



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

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014:07:SDG:VDJ:gk

**Letter Report: Responses to Specific Questions
Regarding the District's Ballpark**

June 28, 2007

EXECUTIVE SUMMARY

The Auditor's examination found new budget items that were not included in the original February 3, 2006, stadium project budget. The new budget line items included: (1) permitting fees; (2) repair and maintenance to RFK; (3) LEEDS certification; (4) miscellaneous; and (5) South Site work. Although the Costs Cap Act does not explicitly require Council approval prior to DCSEC increasing or decreasing existing budget line items or adding new line items, we believe that DCSEC lacks the authority to unilaterally make these decisions without adhering to relevant appropriation and other laws, policies and procedures applicable to the District government. The Council may wish to consider requiring DCSEC to obtain Council approval prior to adding any new line items to the ballpark budget and may consider establishing a dollar threshold that triggers the need for Council approval of any increases or decreases to budget line items.

Additionally, the Auditor found that several line items may exceed the ballpark soft costs cap in certain budget line items as well as some line items that are not capped. These items include the following:

- **Legal and Accounting Fees** - an additional \$1,500,000 or more may be needed for legal and accounting fees to cover contracts through April 2008 for BearingPoint/Clemens for accounting services, Leftwich and Ludaway for legal and procurement services and to cover payments to Covington and Burling for legal services.
- **Land Acquisition** - according to OAG, property owners are seeking approximately \$113 million more than the District has offered. The May 31, 2007, Cost Summary Report reflected commitments of \$96,858,061 against the \$97,900,000 revised land acquisition budget, leaving a balance of only \$1,041,939, or 1.06%, to settle the remaining cases. While not capped under the Costs Cap Act, additional funds to settle eminent domain cases will most likely exceed the \$611 million stadium budget. The Council may wish to consider establishing a land acquisition contingency budget line item and a source of funding to cover increased costs for the land acquisition settlements that exceed the existing \$97,900,000 budget.

- **Relocation** - as of May 31, 2007, \$3,356,500 of the \$4,000,000 budget for relocation had been committed to settle relocation expenses for 10, or 42%, of the owners of the 24 parcels.¹ The \$643,500 balance will likely not be sufficient to cover the total costs of the remaining relocation expenses. Additionally, property owners have 18-months after the date of displacement or the date of the final payment for the acquisition of their real property, whichever is later, and tenants have 18-months after date of displacement to file a claim for relocation payment. The 18-month period has not expired for all of the 24 property owners or the tenants. Therefore, additional funds may be required to finalize relocation payments.
- **Parking Garages** - The budget for parking garages increased to \$32.9 million, or by \$11.9 million (56.7%) above the \$21 million February 3, 2006 budget. DCSEC has proposed a revised parking plan for 1,325 parking spaces (1,200 in the North Parking garages and 125 to 135 in the South structure). However, DCSEC could not provide any supporting documentation confirming that the increase has been approved by the Nationals.
- **Environmental Remediation** - This budget category has increased significantly throughout the project. The budget was originally established at \$8,502,267 and increased to \$13,978,678 as of May 31, 2007, an increase of approximately \$5,476,411, or 64%, since February 2006. DCSEC now has to complete construction of the parking garages which may uncover additional environmental hazards. Given the amount of hazardous materials identified in the past, environmental remediation costs may increase even more and a funding source for these additional costs must be identified.
- **LEEDS Certification**² - The \$612,059 budget for LEEDS certification as of May 31, 2007, was fully committed and DCSEC may exceed the budget as additional costs are incurred in obtaining LEED Certification. Representatives from DCSEC's Project Management Team estimated that an additional \$100,000, in excess of the amounts already committed, is needed for LEED certification and implementation, while DCSEC's project administrator estimated the additional costs at \$1,200,000.

¹According to OPM, the 24 parcels represent 30 former occupants (tenants and property owners).

²According to the U.S. Green Building Council LEED is defined as "the Leadership in Energy and Environmental Design." This refers to the Green Building Rating System which represents the nationally accepted benchmark for the design, construction, and operation of high performance green buildings."

- **Ballpark Contingency** - As of May 31, 2007, the New Ballpark Contingency revised budget totaled \$6,705,679, which is \$12,555,378, or 65%, less than the original \$19,261,057 contingency in the February 3, 2006, budget. As the stadium project moves toward completion, the remaining contingency budget will be further reduced and may be insufficient to cover all remaining contingencies.
- **Traffic Management Plan (TMP)**: The budget for this line item totaled \$700,000. DCSEC's commitments for the TMP through May 31, 2007, totaled \$461,646 to cover a consultant's costs which included the development of a Transportation Operations and Parking Plan (TOPP). The costs of implementing the TOPP had not been determined as of the date of this report. The scope of work for the consultant included: (1) development of a Transportation Operations and Parking Plan (TOPP); (2) assisting Commission in implementing the TOPP; and (3) monitoring and adjusting the TOPP. Although the TOPP has not been finalized, a draft plan contains several recommendations that will require funding for implementation.

The Auditor's review of the Baseball Stadium Budget also revealed that DCSEC received \$6 million as a project administration fee to implement their responsibilities related to the baseball project.³ However, DCSEC management cannot provide a detailed itemized accounting of how the project administration fee has been used. The Council may want to consider requiring DCSEC to maintain a detailed itemized accounting of the expenditure of the project administration fee for fiscal year 2007. To the extent that DCSEC cannot provide a detailed accounting of the expenditure of the entire \$6 million, the funds should be promptly returned to the stadium project budget.

The Auditor also found what appeared to be duplicate or overlapping scopes of services between DCSEC as project administrator and consultants/contractors DCSEC hired to provide project management (PM), legal services, procurement consulting, and accounting services. Additionally, the Auditor found that the scopes of work overlapped among the consultants/contractors themselves.

³See letter dated August 30, 2005, from DCSEC's Chief Executive Officer, Allen Y. Lew to Mr. Henry W. Mosley, Associate Chief Financial Officer, Office of the Chief Financial Officer.

Further, the District has not realized any development rights revenue to cover cost overruns in land acquisition, relocation, and environmental remediation.

In order to comply with Zoning Commission Order No. 06-22, DCSEC must construct the 46,000 square feet of gross floor area to be devoted to preferred uses around the ballpark perimeter. The cost to complete this work is estimated to be between \$3.4 million and \$5 million. DCSEC had not identified available funding consistent with the Costs Cap Act to cover this expense.

The Auditor found that legal costs for eminent domain and land acquisition have far exceeded the land use counsel costs cap in the Stadium budget. There is an effort underway to reclassify these costs to the land acquisition line item which is not capped. We believe this is not only a financial decision but also a policy decision that may benefit from Council clarifying its intent regarding whether these costs were subject to the soft costs cap. Recording legal counsel costs under land acquisition may obscure the exact amount the District is spending on legal services. As a consequence, the Council may wish to consider requiring OAG to report legal costs related to eminent domain cases separately from other ballpark costs. Further, a source of funding for expenses which exceed the budget for legal services related to eminent domain cases should be fully disclosed to the Council.

Finally, Washington Baseball Partners (WBC), LLC, has filed a lawsuit⁴ against the District government, the DCSEC, and the Anacostia Waterfront Corporation for breach of contract in connection with the construction of parking garages. If the WBC prevails, the District could incur significant fines.

⁴See March 9, 2007, letter from DCSEC General Counsel to the District of Columbia Auditor regarding pending or potential litigation.



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The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia
The Honorable Kwame R. Brown
Chairman, Committee on Economic Development
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Letter Report: Responses to Specific Questions Regarding the District's Ballpark

Dear Chairman Gray and Councilmember Brown:

Pursuant to your February 20, 2007 request, and in accordance with section 455 of Pub. L. No. 93-198,⁵ the District of Columbia Auditor (Auditor) conducted a review of the baseball stadium project budget and its compliance with Bill 17-11, the "Ballpark Hard and Soft Costs Cap Act of 2007" (the Costs Cap Act) and Bill 17-21, the "Ballpark Parking Completion Amendment Act of 2007."

⁵See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which states: "The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe." See also, section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code §1-204.55 (c) (2001) which states: "The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit."

OBJECTIVES, SCOPE, AND METHODOLOGY

This letter report presents the Office of the District of Columbia Auditor's ("ODCA") responses to the specific questions raised in your letter.⁶ The objectives of the review, as requested, were to include a delineation of the following:

1. the items included within the \$611 million stadium cap set forth in the attached February 3, 2006 budget for the stadium (which is referenced in the Cost Cap Act), and whether the actual or expected costs for these items, or the items themselves, have changed;
2. the estimated cost of additional items related to the stadium project that were listed "below the line" (i.e., amounts in excess of \$611 million stadium costs "above the line") in the February 3, 2006 budget, including road and Metro improvements, and whether the Cost Cap Act requires that these additional items fall within the \$611 million stadium cap, and whether the actual or expected costs for these items, or the items themselves, have changed; and
3. the actual and expected costs of any other items related to the stadium project cost not included within the \$611 million stadium cap, the source of revenues for expenditures on such other items, and whether expenditures for such other items would comply with the Cost Cap Act.

The Auditor's analysis was based upon the Ballpark budget, cost and expenditure data provided by the D.C. Sports and Entertainment Commission (DCSEC) and, where applicable, the District's Office of the Chief Financial Officer (OCFO), the Office of the Attorney General (OAG), Department of Consumer and Regulatory Affairs (DCRA), Office of Property Management (OPM), District's Department of Transportation (DDOT), Anacostia Waterfront Corporation (AWC), and other entities as necessary. The audit team also reviewed, on a sample basis, select contracts, agreements and other documents related to the ballpark project. However, due to the numerous documents and voluminous data, the Auditor did not review, in detail, all invoices, contracts and supporting documents for each line item in the Ballpark budget. Therefore, the validity and accuracy of the Auditor's analysis are predicated, in part, upon the extent to which DCSEC, the District's

⁶See letter dated February 20, 2007, from Chairman, Council of the District of Columbia and Councilmember (At-Large) Chair Economic Development Committee regarding Bill 17-11, the "Ballpark Hard and Soft Costs Cap Act of 2007" and Bill 17-21, the "Ballpark Parking Completion Amendment Act of 2007."

CFO, DDOT officials, and others fully disclosed and provided reliable, accurate, and up-to-date information in connection with the Auditor's analysis of Ballpark project actual and expected or projected costs.

