountant will make the necessary adjustments so all income is reported accurately.

All monies (Cash/Checks) collected at Fitmar are processed through the POS and deposited within a day or two. All Credit Card payments received by Fitmar through the POS get deposited into our bank account within a day of receipt. The only other deposits made to our account are the monies we receive from our monthly billing via EFT Deposits.

This accounts for **all income** for the month which in turn reflects the **GROSS RECEIPTS COLLECTED AND REPORTED** for the month.

In response to Page 10 for recommendation 33

We are now maintaining all of our financial and membership records as requested by the auditors. We will keep up to 6 years as requested.

Capital improvement work not done:

We will create a plan to catch up with our capital improvement requirements in the near future

We spent much time doing a walk through with the auditors showing to them the disallowed capital improvements that they said were in question. Most of the disallowed improvements were items that they were unsure where the work was done. After many hours of our walkthrough it became obvious that the work was done and we should be given credit for this work. I disagree with the findings that \$93,934 worth of these items should be disallowed and

Fitmar Management LLC

ADDENDUM I
Page 5 of 6

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

know have proved that the majority of the capital improvements in question were done, were paid for, and were accurately reported as capital improvements.

GROSS RECEIPTS UNDERREPORTED / INACCURACY ON GENERAL LEDGER

With regard to the amount that was supposedly underreported (\$10,462.00) I would need to know how it is you arrived at this figure and through what process in order to best explain the "discrepancy" noted.

Page 14; Maintain facility in a clean and litter free manner

Restaurant: we did receive an acceptable grade for our restaurant as a Grade B. While a few mouse droppings were found and some additional corrections were required, they were all done in a timely manner and that is why we did get a B grade.

We never were able to find the exposed electrical outlet shown in a photo in the auditor's report, so it is our contention that this outlet was not accessible to the public and it was repaired. The sink was in a janitorial storage area that used to be a massage room. We no longer give massages at the club. The ceiling panels have been fixed around the soccer field. We will repair any additional panels as needed.

The jungle gym and the gymnastic areas are cleaned on a regular basis. We will either replace or remove some of the older equipment in the next few months.

In response to Page 14 recommendation #9

Under reported receipts

Our reporting has been much more transparent and the underreported amount was a result of us not reporting out monthly dues billing versus our monthly dues collections. As per our license agreement with parks we are supposed to report our gross receipts. We respectfully do not agree with the comptroller's interpretation of this rule.

In a health club with monthly dues type membership, if someone does not pay their automatically charged monthly dues then they go to collection and are not allowed to use the facility until the dues are paid. In our case they are not using our products or services and not paying. Note that this is different from most product sales when customers use a product and don't pay their bill. We have asked for the parks department to review this issue as we don't feel we should pay rent on income we don't receive on services that have not yet been provided.

While there might have been a small difference in the actual and reported income to parks, it was unintentional and is in the under \$11,000 and did not result in lost fees to the parks department.

Fitmar Management LLC

ADDENDUM I

Page 6 of 6

1500 Paerdegat Ave. North Brooklyn NY 11236 718-209-1010

Re: Audit Report On the compliance of Fitmar Management, LLC with its License Agreement
FM11-138F February 23rd, 2012

Timely Reports:

We failed to get the reports to the parks department in at timely manner because we purchased and installed a new computer management system this past summer. We had some minor problems with the accounting software at first but the issue seems to be resolved. We will continue to provide the reports in a timely manner.

In response to Page 16 recommendation #10 & #11

We have a newly authorized agreement with the karate studio. Please see attached.

In response to Page 17: Lack of criminal background

100% of our staff working with children are properly documented with criminal background checks as illustrated by the comptrollers' office. The owners, who don't directly work with the children, have no background of criminal activity, have illustrated that they are not on the state sex offender registry as well.

As per the comptrollers request, the owners will get the additional background checks in the next 60 days.

License Fees:

We will catch up and pay all of our outstanding license fees in the next 60 days.

