

AUDIT REPORT

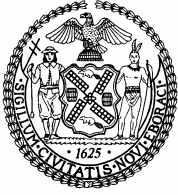


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Compliance of Sterling Mets, L.P. (New York Mets) With Their Lease January 1–December 31, 2002

FN05-116A

June 30, 2006



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

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of Sterling Mets, L.P. (Mets), with the terms of their lease with the New York Department of Parks and Recreation.

Under the provisions of the lease, the Mets are to pay the City fees based on reported revenues for the exclusive use of Shea Stadium during the baseball season. Audits such as this provide a means of ensuring that private concerns conducting business on City property comply with the terms of their agreements, properly report revenues, and pay the City all fees due.

The results of our audit, which are presented in this report, have been discussed with officials from the Mets and the Parks Department. Their complete written responses are attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: FN05-116A
Filed: June 30, 2006

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

**Audit Report on the Compliance of
Sterling Mets L.P. (New York Mets)
With Their Lease
January 1–December 31, 2002**

FN05-116A

AUDIT REPORT IN BRIEF

This audit determined whether Sterling Mets, L.P. (doing business as the New York Mets) complied with their lease agreement with the City; accurately reported all gross receipts in accordance with the lease, and calculated and paid the appropriate fees due the City on time; deducted only allowable and documented credits; and complied with certain non-revenue-related requirements of their lease (i.e., maintained required insurance and reimbursed the City for utility use).

In 1985, Doubleday Sports, Inc., and City Department of Parks and Recreation (Parks) entered into a 20-year lease for the exclusive use of Shea Stadium. The lease is monitored by Parks and was due to expire on December 31, 2004, when a 2001 amendment extended the lease to December 31, 2005, and provided for five one-year renewal options that can be exercised at the discretion of the Mets. In August 2002, Sterling Doubleday Enterprises, L.P. amended its partnership certificate to effect a name change to Sterling Mets, L.P. (doing business as the New York Mets).

The lease requires that the Mets pay the City the greater of either an annual minimum rent of \$300,000 or a percentage of revenues from gross admissions, concessions, wait service, parking, stadium advertising (less \$8,000 for scoreboard maintenance), and a portion of cable television receipts. In calculating the amount due the City, the Mets are permitted to deduct: a portion (related to tickets sales and local cable revenues) of the amount they pay to Major League Baseball; a \$5 million maximum annual credit for expenses incurred related to the planning of a new stadium; 25 percent of the premium payments related to property insurance; 50 percent of Watchmen charges incurred; and all sales taxes included in the amounts collected.

In addition to extending the lease, the first lease amendment allowed the Mets to exclude revenues received from certain cable television broadcasts and advertising revenues from which fees are due. A second amendment allowed the Mets to deduct new stadium planning costs equal to, or less than, \$5 million each year on their rent statements for calendar years 2001 through 2005. Third and fourth amendments extended the new stadium planning cost credit period for 2003 to February 16, 2004, and allowed the Mets to include new scoreboard costs as part of the 2003 new stadium planning costs credit. A fifth amendment extended the 2003 new stadium

planning cost credit period to March 1, 2004. In September 2004, a sixth amendment to the lease allowed the Mets to continue calculating allowable deductions and credits against all rent payable under the lease in accordance with the methodology used in submitting previous annual rent statements to the City. The amendment also stated that the City could not contest the methodology used to determine the deductions taken from rent due calendar years 2002 through 2005 provided the Mets remit \$400,000 to the City each year, and it required that the Mets pay the City 10 percent of the gross revenues received from the New Trivision Boards.

Audit Findings and Conclusions

The Mets generally adhered to the provisions of their lease with the City. In addition, the Mets reimbursed Parks for electricity and water and sewer use; had the required property and liability insurance that named the city as an additional insured party and deducted the appropriate amount as a credit; and accurately calculated sales tax deducted from reported revenue. However, our review of the Mets books and records for the 2002 baseball season disclosed certain minor errors related to cable television, concessions, advertising, and Skyboxes revenues on their rent report to Parks totaling \$97,685, which resulted in additional fees of \$11,873 due the City.