Further, District government entities as well as non-District government entities were involved in various aspects of the Stadium construction and other related areas. Although DCSEC maintained much of the supporting documentation for stadium construction costs, there was no single repository or source from which to obtain *all* of the necessary information and documentation related to the Ballpark project and related activities. Thus, the process of reviewing and reconciling relevant data and interviewing appropriate individuals was an arduous task made more difficult by the numerous entities involved in the project.

BACKGROUND

On October 1, 2004, the Council of the District of Columbia (Council) approved the Ballpark Omnibus Financing and Revenue Act of 2004, effective April 8, 2005.⁷ This legislation authorized DCSEC to develop and construct a baseball stadium on the ballpark site (see Appendix I).⁸ Specifically, the legislation, in part, stated:

The ballpark shall be a first-class, open air baseball stadium to be constructed on the ballpark site, having a natural grass playing field, a capacity of approximately 41,000 seats, and market-appropriate concession, entertainment, and retail areas, fixtures, furnishings, equipment, features, and amenities.

The ballpark shall be designed to comply with all public safety, accessibility, and urban planning requirements generally applicable to buildings of such scale, purpose, and location in the District of Columbia.

To accomplish the above objectives, the DCSEC entered into several agreements including, but not limited to, the following:

⁷See Ballpark Omnibus Financing and Revenue Act of 2004 effective April 8, 2005, (D.C. Law 15-320) (the "Ballpark Act").

⁸The Baseball Stadium Site is bounded by N Street SE, Potomac Avenue SE, South Capitol Street and 1st Street SE. The site consists of approximately 21 acres.

- ☐ On February 2, 2006, a Design Build and Completion Guarantee Agreement between DCSEC and Clark/Hunt/Smoot, a Joint Venture (the CHS);
- ☐ On March 6, 2006, a Lease Agreement between DCSEC and the Baseball Expos, L.P.; and
- ☐ On March 6, 2006, a Construction Administration Agreement (CAA) between the District Government, DCSEC, and the Baseball Expos, L.P.⁹

On February 7, 2006, the Council of the District of Columbia passed the "Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Emergency Act of 2006" (Costs Cap Act), effective February 14, 2006.¹⁰ This emergency act imposed spending caps on hard and certain soft costs related to the District's contribution to the baseball stadium project. According to the Costs Cap Act, the District's contribution to the project from the sale of bonds shall not exceed \$475,184,218. Hard costs¹¹ were capped at \$300,000,000. Soft costs were capped at \$175,184,218. Excluded from the hard and soft costs caps were:

- a. land acquisition costs which were originally budgeted at \$97,650,000;
- b. environmental remediation costs, which were originally budgeted at \$8,502,267;
- c. relocation costs, which were originally budgeted at \$4,000,000; and
- d. demolition costs, which were originally budgeted at \$1,463,515.

A total of \$111,615,782 was originally budgeted for items excluded from the hard and soft costs cap. The original February 3, 2006, budget is presented in Appendix II.

⁹Originally, DCSEC executed the Lease Agreement and the CAA with the Baseball Expos, L.P. Subsequent to March 6, 2006, the team was sold and the CAA and Lease Agreement were assigned to the new owners under an Assignment and Assumption Agreement dated July 21, 2006.

¹⁰See "Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Emergency Act of 2006" (Costs Cap Act), dated February 7, 2006.

¹¹Hard costs are defined as direct construction and the builders contingency costs.

RESULTS OF EXAMINATION

QUESTION 1A: DELINEATE THE ITEMS INCLUDED WITHIN THE \$611 MILLION STADIUM CAP SET FORTH IN THE ATTACHED FEBRUARY 3, 2006 BUDGET FOR THE STADIUM (WHICH IS REFERENCED IN THE COST CAP ACT)

AUDITOR'S RESPONSE: According to Section 2(b) of the Costs Cap Act, effective February 14, 2006, the District's contribution to the ballpark project for hard costs and soft costs shall not exceed \$475,184,218, which consists of \$300,000,000 for hard costs (hard costs cap) and \$175,184,218 for soft costs (soft costs cap). The items included within the costs caps set forth in the original February 3, 2006, budget are presented in Table I.

TABLE I
D.C. Major League Baseball Park
Costs Cap

Category	Costs Cap
Ballpark Hard Costs:	\$300,000,000
Total Ballpark Hard Costs	\$300,000,000
Ballpark Soft Costs:	
Architectural & Engineering Services	30,500,000
Testing Fees, Surveys	1,500,000
Third Party Permit Review / Inspection	1,500,000
Permitting Fees (District)	-0-
Project Administration	6,000,000
Project Management	6,100,000
Land Use Counsel	500,000
Legal and Accounting Fees	4,000,000
Insurance / Performance / Pmt Bonds	15,522,500
Team Contingency	5,000,000
Environmental Mitigation Study	430,000
Other Agencies	2,600,000

Hazmat Inspections	800,000
Traffic Management Plan	700,000
Infrastructure:	
Site Utilities	15,000,000
Tunnel Protection	487,006
Sidewalks	3,743,002
Other Project Costs:	
Parking	21,000,000
Exterior Public Spaces (Plazas)	3,181,794
Completion Guarantee Fee	7,058,859
Financing Fee	30,300,000
Contingency	19,261,057
Total Soft Costs	175,184,218
Hard & Soft Costs Total:	\$475,184,218

Source: February 3, 2006, Ballpark Budget, and the "Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Emergency Act of 2006, effective February 14, 2006,

AUDITOR'S OBSERVATIONS

- **Project Administration:** DCSEC management received \$6 million (\$2 million each fiscal year for 2005, 2006 and 2007) as a project administration fee to implement their responsibilities related to the ballpark project.¹² DCSEC management could not provide the audit team a detailed itemized accounting of how the project administration fee has been used. The audit team sought to obtain information such as: (1) name, (2) hours, (3) dates of service for work performed by DCSEC staff working on the ballpark project, the (4) amounts disbursed by fiscal year, (5) overtime hours worked, or (6) an itemized listing of all other costs paid from the project administration fee advanced to DCSEC. DCSEC management explained that: "The Commission did not maintain the project administration funds as a separate budget. The Commission recorded the \$6 million as revenue in the amount of \$2 million each fiscal year (fiscal years 2005, 2006, and 2007). Since the Commission did not maintain a separate project administration budget, specific Commission expenses were not recorded or charged against these funds." The Council may want to consider requiring DCSEC to maintain a detailed itemized accounting of the expenditure of the project administration fee for fiscal year 2007, including the information detailed above. To the extent that DCSEC cannot provide a detailed accounting of the expenditure of the entire \$6 million, the funds should be promptly returned to the stadium project budget.

¹²See Ballpark Omnibus Financing and Revenue Act of 2004.

- **Project Administration versus Project Management - Overlapping Scopes of Services:**
It appeared that: (a) the scope of services for DCSEC as project administrator duplicated or overlapped services of consultants/contractors DCSEC hired to provide project management (PM),¹³ legal services, and procurement consulting and accounting services; and (b) scopes of work among the consultants/contractors overlapped. DCSEC's commitments to consultants/contractors through May 31, 2007, totaled \$3,815,689 for legal and accounting services and \$7,159,801 for PM. DCSEC's \$6 million project administration fee was to cover DCSEC functions related to the ballpark project including:
 - salaries for the Office of the Chief Executive Officer and the Finance Department;
 - cost for Legal/Procurement functions; and
 - related overhead costs.¹⁴

The scopes of work for consultants/contractors hired by DCSEC and paid from the project management budget included the following:

- **Turner/McKissack/Brailsford,¹⁵ PM Team:** DCSEC had made a total of \$5,686,011 in commitments through April 30, 2007, for the following scope of work: (1) maintaining a complete project file which will be delivered to DCSEC at the conclusion of the project; (2) tracking expenditures and updating the budget on an on-going basis; (3) tracking and updating the project schedule; (4) assisting DCSEC in managing the work of various contractors working on the project and ensuring that their work is properly coordinated; (5) assisting DCSEC and its staff as required; (6) reviewing bills and change orders submitted by other contractors and making recommendations as to payment; and (7) preparing a monthly report summarizing the status of the project and identifying key issues that must be addressed by DCSEC and its staff.
- **BearingPoint/Clemens:** a total of \$1,015,861 in commitments had been made through April 30, 2007, for the following scope of work: (1) managing a project

¹³The Project Management Team consists of a joint venture between Turner Construction, McKissack & McKissack, and Brailsford & Dunlavey (Turner/McKissack/Brailsford).

¹⁴See DCSEC's analysis of project administration and project management, March 2007.

¹⁵Before the joint venture was formed between Turner Construction, McKissack & McKissack, and Brailsford & Dunlavey, each contractor was paid under individual contracts. Brailsford & Dunlavey was paid \$915,000 and McKissack & McKissack was paid \$225,863.77.

financial management system that will track expenditures and contractual commitments to the approved budget; (2) reviewing invoices and logging them into the financial management system including a math check of the invoices; and (3) preparing periodic reports summarizing the project's financial status.

- **Leftwich and Ludaway:** a total of \$1,406,000 in commitments had been made through April 30, 2007, for the following scope of work: (1) weekly project meetings; (2) reviewing incoming correspondence for potential legal issues; (3) change order management; (4) coordinating with Land Use Counsel and Office of the Attorney General (OAG); (5) purchasing; (6) Anacostia Waterfront Corporation¹⁶ (AWC) Memorandum of Understanding and interaction; (7) assisting DCSEC in developing necessary procedures to ensure that the CAA is complied with and providing day-to-day support with regard to these requirements; (8) interacting with the Nationals; (9) providing day-to-day support to DCSEC and the Program Manager with respect to legal issues that arise during the project including permitting and fee waivers, building code requirements, the Americans with Disabilities Act (ADA), zoning regulations as well as issues under the Home Rule Act and other laws related to District government entities.
- **Covington and Burling:** a total of \$1,295,988.42 in commitments had been made through April 30, 2007, for services related to the new baseball stadium. The scope of work states that this representation will extend to all matters for which DCSEC requires outside legal services except those matters for which Covington and Burling may be constrained by Rules of Professional Responsibility from representing DCSEC, or for those matters existing prior to the date hereof on which DCSEC is advised by other counsel.
- **The Covington and Burling Contract Exceeded Five (5) Years Without Council Approval** - D.C. Code, Section 1-204.51 requires Council approval of all contracts exceeding five (5) years.¹⁷ DCSEC's agreement with Covington and

¹⁶ AWC was established pursuant to D.C. Law 15-219, effective December 7, 2004. In accordance with D.C. Law 15-219, AWC was established as a corporate body and independent instrumentality of the District government primarily to promote and advocate for the development, redevelopment, and revitalization of the Anacostia Waterfront among other purposes.