Audit recommendation of Termination:

We are requesting that in your Audit Recommendations as shown on page 3, that you consider altering it to reflect the following:

Recommending that the parks department require us to pay all outstanding fees, but give us 60 days to comply with the auditor's finings of all outstanding issues. If we don't comply substantially with the outstanding compliance issues, then recommending termination of our agreement.

I ask this as we have been a very positive, constructive, and invaluable component in our community for the past 32 years and would greatly appreciate the opportunity for us to comply with your report and allow us to continue providing all of the valuable services in the future.



City of New York
Parks & Recreation

ADDENDUM II
Page 1 of 2

The Arsenal
Central Park
New York, New York 10065

Adrian Benepe
Commissioner

March 8, 2012

H. Tina Kim
Deputy Comptroller
The City of New York / Office of the Comptroller
1 Centre Street
New York, NY 10007

RE: Comptroller's Draft Follow-up Audit Report on the Compliance of Fitmar Management, LLC with its License Agreement
Audit No. FM11-138F, Dated February 23, 2012

Dear Deputy Comptroller Kim:

This letter addresses the findings and Recommendation contained in the New York City Comptroller's ("Comptroller") follow-up draft audit ("Follow-up Report") on the Compliance of Fitmar Management, LLC ("Fitmar") with its License Agreement ("License") with the New York City Department of Parks & Recreation ("Parks" or the "Department") for the operation of the Paerdegat Athletic Club ("PAC"). The Follow-up Report examines Fitmar's implementation of Recommendations made in a prior Comptroller audit report of Fitmar, released on September 4, 2009. The Follow-up Report found that Fitmar had not implemented the majority of the Recommendations from the prior audit report and had numerous internal control weaknesses which lead to underreported gross receipts and other areas of non-compliance. Moreover, Fitmar's outstanding fees due the City total \$177,736. As a result, the Follow-up Report's sole Recommendation is that: **Parks issue a "Notice to Cure" to Fitmar requiring that it immediately remit the \$177,736 in unpaid license fees and late charges due the City and terminate the agreement.**

As explained to the Comptroller during the course of preparing the Report, since the Comptroller's initial audit report, Parks has made a demonstrated effort to increase Fitmar's compliance with its License. Parks staff has established frequent and steady oversight presence at Fitmar and has taken numerous steps to provide Fitmar with opportunities to correct deficiencies, including:

- performing two internal reviews of Fitmar's compliance
- holding compliance-focused meetings with Fitmar's principals;
- conducting 14 facility and capital inspections;
- issuing 25 notices for failure to pay license fees, capital commitment shortfalls or facility conditions in need of correction.

Indeed, with regard to facility conditions and inspections of PAC performed by Parks and other City agencies, we believe the facility is maintained in an overall safe and sanitary manner. PAC was last inspected by Parks in January 2012. No hazardous conditions or safety concerns were identified.



Additionally, PAC's snack bar is properly permitted with DOHMH and has received a B grade. PAC's childcare programs are properly permitted and inspected as required by DOHMH and the FDNY has licensed PAC as a Place of Public Assembly.

These efforts notwithstanding, Parks recognizes the difficulties Fitmar still faces in complying with its License. Consequently, Parks has informed Fitmar of the Department's intent to re-solicit this concession. On February 24, 2012, Parks issued a 40-day Community Board/ Borough President Memorandum notifying the community surrounding PAC of a forthcoming solicitation for a new operator.

It is our goal to work with Fitmar during this transition period in order to maintain the continuity of a variety of services (including afterschool, preschool, infant care, soccer, swim, basketball and summer camp) that are provided to many neighborhood children and families until a new operator is in place. Moreover, Parks will insist that Fitmar repay the \$177,736 in outstanding fees, as endorsed by the Report.

Finally, we thank the Comptroller for its work in preparing this Report.

Sincerely,


Elizabeth W. Smith

Cc: Adrian Benepe, Robert L. Garafola, Charles Kloth, David Cerron