Moreover, none of the six amendments to the lease, executed between December 28, 2001, and September 1, 2004, that granted the Mets additional privileges were ever submitted by Parks to the Comptroller's Office for registration. The submission of the amendments for registration provides for an independent assessment of the implementation of the amendments, thereby also providing accountability for the City's receipt of a fair share of rent for its leased properties. This should have been done by Parks at the time when each amendment was established to maintain transparency in the financial interactions between Parks and the Mets since each of these amendments deals with the amount of revenue the City is to receive.

Audit Recommendations

The audit recommends that the Mets: pay the City \$11,873 in additional fees due, and ensure that revenue from all cable television, concessions, advertising, and Skyboxes is accurately reported to the City, paying all appropriate fees. The audit also recommends that Parks ensure that the Mets pay the additional fees recommended in this report, comply with the audit's recommendations, and submit all amendments to the lease to the Comptroller's Office for registration.

Mets Response

Mets officials responded that they will process the payment of \$11,873 to satisfy the amounts due.

Parks Response

Parks officials responded that Parks has issued a Notice to Cure to the Mets requiring that the Mets pay \$11,873 in additional fees, and disagreed that Parks is required to register the lease amendments, stating that leases may be amended based on business terms when working out disputes with tenants, without the need to go through registration as it applies to Chapter 13

procurements, and through a cross-reference to Chapter 14 agreements under the City Charter. Parks officials also responded that they take exception to the report's characterization that the sixth amendment was not in the best interest of the City, and that they believe all of the lease's amendments should be seen as in the City's best interest.

The specific issues raised by Parks and our rebuttals are included within the respective sections of this report. The full texts of the Mets and Parks comments are included as addenda to this report.

INTRODUCTION

Background

On January 1, 1985, Doubleday Sports, Inc., and the New York City Department of Parks and Recreation (Parks) entered into a 20-year lease for the use of Shea Stadium. In 1986, Doubleday Sports, Inc., assigned the lease to Sterling Doubleday Enterprises, L.P. In August 2002, a change in ownership assigned the lease to Sterling Mets, L.P. (doing business as the New York Mets). The lease, which is monitored by Parks, permits the Mets exclusive use of Shea Stadium during the baseball season, and allows the Mets to sell tickets; provide food and souvenir concessions; operate restaurant and catering services for the Diamond Club restaurant, the Grill Room Bar, and luxury suites; provide parking; provide cable television broadcasts; sell stadium advertising; and conduct post season baseball games, if applicable. The lease also allows the Mets to either operate or subcontract their concessions. The Mets chose to subcontract their concessions to Aramark Sports Entertainment Services, Inc., (Aramark) which include the stadium's restaurant, bar, catering, and souvenir operations.

The lease has been amended six times from its inception through September 1, 2004, granting the Mets additional privileges. On December 28, 2001, the first and second amendments, retroactive to January 1, 2001: extended the expiration of the lease to December 31, 2005, and provided for five one-year renewal options that can be exercised at the discretion of the Mets; allowed the Mets to exclude revenues received from certain cable television broadcasts and advertising revenues from which fees are due; and allowed the Mets to deduct new stadium planning costs equal to, or less than, \$5 million each year on their rent statements for calendar years 2001 through 2005. However, in December 2003, the third and fourth amendments extended the new stadium planning cost credit period for 2003 to February 16, 2004, and allowed the Mets to include new scoreboard costs as part of the 2003 new stadium planning costs credit. Moreover, on February 27, 2004, a fifth amendment extended the 2003 new stadium planning cost credit period to March 1, 2004.

On September 1, 2004, the sixth amendment to the lease was executed between the Mets and the City allowing the Mets to continue calculating allowable deductions and credits against all rent payable under the lease in accordance with the methodology used in submitting previous annual rent statements to the City. The amendment also stated that the City could not contest the methodology used to determine the deductions taken from rent due calendar years 2002 through 2005, provided the Mets remit \$400,000 for each year to the City upon execution of the amendment on or before December 31, 2004 (which they did). In addition, the sixth amendment required that the Mets pay the City 10 percent of the gross revenues received from the New Trivision Boards.