¹⁷ See D.C. Code § 1-204.51 (a) which states "Contracts extending beyond one year. – No contract involving expenditures out of an appropriation which is available for more than 1 year shall be made for a period of more than 5 years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extensions of such period for such contract..."

Burling is dated February 6, 2002, and was signed by DCSEC's former President and Executive Director. Despite the fact that the contract has exceeded the five-year period permitted under District law, DCSEC continues to obtain services from Covington and Burling in the absence of a valid duly executed contract.

- **Legal and Accounting Fees** - An additional \$1,500,000 or more may be needed for legal and accounting fees to cover contracts through April 2008 for accounting services provided by BearingPoint/Clemens, legal and procurement services provided by Leftwich and Ludaway, and legal services provided by Covington and Burling. The BearingPoint/Clemens contract expired April 30, 2007. On June 19, 2007, approximately 1½ months after the engagement letter expired, DCSEC issued a letter agreement to BearingPoint/Clemens which extended the terms and conditions of the original engagement through June 30, 2007, with all terms and conditions remaining the same. DCSEC indicated they are currently negotiating a new engagement letter and expects to complete negotiations by June 30, 2007. The Leftwich and Ludaway contract expired May 30, 2007. Approximately one week after the contract expired, DCSEC issued an engagement letter effective June 1, 2007 through May 31, 2008. Also, additional payments may be made to Covington and Burling for legal services.
- **Traffic Management Plan (TMP)**: The budget for this line item totaled \$700,000. DCSEC's commitments through May 31, 2007, totaled \$461,646 to cover a consultant's costs which included the development of a Transportation Operations and Parking Plan (TOPP).¹⁸ The costs of implementing the TOPP had not been determined as of the date of this report. The scope of work for the consultant included: (1) developing a Transportation Operations and Parking Plan (TOPP); (2) assisting Commission in implementing the TOPP; and (3) monitoring the TOPP. Although the TOPP has not been finalized, a draft plan contains several recommendations that will require additional funds for implementation.
- **Tunnel Protection**: DCSEC indicated that \$271,082 of the \$487,600 budget will no longer be necessary for tunnel protection.¹⁹ The February 3, 2006, budget estimate anticipated that CHS would be required to prevent the collapse of the sewer line. However, CHS was able to protect the tunnel by using other methods thus achieving a savings of \$271,082.

¹⁸ According to a Summary of Recommendations draft dated October 11, 2006, "The basis for the Ballpark TOPP is the D.C. Major League Baseball Park Transportation Management Plan (TMP) prepared by Gorove/Slade Associates, Inc., dated April 2006.

¹⁹ See DCSEC May 7, 2007, letter to the District of Columbia Auditor.

According to DCSEC, the \$271,082 savings will be transferred to the new ballpark contingency.

QUESTION 1B: WHETHER THE ACTUAL OR EXPECTED COSTS FOR THESE ITEMS HAVE CHANGED

AUDITOR'S RESPONSE: The Auditor found that actual and expected costs for several soft cap items have changed. Some capped items have increased while others have decreased. Table II presents the increases and decreases.

TABLE II
Increases/Decreases in Expected Costs of Capped Items
from the Original February 3, 2006 Budget Through May 31, 2007

Ballpark Soft Costs:	Original Budget February 3, 2006	Revised Budget as of May 31, 2007	Increase/ (Decrease)
Architectural & Engineering Services	\$30,500,000	\$30,766,560	\$266,560
Testing Fees, Surveys	1,500,000	0	(1,500,000)
Third Party Permit Review/Inspection ²⁰	1,500,000	3,047,342	1,547,342
Land Use Counsel	500,000	1,870,000	1,370,000
Project Management	6,100,000	7,159,801	1,059,801
Environmental Mitigation Study	430,000	460,546	30,546
Other Agencies	2,600,000	1,870,137	(729,863)
Infrastructure			
Site Utilities	15,000,000	11,866,803	(3,133,197)
Tunnel Protection	487,006	215,924	(271,082)
Sidewalks	3,743,002	10,463,153	6,720,151
Other Project Costs:			
Parking	21,000,000	32,900,000	11,900,000
Financing	30,300,000	13,599,582	(16,700,418)
New Ballpark Contingency	19,261,057	6,705,679	(12,555,378)
	\$132,921,065	\$120,925,527	(11,995,538)

Source: February 3, 2006, Ballpark Stadium Budget and DCSEC May 31, 2007, Cost Summary Report

²⁰ Testing Fees, Surveys were combined with Third Party Permit Review/Inspection. As a result, a single line item is shown for these categories as of May 31, 2007.

AUDITOR'S OBSERVATIONS

- **Sidewalks** - Approximately \$6.7 million, or 64.2%, of the \$10,463,153 revised budget for this line item is misclassified because the increase does not relate to sidewalks. Only \$3,743,002 of the \$10,463,153 budget relates to sidewalks within the Ballpark site. The remaining \$6,720,151 relates to empty core and shell space work on First Street, SE that was originally planned for retail space.²¹
 - Originally AWC was to fund the cost of First Street retail space but was unable to do so because it lacked a funding source.²² As a result, DCSEC had to perform the work in this space to move forward with Stadium construction and to ensure that the stadium would be able to obtain necessary permits.
 - The Council may wish to consider requiring DCSEC to separate the budget and expenditures for sidewalks from the budget and expenditures for work on the core and shell space. In the future, DCSEC should more appropriately classify budget and related expenditures reported in the Ballpark Cost Summary Reports.
- **Zoning** - in order to comply with Zoning Commission Order No. 06-22,²³ DCSEC must construct the 46,000 square feet of gross floor area to be devoted to preferred uses around the Ballpark perimeter. Between \$3.4 million and \$5 million was the estimated cost of completing this work. DCSEC has yet to identify an available source of funding for this work consistent with the Costs Cap Act.
- **Parking Garages** - The budget for parking garages increased to \$ 32.9 million, or by \$11.9 million (56.7%) above the \$21 million February 3, 2006, budget. The \$11.9 million was funded from the new ballpark contingency.

²¹First Street retail space work was necessary in order for DCSEC to move forward with stadium construction and to meet requirements necessary to obtain building permits. The First Street retail space was originally intended to be used as retail space and required some work to facilitate completion of the stadium.

²²See Memorandum from DCSEC's Chief Executive Officer to Chairman, Board of Directors entitled "Core and Shell Space Along First Street" dated June 7, 2006.

²³See Zoning Commission Order No. 06-22 A.C. Case No. 06-22 (Construction of a Major League Baseball Ballpark - District of Columbia Sports and Entertainment Commission) dated July 6, 2006.

- a revised parking plan has been proposed by DCSEC for 1,325 parking spaces (1,200 in the North Parking garages and 125 to 135 in the South parking structure). However, DCSEC could not provide any supporting documentation confirming that the increase has been approved by the Nationals; and
- the scope of work for CHS initially did not include construction of parking garages, however, a change order later assigned construction of the parking garages to CHS.
- **Financing** - a savings of approximately \$16.7 million, or 55.1%,²⁴ in bond financing costs were realized by the Office of the Chief Financial Officer. Originally, financing costs were estimated at \$30.3 million, however, actual financing costs totaled \$13.6 million.
 - the savings were realized from the purchase of several surety policies to meet debt service reserve requirements;²⁵
 - as a result, the District did not have to establish and fund a debt service reserve fund; and
 - the purchase of the surety policies resulted in a one-time savings of \$16.7 million.

The \$16.7 million has been redirected to other existing and new budget line items.

- **New Ballpark Contingency** - \$19,261,057 was originally budgeted for the ballpark contingency line item. However, as of May 31, 2007, it was revised downward to \$6,705,679, which was \$12,555,378, or 65%, **less** than the ballpark contingency established in the February 3, 2006, budget.
 - savings, from actual costs which were below the estimate in certain budget line items, were added to the ballpark contingency, however, the contingency was then used to fund new line items and increases to existing line items thus further decreasing the contingency fund (increases and decreases in existing line items are presented in Table II and new line items are presented in Table III);

²⁴See Office of the Chief Financial Officer's, Office of Economic Development Finance March 8, 2007 letter to the Auditor.

²⁵See Financial Guaranty Insurance Company Municipal Bond Debt Service Reserve Fund Policy Numbers 06010204; 06010205; and 06010206, respectively. The effective dates of these policies are May 15, 2006.

- funds available from the ballpark contingency are likely to decrease if DCSEC continues to add new items to the ballpark budget or increase the budget for existing line items without also identifying savings; and
- additional costs may further reduce the contingency as a result of:
 - (1) An increase in legal and accounting fees.
 - (2) Delay in completion of the Stadium by CHS - CHS has already requested an equitable adjustment in contract time of 65 days for land assembly milestone delays. CHS could also request an equitable adjustment in contract time for hazardous materials encountered during construction.²⁶
 - (3) Washington Baseball Partners (WBC), LLC, Lawsuit²⁷ - WBC filed a lawsuit against the District of Columbia government, the DCSEC, and the AWC. If the WBC prevails, the District could incur significant fines and other costs. The lawsuit alleges a breach of contract against the District and AWC. The lawsuit also alleges that DCSEC “interfered with the contract and intentionally created the alleged breach . . . ,” among other things. The lawsuit seeks:
 - injunctive relief for exclusive right to develop the northern portion of the Ballpark site;
 - specific performance of the alleged agreement to develop the northern portion of the ballpark site;
 - \$10 million in compensatory damages;
 - \$100 million in punitive damages;
 - attorney’s fees, interest and costs; and
 - other relief deemed proper by the Courts.

²⁶See Change Order #25, dated February 2, 2006, which states “In addition, the parties acknowledge that the Agreement contemplates that the Design-Builder may be entitled to an equitable adjustment in the Contract Time if Hazardous Materials are encountered. This Amendment is only intended to resolve the Design-Builder’s entitlement to billing and payment for the work described below. Any extension of Contract Time by virtue of the events described in the Change Proposal i.e. the discovery and removal of Hazardous Materials), the Design-Builder’s entitlement to an extension of Contract Time by virtue of the Land Assembly Milestone Date or a Change Event(s) other than those described, in or arising from, the events described in the Change Proposal are hereby reserved and shall be adjusted separately.

²⁷See March 9, 2007, letter from DCSEC General Counsel to the District of Columbia Auditor regarding pending or potential litigation.

If the injunctive relief motion is granted, the schedule for completion of the stadium may be impacted resulting in damage claims by CHS. The potential cost to the District government currently cannot be quantified.

(4) Items in Negotiation - Approximately \$5.7 million in unresolved issues are currently under negotiation between DCSEC and the Nationals. The issues include: (1) scoreboard enhancements totaling \$227,000; (2) furniture/fixtures/equipment (FFE) totaling \$3.5 million; and (3) outstanding design issues (hands-free plumbing fixtures, enclosure of exterior elevator lobbies and others) estimated at approximately \$2 million. DCSEC is currently in discussions with the Nationals regarding responsibility for the cost of these items. However, discussions have not been finalized. Ultimately, DCSEC may be required to fund the entire \$5.7 million and indicated they would use funds from the ballpark contingency.

QUESTION 1C: WHETHER THE ITEMS THEMSELVES HAVE CHANGED

AUDITOR'S RESPONSE: The Auditor found that the items themselves have changed as a result of DCSEC adding new line items to the budget totaling \$6,269,127 as of May 31, 2007. These new items and the expected costs of each item are presented in Table III.

Table III
New Budget Line Items

Budget Category	Amount
Permitting Fees	1,879,717
Repair and Maintenance to RFK	1,200,000
LEEDS Certification	612,059
Miscellaneous	77,351
South Site Work	2,500,000
Total New Budget Line Items	\$6,269,127

Source: DCSEC Cost Summary Report dated May 31, 2007

AUDITOR'S OBSERVATIONS:

- Although the Costs Cap Act does not explicitly require Council approval prior to DCSEC increasing or decreasing existing budget line items or adding new line items, we believe that

DCSEC lacks the authority to unilaterally make these decisions without Council input. As construction of the Stadium continues, Council may wish to establish or clarify the policy and procedures applicable to the addition of any new line items and the redirection of funds to increase existing line items of the February 3, 2006, Stadium budget, including establishing a dollar threshold that would trigger a requirement for Council review and approval prior to increasing existing line items or adding and funding new budget items. For example, in the February 3, 2006 budget, the Council approved a total of \$24 million for RFK repair and maintenance.²⁸ DCSEC included an additional \$1.2 million in RFK repair and maintenance funds as a new line item in the January 30, 2007, revised Stadium budget. Establishing an expedited Council review and approval process and caps on newly established line items, as specified by the Council, would give Council an opportunity to closely monitor construction progress, changes to the ballpark budget, and expenditures against the budget.

- The Auditor found that legal costs for eminent domain and land acquisition have far exceeded the land use counsel costs cap in the ballpark budget. There is an effort underway to reclassify these costs to the land acquisition line item which is not capped. We believe this is a policy decision that may benefit from Council clarifying its intent regarding whether these costs were subject to the soft costs cap. Recording legal counsel costs under land acquisition may obscure the exact amount the District is spending on legal services. As a consequence, the Council may wish to consider requiring OAG to report legal costs related to eminent domain cases separately from other ballpark costs. Further, a source of funding for expenses which exceed the budget for legal services related to eminent domain cases had not been disclosed to the Auditor but should be fully disclosed to the Council.
- **LEEDS Certification**²⁹ - The \$612,059 budget for LEEDS certification as of May 31, 2007, was fully committed and DCSEC may exceed the budget as additional costs are incurred in obtaining LEED Certification. Representatives from DCSEC's Project Management Team estimated that an additional \$100,000, in excess of the amounts already committed, is needed for LEED implementation and certification, while DCSEC's Chief Executive Officer estimated the additional costs at \$1,200,000.

²⁸DCSEC received \$18.5 million for RFK Renovation and \$5.5 million in contingency funds which DCSEC officials indicated was to be used for RFK improvements above the \$18.5 million.

²⁹ According to the U.S. Green Building Council LEED is defined as "the Leadership in Energy and Environmental Design." This refers to the Green Building Rating System which represents the nationally accepted benchmark for the design, construction, and operation of high performance green buildings."

- **Miscellaneous** - Costs in this new line item could increase further and should be monitored closely so that it does not become a source of misuse. Commitments through May 31, 2007, for this new line item totaled \$77,351 and related primarily to costs associated with groundbreaking for the ballpark including:
 - \$31,969 for photography related to site before demolition and during construction;
 - \$18,780 for the decor/installation and management of unveiling of stadium models and groundbreaking event;
 - \$2,000 for food;
 - \$5,000 to DC Chamber of Commerce to cover DCSEC's cost for a consultant's study on how to open the capital market to LSDBE firms;
 - \$2,301 in bank service fees; and
 - \$710 for photography of stadium models
- **Items Not Included in the Hard and Soft Costs Cap but Included in the Stadium Budget**

Table IV presents ancillary costs that were not included in the \$300,000,000 hard costs cap and \$175,184,218 soft costs cap established by the Costs Cap Act but were included in the \$611 million Stadium budget.

Table IV
Increases/Decreases in Expected Costs of Ancillary Costs
from the February 3, 2006 Stadium Budget Through May 31, 2007

Ancillary Costs	February 3, 2006 Budget	Revised Budget as of May 31, 2007	Increase/ (Decrease)
Land, Remediation and Infrastructure			
Land Acquisition	\$97,650,000	\$97,900,000	\$250,000
Relocation	4,000,000	4,000,000	-0-
Demolition	1,463,515	1,463,515	-0-
Environmental Remediation	8,502,267	13,978,678	5,476,411
Total Ancillary Cost	\$111,615,782	\$117,342,193	\$5,726,411

Source: February 3, 2006 Budget/Cost Summary Report for the month ending May 31, 2007

AUDITOR'S OBSERVATIONS:

- **Land Acquisition** - Actual expenses for land acquisition may skyrocket and are likely to far exceed the budget in order to settle the remaining 14.5 parcels.³⁰ The cost of legal services, experts, consultants, witnesses, and studies conducted by land valuation and environmental experts will also likely increase before this process is completed. Specifically:
 - the District has not settled 14.5, or 60.4%, of the 24 parcels;³¹ However, DCSEC could not provide any supporting documentation confirming that the increase has been approved by the Nationals
 - the 14.5 parcels that remain unsettled are currently in litigation and could take several years to finalize;
 - according to OAG, property owners are seeking approximately \$113 million more than the District has offered;
 - the May 31, 2007, Cost Summary Report reflected commitments of \$96,858,061 against the \$97,900,000 revised land acquisition budget, leaving a balance of only \$1,041,939, or 1.06%. Although development rights could be used to cover overruns in this line item, to date, no development rights revenue has been realized. According to Section 3(b)(3) of the Costs Cap Act: "Any revenue derived from development rights on the Ballpark site, . . . by the Anacostia Waterfront Corporation or any District government entity, independent agency or instrumentality . . . may be used for any overruns on the land acquisition and remediation costs which are documented."

³⁰One parcel, parcel K, had two owners, only one of whom settled with the District.

³¹ Generally, *Eminent Domain* is the power of a governmental entity (federal, state, county or city government, school district, hospital district or other agencies) to take private real estate for public use, with or without the permission of the owner. D.C. Code §16-1311 governs condemnation proceedings in the District of Columbia. The provision reads in relevant part "[W]hen real property in the District of Columbia is needed by the Mayor of the District of Columbia for sites of schoolhouses, fire or police stations, rights-of-way for roads, highways, streets and alleys or parts thereof, right-of-way for water mains or sewers, or any other authorized municipal use, and that property cannot be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the Superior Court of the District of Columbia in the name of the District of Columbia for the condemnation of the property or rights-of-way and the ascertainment of its value."

- OAG awarded a contract to Venable, Baetjer and Howard, LLP (Venable) to provide legal services pertaining to eminent domain and land acquisition. Venable had incurred expenses totaling approximately \$2.4 million as of February 28, 2007. These costs are expected to continue at this level through FY 2007 and possibly FY 2008, if not beyond. If these costs are transferred to the Land Acquisition line item, this will result in overspending of the \$97,900,000 land acquisition budget, which is not capped.³² The current land acquisition budget will not be sufficient to cover the remaining costs of these services as well as land acquisition; and
- the Council may wish to establish a land acquisition contingency budget line item to cover increased costs for land acquisition.
- **Relocation** - as of May 31, 2007, \$3,356,500 of the \$4,000,000 budget for relocation had been committed to settle relocation expenses for 10, or 42%, of the owners of the 24 parcels.³³ The \$643,500 balance will likely not be sufficient to cover the total costs of the remaining relocation expenses. Additionally, property owners have 18-months after the date of displacement or the date of the final payment for acquisition of their real property, whichever is later, and tenants have 18-months after date of displacement to file a claim for a relocation payment. The 18-month period has not expired for all of the 24 property owners and the tenants. Therefore, additional funds may be required to finalize relocation payments.
- **Environmental Remediation** - This budget category has increased significantly throughout the project. The budget was originally established at \$8,502,267 and was increased to \$13,978,678, as of May 31, 2007, an increase of \$5,476,411, or 64%, since February 2006. DCSEC now has to complete the construction of the parking garages which may uncover additional environmental hazards requiring remediation. Given the amount of hazardous materials identified in the past, environmental remediation costs may increase even more.

³²See D.C. Auditor's Letter Report entitled "Auditor's Preliminary Findings From Examination of Contract Between the Office of Contracting and Procurement and Venable, Baetjer and Howard, LLP" dated June 1, 2007.

³³According to OPM, the 24 parcels represent former 30 occupants (tenants and property owners).

QUESTION 2A: THE ESTIMATED COST OF ADDITIONAL ITEMS RELATED TO THE STADIUM PROJECT THAT WERE LISTED “BELOW THE LINE” (I.E., AMOUNTS IN EXCESS OF \$611 MILLION STADIUM COSTS “ABOVE THE LINE”) IN THE FEBRUARY 3, 2006 BUDGET, INCLUDING ROAD AND METRO IMPROVEMENTS

AUDITOR’S RESPONSE: The additional “below the line” items presented in Table V were included in the February 3, 2006, budget:

**Table V
Metro & Roads**

Category	Amount
Metro Improvements	\$19,900,000
Metro Design	1,400,000
Roadwork	12,000,000
Roadwork Design	-0-
Contingency - Metro & Roads	3,200,000
Subtotal - Metro & Roads	\$36,500,000

Source: February 3, 2006, Ballpark Stadium Budget

AUDITOR’S OBSERVATIONS

- **Metro Improvements/Metro Design** - The then Director of DDOT authorized \$20 million of District dollars on account at WMATA to fund modifications to the west entrance of the Navy Yard Metro Station at the corner of Half and M Streets SE. Modifications included increasing the number of fare gates to allow for an increase in the number of passengers entering and exiting the station. The District entered into a Memorandum of Agreement with WMATA to manage the project. On December 1, 2006, WMATA, as the project manager, awarded a \$17,549,000 design/build construction coordination contract to MR Ballpark 5 LLC (Construction Coordinator) and Clark Design/Build LLC (Design-Builder). Other related costs are estimated at \$3,351,000 for a total approved budget of \$20 million. Table VI presents a breakdown of District funds on account at WMATA that are being used to fund the Navy Yard Metro project.

Table VI
District Funds on Account at WMATA
Used to Fund Navy Yard Metro Project

Funding Source³⁴	Amount
Audit adjustments	\$1,600,000
Operating Interest Earnings	2,000,000
Reserve for Bus per Resolution #2000-12	1,300,000
Reserve for DC-DPW per Resolution #2000-12	1,400,000
Reserve for New Bus Service	500,000
DCLFA-“Fast Track” Funds	7,500,000
THF available Balance (portion)	4,900,000
Projected Interest Earnings through 6/30/07	300,000
District Capital Funds	500,000
Total Funds	\$20,000,000

Source: WMATA

In Revised Continuing Appropriations Resolution, 2007, approved February 15, 2007 (P.L. 110-5)(CR), Congress appropriated \$20 million of federal funds to the District to be used “only for upgrading and expanding public transportation capacity, in accordance with an expenditure plan submitted by the Mayor of the District of Columbia not later than 60 days after the enactment of this section which details the activities to be carried out with such Federal Payment.” The Mayor detailed the District’s plans for expenditure of the \$20 million in a report, dated April 17, 2007, to U.S. Representative Jose E. Serrano. In the report, the Mayor stated: “The \$20 million provided under the CR will be used to replace the funds the District pledged to the project, and is planned to be directed to transportation priorities of the Mayor.” As previously stated, the District authorized the expenditure of \$20 million held on account at WMATA to begin improvements to the Navy Yard Metro Station. However, according to the Acting Associate Director of the District’s Department of Transportation, Mass Transit Administration, the \$20 million in federal funds appropriated under the CR will not be returned to the District’s account at WMATA. This change appears to be inconsistent with the Mayor’s stated position in the April 17, 2007 report to Representative Serrano. Instead, according to DDOT’s Acting Associate Director of the Mass Transit Administration, DDOT plans to use the entire \$20 million in federal funds for transportation priorities established by the

³⁴See Appendix III for explanation of funding sources.

Mayor. While WMATA and DDOT officials indicated that no planned projects were delayed or jeopardized as a result of the use of the \$20 million for the Navy Yard Metro project, in comments to the Auditor's draft report, DDOT's Director acknowledged that the use of the funds depleted contingency resources for planned DDOT projects and altered DDOT's planning for projects that were under consideration. The Auditor also notes that the Mayor, in a report attached to the April 17, 2007, letter indicated that: "In an effort to ensure timely completion of the project, the District chose to forego its established, long-planned transit investment priorities to invest its balances in the construction of the station based on the expectation that these funds would be reimbursed or replenished through the appropriation process."

QUESTION 2B: WHETHER THE COST CAP ACT REQUIRES THAT THESE ADDITIONAL ITEMS FALL WITHIN THE \$611 MILLION STADIUM CAP

AUDITOR'S RESPONSE: The "below the line items" in Table V were not required to fall within the \$611 million Stadium budget.

QUESTION 2C: WHETHER THE ACTUAL OR EXPECTED COSTS FOR THESE ITEMS, OR THE ITEMS THEMSELVES, HAVE CHANGED

AUDITOR'S RESPONSE: The budgets for the "below the line items" have not changed, however, the actual costs for some of the items may exceed their budget.

AUDITOR'S OBSERVATIONS:

- **Navy Yard Metro Station project was seven weeks behind schedule as of April 2007.** as a consequence, the contractor may have to incur overtime costs in order to meet project milestones in the contract and to complete the project on schedule. This course of action will most likely increase overall project costs. A WMATA official indicated that approximately \$50,000 has been authorized for overtime. WMATA plans to recover the overtime cost from the developer, however, the success of this course of action is uncertain. To the extent that WMATA exceeds the total budget of \$20 million, the MOU states that either: (1) the estimated capital costs will be revised to reflect the new estimate for the capital costs upon the District's agreement to provide the additional estimated capital costs, subject to any necessary appropriations or approvals; (2) a reduction in the scope of work for the station improvements such that the available funding is sufficient for the capital costs; (3) WMATA will direct the construction contractor to cease work on the station improvements, or (4) any combination of (1), (2), or (3).

- **WMATA's project management fee may exceed estimated amount** - The District's MOA with WMATA established WMATA's project management fee to be the difference between \$20,000,000 and the total amount of the station improvements provided that WMATA's project management fee shall not exceed 13% of \$20,000,000, or \$2,600,000. However, the MOA also states that WMATA's project management fee will be revised if the station improvements exceed the estimated \$20 million budget. If actual costs to complete the project exceed \$20 million, the District would be responsible for any additional project management fees and for any project costs which exceed \$20 million.

QUESTION 3A: THE ACTUAL AND EXPECTED COSTS OF ANY OTHER ITEMS RELATED TO THE STADIUM PROJECT COST NOT INCLUDED WITHIN THE \$611 MILLION STADIUM CAP

AUDITOR'S RESPONSE: The Auditor identified the following areas that were not included within the \$611 million stadium budget that might require the expenditure of District funds.

- **Costs Associated with Implementation of Recommendations Made in the TOPP.**
In a February 2007 meeting³⁵ with the audit team, DDOT's Deputy Chief Transportation Engineer estimated the cost associated with the implementation of the needed improvements at approximately \$5 million. However, because the TOPP has not been finalized, a final determination of costs has not been made. A draft summary of recommendations prepared by the Ballpark TOPP Task Force, dated October 11, 2006, contained draft recommendations for improvements which included, but were not limited to, the following:
 - provide a detailed signage/way finding plan that directs both vehicular and pedestrian traffic to the Stadium and to Stadium parking facilities;
 - install regional and local Variable Message Signs (VMS);
 - develop an Emergency Response Plan in conjunction with DDOT, the DC Fire Department (DCFD), Emergency Management Services (EMS), and the Metropolitan Police Department (MPD);
 - upgrade communications and place "communications hub" near Ballpark;

³⁵See audit team meeting notes of February 28, 2007 meeting with DDOT's Deputy Chief Transportation Engineer and Deputy Director Resource Allocation.

- station traffic control officers at intersections to manage pedestrian traffic one hour prior to game start time until one hour after game end time;
- add a new DC Circulator route and/or extend existing Circulator service;
- park ambulances in and around the Ballpark for ease of access to ramps and elevators for ease of transport; and
- place police vehicles in strategic places in and around the Ballpark.

QUESTION 3B: THE SOURCE OF REVENUES FOR EXPENDITURES ON SUCH OTHER ITEMS

AUDITOR'S RESPONSE: The Costs Cap Act does not identify a source of revenue for actual and expected costs for any other items related to stadium project costs not included within the \$611 million stadium project budget.

QUESTION 3C: WHETHER EXPENDITURES FOR SUCH OTHER ITEMS WOULD COMPLY WITH THE COST CAP ACT

AUDITOR'S RESPONSE: Although the Traffic Management Plan was a line item included in the February 3, 2006, budget, it appears that this represented the projected costs for a consultant's study rather than the actual or estimated costs of implementing the plan. It does not appear that costs associated with implementing the recommendations of the plan were included in the \$611 million stadium budget.

SUMMARY

The Auditor's examination found new budget items that were not included in the original February 3, 2006, stadium project budget. The new budget line items included: (1) permitting fees; (2) repair and maintenance to RFK; (3) LEEDS certification; (4) miscellaneous; and (5) South Site work. Although the Costs Cap Act does not explicitly require Council approval prior to DCSEC increasing or decreasing existing budget line items or adding new line items, we believe that DCSEC lacks the authority to unilaterally make these decisions without adhering to budget laws, policies and procedures applicable to the District government. The Council may wish to consider requiring DCSEC to obtain Council approval prior to adding any new line items to the ballpark budget and may consider establishing a dollar threshold that triggers the need for Council approval of any increases or decreases to budget line items.

Additionally, the Auditor found that several line items may exceed the ballpark soft costs cap in certain budget line items as well as some line items that are not capped. These items include the following:

- **Legal and Accounting Fees** - an additional \$1,500,000 or more may be needed for legal and accounting fees to cover contracts through April 2008 for BearingPoint/Clemens for accounting services, Leftwich and Ludaway for legal and procurement services and to cover payments to Covington and Burling for legal services.
- **Land Acquisition** - according to OAG, property owners are seeking approximately \$113 million more than the District has offered. The May 31, 2007, Cost Summary Report reflected commitments of \$96,858,061 against the \$97,900,000 revised land acquisition budget, leaving a balance of only \$1,041,939 or 1.06% to settle the remaining cases. While not capped under the soft costs cap provisions of the Costs Cap Act, additional funds to settle eminent domain cases will most likely exceed the \$611 million stadium budget. The Council may wish to consider establishing a land acquisition contingency budget line item and a source of funding to cover increased costs for the land acquisition settlements that exceed the existing \$97,900,000 budget.
- **Relocation** - as of May 31, 2007, \$3,356,500 of the \$4,000,000 budget for relocation had been committed to settle relocation expenses for 10, or 42%, of the owners of the 24 parcels.³⁶ The \$643,500 balance will likely not be sufficient to cover the total costs of the remaining relocation expenses. Additionally, property owners have 18-months after the date of displacement or the date of the final payment for the acquisition of their real property, whichever is later, and tenants have 18-months after date of displacement to file a claim for a relocation payment. The 18-month period has not expired for all of the 24 property owners and tenants. Therefore, additional funds may be required to finalize relocation payments.
- **Parking Garages** - The budget for parking garages increased to \$ 32.9 million, or by \$11.9 million (56.7%) above the \$21 million February 3, 2006 budget. DCSEC has proposed a revised parking plan for 1,325 parking spaces (1,200 in the North Parking garages and 125 to 135 in the South structure). However, DCSEC could not provide any supporting documentation confirming that the increase has been approved by the Nationals.

³⁶According to OPM, the 24 parcels represent 30 former occupants (tenants and property owners).

- **Environmental Remediation** - This budget category has increased significantly throughout the project. The budget was originally established at \$8,502,267 and increased to \$13,978,678 as of May 31, 2007, an increase of approximately \$5,476,411, or 64%, since February 2006. DCSEC now has to complete construction of the parking garages which may uncover additional environmental hazards. Given the amount of hazardous materials identified in the past, environmental remediation costs may increase even more.
- **LEEDS Certification**³⁷ - The \$612,059 budget for LEEDS certification as of May 31, 2007, was fully committed and DCSEC may exceed the budget as additional costs are incurred in obtaining LEED Certification. Representatives from DCSEC's Project Management Team estimated that an additional \$100,000, in excess of the amounts already committed is needed for LEED certification and implementation, while DCSEC's project administrator estimated the additional costs at \$1,200,000.
- **Ballpark Contingency** - As of May 31, 2007, the New Ballpark Contingency revised budget totaled \$6,705,679, which is \$12,555,378, or 65%, less than the original \$19,261,057 contingency in the February 3, 2006, budget. As the stadium project moves toward completion, the remaining contingency budget will be further reduced and may be insufficient to cover all remaining contingencies.
- **Traffic Management Plan (TMP)**: The budget for this line item totaled \$700,000. DCSEC's commitments for the TMP through May 31, 2007, totaled \$461,646 to cover a consultant's costs which included the development of a Transportation Operations and Parking Plan (TOPP). The costs of implementing the TOPP had not been determined as of the date of this report. The scope of work for the consultant included: (1) development of a Transportation Operations and Parking Plan (TOPP); (2) assisting Commission in implementing the TOPP; and (3) monitoring and adjusting the TOPP. Although the TOPP has not been finalized, a draft plan contains several recommendations that will require funding for implementation.

³⁷ According to the U.S. Green Building Council LEED is defined as "the Leadership in Energy and Environmental Design." This refers to the Green Building Rating System which represents the nationally accepted benchmark for the design, construction, and operation of high performance green buildings."

The Auditor's review of the Baseball Stadium Budget also revealed that DCSEC received \$6 million as a project administration fee to implement their responsibilities related to the baseball project.³⁸ However, DCSEC management cannot provide a detailed itemized accounting of how the project administration fee has been used. The Council may want to consider requiring DCSEC to maintain a detailed itemized accounting of the expenditure of the project administration fee for fiscal year 2007. To the extent that DCSEC cannot provide a detailed accounting of the expenditure of the entire \$6 million, the funds should be promptly returned to the stadium project budget.

The Auditor also found what appeared to be duplicate or overlapping scopes of services between DCSEC as project administrator and consultants/contractors DCSEC hired to provide project management (PM), legal services, procurement consulting and accounting services. Additionally, the Auditor found that the scopes of work overlapped among the consultants/contractors themselves.

Further, the District has not realized any development rights revenue to cover cost overruns in land acquisition, relocation and environmental remediation.

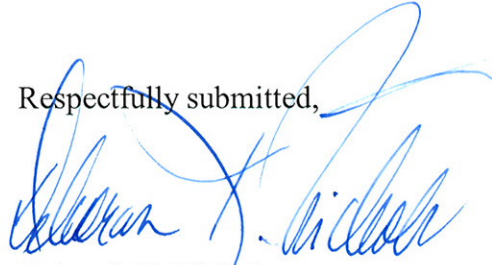
In order to comply with Zoning Commission Order No. 06-22, DCSEC must construct the 46,000 square feet of gross floor area to be devoted to preferred uses around the ballpark perimeter. The cost to complete this work is estimated to be between \$3.4 million and \$5 million. DCSEC had not yet identified available funding consistent with the Costs Cap Act to cover this expense.

The Auditor found that legal costs for eminent domain and land acquisition have far exceeded the land use counsel costs cap in the Stadium budget. There is an effort underway to reclassify these costs to the land acquisition line item which is not capped. We believe that this is a policy decision that may benefit from Council clarifying its intent regarding whether these costs were subject to the soft costs cap. Recording legal counsel costs under land acquisition may obscure the exact amount the District is spending on legal services. As a consequence, the Council may wish to consider requiring OAG to report legal costs related to eminent domain cases separately from other ballpark costs. Further, a source of funding for expenses which exceed the budget for legal services related to eminent domain cases has not been disclosed to the Auditor but should be fully disclosed to the Council.

³⁸See letter dated August 30, 2005, from DCSEC's Chief Executive Officer, Allen Y. Lew to Mr. Henry W. Mosley, Associate Chief Financial Officer, Office of the Chief Financial Officer.

Finally, Washington Baseball Partners (WBC), LLC, has filed a lawsuit³⁹ against the District government, the DCSEC, and the Anacostia Waterfront Corporation for breach of contract in connection with the construction of parking garages. If the WBC prevails, the District could incur significant fines.

Respectfully submitted,



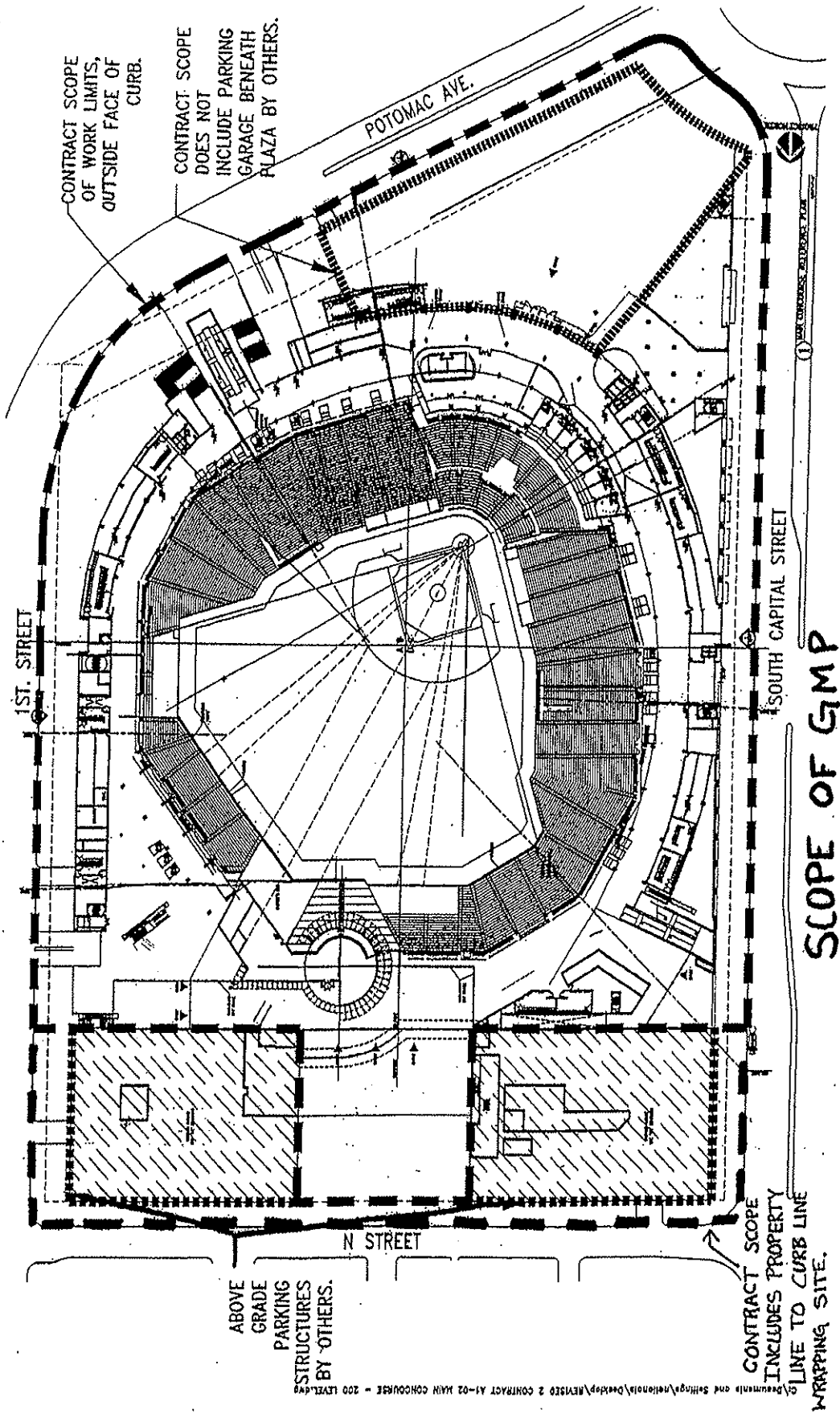
Deborah K. Nichols

District of Columbia Auditor

³⁹See March 9, 2007, letter from DCSEC General Counsel to the District of Columbia Auditor regarding pending or potential litigation.

APPENDICES

APPENDIX I



MARCH 15, 2006
A-1

CFO Estimate (Dec 2005)	
RFK Stadium	18,500,000
RFK Renovation	5,500,000
Contingency	24,000,000
Total RFK Costs	48,000,000
Ballpark Hard Costs	see in total
Direct Construction:	see in total
Builders Contingency	see in total
Total Ballpark Hard Costs	315,400,000
Ballpark Soft Costs	26,100,000
Architectural & Engineering Services	1,500,000
Testing Fees, Surveys	1,500,000
Third Party Permit Review / Inspection	0
Permitting Fees (District)	6,000,000
Project Administration	500,000
Land Use Counsel	2,000,000
Legal and Accounting Fees	8,000,000
Insurance	6,100,000
Project Management	5,000,000
Team Contingency	420,000
Environmental Mitigation Study	2,600,000
Other Agencies	800,000
Hazmat Inspections	700,000
Traffic Management Plan	0
Total Soft Costs	61,220,000
HARD & SOFT COST TOTAL:	376,620,000
Auxiliary Costs	97,650,000
Land, Remediation and Infrastructure	0
Land Acquisition	4,000,000
Relocation	3,000,000
Demolition	8,000,000
Environmental Remediation	0
Infrastructure	15,000,000
Site Utilities	500,000
Tunnel Protection	4,000,000
Sidewalks	0
Other Project Costs:	21,000,000
Parking	3,181,794
Exterior Public Spaces (Plazas)	17,377,584
Auxiliary & Other Project Cost Total:	42,220,000
New Ballpark Contingency	43,220,000
BALLPARK PROJECT COST TOTAL:	600,500,000
Completion Guarantee Fee:	0
Completion Guarantee Fee:	0
Total:	600,500,000
Project plus Fee Total:	600,500,000
Financing Fee	30,300,000
Subtotal - Project Total plus Financing:	630,800,000

Notes:
1) The CFO Estimate (Column A) remains the same as presented to the Council in December 2005.
2) Column B represents Clark/Hunt/Smoot's Completion Guarantee relative to the new ballpark; Clark/Hunt/Smoot's Completion Guarantee total is approximately \$269 million.
3) Column C represents the remaining Ballpark costs not within the CHS guarantee that is controlled or estimated directly by DCSEC or other District Agencies.
4) Column D represents the total Revised Estimate for the Ballpark costs (Column B + C). The Ballpark costs are estimated by the DCSEC Dec. 2005 Estimate.
5) Relative to the construction insurance costs, MLB will pay a portion of construction insurance costs. For the Construction Administration Agreement between the District and MLB, MLB is responsible for paying 50% of project insurance costs.

Additional Costs:

Metro & Roads	19,800,000
Metro Improvements	1,400,000
Metro Design	12,000,000
Roadwork	0
Roadwork Design	3,200,000
Contingency - Metro & Road	35,500,000
Subtotal - Metro & Roads	667,300,000
TOTAL Project Costs + Metro & Roads:	667,300,000

Revised Ballpark Estimate	
B	C
CHS Guarantee (Ballpark Costs)	Remaining Ballpark Costs (DCSEC & Other Agencies)
RFK Stadium	18,500,000
RFK Renovation	5,500,000
Contingency	24,000,000
Total RFK Costs	48,000,000
Ballpark Hard Costs	0
Direct Construction:	0
Builders Contingency	0
Total Guaranteed Ballpark Hard Costs	0
Ballpark Soft Costs	30,500,000
Architectural & Engineering Services	0
Testing Fees, Surveys	1,500,000
Third Party Permit Review / Inspection	0
Permitting Fees (District)	6,000,000
Project Administration	500,000
Land Use Counsel	2,000,000
Legal and Accounting Fees	8,000,000
Insurance / Performance / Phil. Bonds	11,250,000
Project Management	6,100,000
Team Contingency	5,000,000
Environmental Mitigation Study	2,600,000
Other Agencies	800,000
Hazmat Inspections	700,000
Traffic Management Plan	0
Total Soft Costs	75,150,000
HARD & SOFT COST TOTAL:	354,771,500
Auxiliary Costs	97,650,000
Land, Remediation and Infrastructure	0
Land Acquisition	4,000,000
Relocation	0
Demolition	1,463,515
Environmental Remediation	8,572,267
Infrastructure	15,000,000
Site Utilities	487,006
Tunnel Protection	0
Sidewalks	0
Other Project Costs:	21,000,000
Parking	3,181,794
Exterior Public Spaces (Plazas)	17,377,584
Auxiliary & Other Project Cost Total:	137,650,000
Contingency	19,261,057
BALLPARK PROJECT COST TOTAL:	593,441,411
Completion Guarantee Fee:	0
Completion Guarantee Fee:	7,058,859
Total:	7,058,859
Project plus Fee Total:	221,291,057
Financing Fee	30,300,000
Subtotal - Project Total plus Financing:	251,591,057
TOTAL Project Costs + Metro & Roads:	630,800,000

Metro & Roads	19,800,000
Metro Improvements	1,400,000
Metro Design	12,000,000
Roadwork	0
Roadwork Design	3,200,000
Contingency - Metro & Road	35,500,000
Subtotal - Metro & Roads	667,300,000
TOTAL Project Costs + Metro & Roads:	667,300,000

LINE ITEM DEFINITIONS OF SOURCE OF FUNDING FOR DISTRICT FUNDS ON ACCOUNT WITH WMATA FOR THE NAVY YARD METRO IMPROVEMENTS

Audit Adjustments:	Subsidy savings credited to the local jurisdiction after the annual audit.
Operating Interest Earnings:	Credits resulting from depositing quarterly payments into interest-bearing accounts.
Reserve for Bus per Resolution #2000-12:	Cost savings allocated to the District and included in WMATA's FY 2000 Operating Budget.
Reserve for DC-DPW per Resolution #2000-12:	Cost savings allocated to the District and included in WMATA's FY 2000 Operating Budget.
Reserve for New Bus Service:	Portion of a previous audit adjustment that DC DDOT wanted to reserve exclusively to increase, enhance and improve bus service in the District.
DCLFA- "Fast Track" Funds:	Savings and interest earnings from the "FAST TRACK" construction program for the last 13.5 miles of the Adopted Regional System. The project got very good bids and was completed under budget.
TIFF available Balance (portion):	Board allocated revenue to each jurisdiction resulting from joint development proceeds
Projected Interest Earnings thru 6/30/2007:	Anticipated interest earnings from interest-bearing accounts

AGENCY COMMENTS

AGENCY COMMENTS

On June 21, 2007, the District of Columbia Auditor (Auditor) submitted this report in draft to Chairman Vincent C. Gray; Councilmember Kwame R. Brown; Mr. Allen Lew, Executive Director, D.C. Sports and Entertainment Commission; Dr. Natwar Gandhi, Chief Financial Officer for the District of Columbia; Mr. Emeka Moneme, Director, District Department of Transportation; Mr. John B. Catoe, General Manager, WMATA; and Mr. Lars Etzkorn, Director, Office of Property Management. The recipients were extended an opportunity to review the report and provide any comments regarding the factual information presented in the draft report.

Written comments were received from the Chief Financial Officer, Executive Director of the Sports and Entertainment Commission, and the Director of the Department of Transportation. Where appropriate, changes were made to the report based on the comments received.

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

June 25, 2007

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, NW – Suite 900
Washington, DC 20005

Dear Ms. Nichols:

Thank you for the opportunity to comment on a draft *Letter Report: Responses to Specific Questions Regarding the District's Ballpark*, dated June 20, 2007. This Report, undertaken at the request of Council Chairman Gray and Councilmember Brown, conducted a review of the baseball stadium project budget examining its compliance with the "Ballpark Hard and Soft Costs Cap Act of 2007" and the "Ballpark Parking Completion Amendment Act of 2007". After reviewing the draft letter report, I offer the following comments pertaining to the Office of the Chief Financial Officer.

The Council requested that your office address three specific issues:

1. Delineating the items included within the cap set forth in the Cost Cap Act;
2. Determining whether road and Metro improvements fall within the cap;
3. Identifying potential costs not included in the original estimated budget, the source of revenue for these costs and whether expenditures for these costs would comply with the Cost Cap Act.

Items included within the cap set forth in the Cost Cap Act

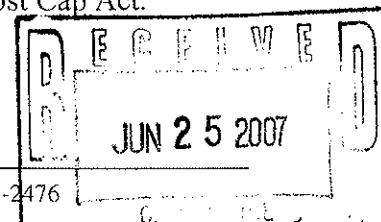
The letter report clearly states that the Cost Cap Act solely limits the District's contribution to hard and soft costs, and that land acquisition, environmental remediation, relocation and demolition costs are excluded from this cap. The cap specifically limits District expenditures on hard and soft costs to \$475,184,218. It does not enact an overall cap of \$611 million.

Whether road and Metro improvements fall within the cap

The letter report finds that the "below the line" items related to road and Metro improvements were not part of the \$611 million estimated stadium budget. Since the cap specifically limits the District's contribution to \$475,184,218 for hard and soft costs, District expenditure on these items is not limited by the Cost Cap Act.

Potential other costs not included in the original \$611 million estimated budget

The letter report finds that the cost of implementing a traffic management plan was not included as part of the original estimated budget and would not be restricted by the Cost Cap Act.



In addition to addressing the three specific questions, the letter report also points out various areas of potential cost increases above the "\$611 million stadium cap." As noted in the first finding, the Cost Cap Act refers solely to hard and soft costs totaling \$475,184,218. The \$611 million is a budget estimate rather than a cap.

As with any project of this size and scope, unforeseen costs are always a possibility. Currently, the financial aspects of the project are reviewed on a monthly basis by my office in coordination with the Sports and Entertainment Commission. To the extent that additional costs can be managed within the existing source of funds, the Sports Commission will continue to manage these expenditures. However, if additional sources of funds are required at any point, my office has committed to work with the Council in addressing these costs.

The letter report states that there is an effort underway to reclassify legal costs associated with the eminent domain proceedings "because legal costs incurred now exceed the soft cost cap line item under which they were initially classified..." I would like to clarify that the Land Use Counsel line item included in the soft costs was intended to fund legal costs associated with the District's application before the Zoning Commission. Conversely, the baseball stadium and the land that it sits on are considered capital assets of the District. District accounting policy is to record all purchased capital assets at "historical cost". The historical cost of acquiring a capital asset includes all expenditures necessary for acquisition and which add to the value of the asset and/or extend the useful life of the asset. Therefore, the legal costs associated with acquiring the land are considered part of the cost of the land. Thus, the purpose behind the reclassification is to correct the accounting treatment of the expenditure so that it complies with District policy.

Finally, the letter report states that "a source of funds for expenses which exceed the budget for legal services related to eminent domain cases has not been disclosed to the Auditor but should be fully disclosed to the Council." In previous conversations between our offices, the excess taxes collected in the Ballpark Revenue Fund were identified as a potential source to fund these costs. The Council requested appropriation authority for approximately \$12.2 million in excess taxes in its FY2008 Budget Request Act.

Again, thank you for the opportunity to comment on this draft Report. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Natwar M. Gandhi
Chief Financial Officer

cc: The Honorable Vincent C. Gray, Chairman
 The Honorable Carol Schwartz (At-Large)
 The Honorable David Catania (At-Large)
 The Honorable Phil Mendelson (At-Large)
 The Honorable Kwame R. Brown (At-Large)
 The Honorable Jim Graham (Ward 1)
 The Honorable Jack Evans (Ward 2)
 The Honorable Mary M. Cheh (Ward 3)
 The Honorable Muriel Bowser (Ward 4)
 The Honorable Harry Thomas Jr. (Ward 5)
 The Honorable Thomas Wells (Ward 6)
 The Honorable Yvette M. Alexander (Ward 7)
 The Honorable Marion Barry (Ward 8)

June 25, 2007



Ms. Deborah K Nichols
District of Columbia Auditor
Office of the DC Auditor
717 14th Street NW, Suite 900
Washington DC 20005

Dear Ms. Nichols:

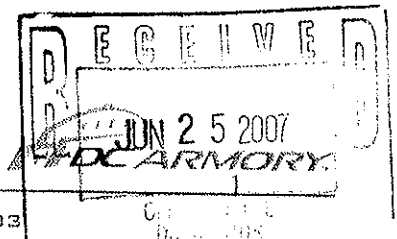
I am in receipt of your draft letter report dated June 21, 2007 regarding "Responses to Specific Questions Regarding the District's Ballpark". Please find below the DC Sports and Entertainment Commission's (DCSEC) response to the draft report.

The Auditor concluded that DCSEC lacked the authority to transfer amounts within the various line items in the Hard and Soft Cost budget categories.

DCSEC disagrees with this conclusion for several reasons. First, as the Auditor notes in the report, the Ballpark Hard and Soft Costs Cap Act of 2007 (the "Act") does not prohibit transfers between line items within the Soft Cost category. The Act does, however, prohibit transfer of amounts from the Soft Cost category to the Hard Cost category, as those terms are defined in the Act, and vice versa. The Auditor has not identified any such transfers and has concluded that project costs are currently within the ceilings established for those two categories.

Further, DCSEC notes that the budget approved by the Act included a project contingency. The Act did not place any restrictions on the use of the project contingency. Inherent in the concept of a contingency is the premise that funds in the contingency will be used to fund unforeseen events. Thus, DCSEC believes it was fully within DCSEC's authority to transfer funds from the contingency to other Soft Cost line items to provide funding for unforeseen events.

It should also be noted that the Hard and Soft Cost Cap Act requires DCSEC to submit monthly reports to the Council that, among other things, provide a detailed budget summary. DCSEC believes that the detailed budget summary, as well as the requirement for Council to approve all contracts or change orders in excess of \$1 million, provides the Council with the necessary tools to provide oversight for the project. DCSEC believes that additional Council approvals as suggested by the Auditor—that is, "to obtain Council approval prior to adding new line items ...and ... any increases or decreases to the budget line items" could cause delays to and already tight timeline in completing the stadium.



The Auditor's report suggests that the various consultants engaged to manage this project have overlapping scopes of work.

DCSEC disagrees with this conclusion. In a large project of this nature, it is necessary to adopt a collaborative inter disciplinary approach. For example, when DCSEC receives a change order request from its main contractor, it must first be reviewed by the design and construction professionals on the Program DCSEC team to determine what impact it would have on the new Ballpark and the project's Program of Requirements. It must also be reviewed by DCSEC's lawyers to determine whether the contractor is legally entitled to a change in the contract's price. Finally, if a change is granted to the contract, DCSEC's financial consultants must ensure it is properly accounted for and recorded in the project's budget. It is in this sense that the various consultants have overlapping scopes. DCSEC believes this is appropriate, and indeed the only practical way, for a project of this nature to be managed.

Further, DCSEC notes that the total cost of the various consultants engaged to manage this project is less than \$20 million and represents approximately 3 percent of the project budget. This percentage is typical of what is expected on a project of this nature.

The Auditor found that DCSEC did not fully document its internal payroll and other costs that were charged against the Project Administration line item.

The Project Administration line item was an estimate of anticipated actual costs, using a percentage of the total project as the basis for deriving a reasonable estimate of DCSEC actual costs. The \$6 million was included in the DCSEC's operating budget, and recorded as operating revenue to the Commission in increments of \$2 million in each fiscal year starting in fiscal year 2005. While DCSEC did not maintain a separate cost allocation system, all expenditures including payroll costs were recorded in the financial DCSEC system in detail. These expenditures were audited as part of the District's Comprehensive Annual Financial Report (CAFR) audit, and DCSEC obtained "clean" unqualified opinion in both fiscal years 2005 and 2006.

Further, there would be no way to recreate the historical time allocation suggested by the Auditor. This requirement would have to be established on a forward going basis.

The Auditor found that the Covington and Burling contract exceeded the District's Five (5) Year Term

In connection with the arrival of baseball, Covington & Burling's intended scope of work was to negotiate the terms of the various agreements with Major League Baseball. These tasks were largely completed in 2006, which was within five years of the date of Covington's agreement. Although Covington's main scope of work had been completed and the development team took the lead in ballpark construction, DCSEC considered it prudent to maintain a relationship with Covington due to the firm's knowledge and

experience with the negotiations with Major League Baseball. The Commission will review its requirements for legal representation and make any appropriate changes to its contracts or legal services.

The Auditor stated that per the Zoning Commission Order No. 6-22, DCSEC must build out the entire 46,000 square feet planned for retail space along First Street, SE. The Auditor also stated that the District has not realized any development rights revenue to cover costs overruns.

The Zoning Commission order required that the ballpark project include 46,000 square feet of “preferred use” space. DCSEC currently has 29,000 square feet funded and under construction, including 16,000 square feet of core and shell space. It is contemplated that funding for construction and completion of the remaining 17,000 square feet will be provided by upfront lease payments from tenants selected to occupy this space. DCSEC and the District believe that the value of the retail space at the ballpark will be maximized as other development in the ballpark area proceeds. Accordingly, DCSEC is waiting until late summer or early fall 2007 to issue an RFP to select retail tenants to occupy the ballpark core and shell space.

The following are additional DCSEC comments to the draft report:

- Executive Summary page i and throughout the report – the report states “Clemons”, but should be “Clemens”
- Executive Summary page ii, LEED Certification – The audit report states that \$612,059 has been already “expended”; only \$219,171 has been expended as of March 31, 2007. The \$612,059 represents commitments. In addition, the DCSEC’s project administrator’s estimate of \$1,200,000 is a historical estimate. The Project Management Team’s estimate of \$100,000 is the current estimate.
- Project Administration, page 6—The audit reports states that DCSEC management received \$6 million. This statement is incorrect. DCSEC operations as a whole received the \$6 million, not management.
- Sidewalks, page 11—The audit report states that as a result of AWC’s lack of funding, “DCSEC had to perform the work in this space to ensure that the stadium would be able to obtain necessary permits”. This statement is only partially correct, in that the retention of the core and shell for the perimeter retail space and the relocation of the loading dock to the interior (costing \$6.7 million) were necessary to conform to the Zoning Commission order.

- Miscellaneous, page 16—the following provides the audit report information and the DCSEC corrected information for the miscellaneous items noted:

Dollar Amount	Audit Report Description	DCSEC Correct Information
\$31,969	“for photography related to the groundbreaking event”	for photography related to site before demolition, and during construction
\$18,780	“for the groundbreaking event”	for the décor/installation and management of unveiling of stadium models and groundbreaking event
\$2,256		Amount should be \$2,301
\$710	“for a newsletter”	for photography of stadium models

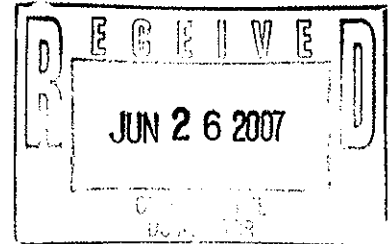
Please feel free to contact me at (202) 608-1130 or Wilma G. Matthias, Chief Financial Officer, at (202) 608-1137 if you have additional questions.

Sincerely,



Allen Y. Lew
Chief Executive Officer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION



OFFICE OF THE DIRECTOR

June 25, 2007

Deborah K. Nichols, Esq.
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Nichols:

I appreciate the opportunity to review and offer comments on the draft letter report entitled, "Responses to Specific Questions Regarding the District's Ballpark." Specifically, I would like to provide the following comments. The text in italics is suggested to replace the language in the draft report.

Page 9, paragraph 3

The Transportation Operations and Parking Plan (TOPP) draft is undergoing final review and comment. This draft will be sent out for public comment in July 2007. Following public comment, the TOPP will be finalized and cost estimates will be prepared to implement the plan. We anticipate that some costs will be shared with the Washington Nationals baseball group.

Page 20, paragraph 1, sentences 4 and 5

"However, according to the Acting Associate Director of the District's Department of Transportation, Mass Transit Administration, the \$20 million in federal funds appropriated under the CR will *replace the funds that were on account at WMATA and will be expended directly by DDOT. This is consistent with the Mayor's stated position that 'the \$20 million provided under the CR will be used to replace the funds that the District pledged to the project' in his April 17, 2007 report to Representative Serrano.*"

Page 21, paragraph 1, sentence 1

"WMATA and DDOT officials indicated that although no *planned* projects were delayed or jeopardized as a result of the use of the \$20 million for the Navy Yard Metro project, *the use of the funds depleted contingency resources for planned DDOT projects and altered DDOT's planning for projects that were under consideration.*"

Page 21, paragraph 6, sentence 1

“Navy Yard Metro Station project was seven weeks behind schedule as of April 2007 *and the contractor has since made up that time as of June 2007.*”

Page 21, paragraph 6, sentence 4

“WMATA plans to recover the overtime cost from the *developer*, however, the success of this course of action is uncertain.”

Page 21, paragraph 7, sentence 1

“The District’s MOA with WMATA established WMATA’s project management fee *shall be the difference between \$20 million and the total amount of the Station improvements; provided that* WMATA’s project management fee *shall not exceed 13% of the \$20,000,000 or \$2,600,000.*”

Page 21, paragraph 7, sentence 3

“If actual costs to complete the project exceed \$20 million, *the District and WMATA mutually agree that either:*

- 1. The capital costs will be revised upon the District’s agreement to provide additional estimated capital costs,*
- 2. A reduction in the scope of work for the station improvements such that the available funding is sufficient for the capital costs,*
- 3. WMATA will direct the construction contractor to cease work on the station improvements, or*
- 4. Any combination of the previous options.”*

Page 22, paragraph 3

We recommend deleting the first and third sentence of the first paragraph of this section in that there is no cost estimate associated with TOPP implementation in February 2007 or October 2006. In October 2006 and February 2007 the TOPP was still being drafted; any documents available at that time were merely working papers leading to the development of the TOPP.

Also, the bulleted items in the Auditor’s report were preliminary suggestions. The first draft of the TOPP was not available for review until April 2007. As stated in our comments on Page 9, a revised final draft TOPP was distributed in June 2007. This document will be sent out for public review and comment in July/August 2007. After public review and comment, the final elements of the TOPP will be identified and a budget for implementation will be prepared.

Funding for the implementation of the final recommendations of the TOPP will be allocated to the DC SEC, the Nationals baseball group, and the District government. However, some of the improvements reflected in the TOPP relate to transportation improvements being implemented to meet transportation needs associated with a variety of developments in the near Southwest and near Southeast area, such as the expansion of the circulator service, and are not solely for baseball transportation management.

Page 23, paragraph 4

Add at the end of the paragraph: *"Costs for implementing the TOPP will be determined following public review and comment later this summer. Costs will be allocated to a variety of groups, including the Washington Nationals baseball group."*

Please call me at (202) 671-6813 or Ken Laden at (202) 671-2309 if would like to discuss the responses above or any other portion of the report.

Sincerely,

Emeka Moneme
Director