According to the lease, the Mets are required to pay the City the greater of either an annual minimum rent of \$300,000 or a percentage of revenues from gross admissions, concessions, wait service, parking, stadium advertising (less \$8,000 for scoreboard maintenance), and a portion of cable television receipts. Pertaining to each baseball season, the Mets are permitted to deduct portions of the actual payments they make to Major League Baseball related to their tickets sales and local cable revenues; planning costs up to \$5 million per year for a new stadium; and all sales taxes before calculating their rent payments to the City. The rent payments and the credits against rent payments under the lease for 2002 are shown in Table I, which follows:

Table I
Mets Rent Payments and Credits Under Lease

Rent Payments:

Gross Admission Receipts (Ticket Sales)	7.5% of ticket sales.
Gross Concession Receipts	7.5% of Gross Concession Receipts, when paid attendance exceeds two million patrons.
Gross Wait Service Receipts	5% of Gross Wait Service Receipts on concessions, when paid attendance exceeds two million patrons.
Sales of Parking Privileges	\$1.00 per car plus 50% of each charge exceeding \$2.50.
Advertising	10% of advertising receipts less \$8,000. The first amendment allows the Mets to exclude the fees on home plate advertising beginning January 1, 2001.
Scoreboard Maintenance	\$8,000 per year. The City receives this compensation to provide general repairs to the scoreboard.
Cable Television	10% of home game receipts after allowable adjustment.
Skybox Revenue	50% of net income from Skybox suites. 100% of maintenance, electrical, and plumbing costs.
Diamond Vision Board	100% of maintenance costs during the baseball season.
Utilities (Electricity and Water and Sewer)	100% of consumption costs during the baseball season.

Credits/Deductions against Rent Payments:

Payment to Major League Baseball	Percentage of payment related to their ticket sales and local cable revenues.
New Stadium Planning Costs	\$5 million maximum annual credit for expenses incurred for the planning of a new stadium within the calendar year.
Sales Taxes	100% of sales taxes from ticket sales, concessions, and parking privileges.

Property Insurance	25% of premium payment.
Watchmen Charges	50% of Watchmen charges.

The lease also requires that the Mets carry comprehensive property and liability insurance that names the City as an additional insured party, and submit to Parks every March an annual Statement of Rent, Reserved Parking Fees, Scoreboard Maintenance, and a Skybox Net Income statement for the preceding year. For the 2002 audit period, the Mets reported gross revenues totaling \$160.2 million and, after deductions, paid the City \$4 million (2.5 percent).

Objectives

Our audit objectives were to determine whether the Mets:

- accurately reported all gross receipts in accordance with the lease, and calculated and paid the appropriate fees due the City on time;
- deducted only allowable and documented credits; and,
- complied with certain non-revenue-related requirements of their lease (i.e., maintained required insurance and reimbursed the City for its utility use).

Scope and Methodology

This audit, which was requested by Parks, covered the period January 1–December 31, 2002. To achieve our audit objectives, we reviewed and abstracted the relevant terms and conditions of the lease. To ascertain whether the Mets submitted the required statements and paid all fees on time, we reviewed records on file at Parks, including the Parks Accounts Receivables Ledger and rent statements, Mets insurance certificates, and correspondence between the Mets and Parks.

We conducted a walkthrough of the Mets operations pertaining to ticket and concession sales, and game-day catering operations in the stadium’s restaurant, bar, and luxury suites, and documented our understanding of Mets procedures and controls through memoranda. We then analyzed the Mets reported revenue amounts to identify large fluctuations or inconsistencies.

To determine whether the Mets reported ticket sales and attendance accurately, we traced the reported ticket sales to the general ledger detail and their daily Ticketing System (Game Sales reports) for the entire audit period. We traced the attendance from the Game Sales reports to the Sales Summary reports and the daily Turnstile reports. We reviewed whether the amounts for rain-check revenue were accurately calculated and properly deducted from gross ticket sales. We also determined whether any required flat rental fees for post-season games played at Shea Stadium were due and paid.

We determined whether revenue generated from concession sales and catering services was reported accurately by reviewing Aramark’s annual sales records and its independent auditor’s reports and by comparing those amounts to the amounts the Mets reported to the City. We also determined whether the Mets accurately reported to Parks the amounts and numbers of parking

privileges sold—prepaid parking spaces—by reviewing the Mets books and records, which included their trial balances, supporting schedules, and the daily game-by-game Parking Summary reports.

We determined whether the Mets reported all cash receipts generated from stadium advertising—Scoreboard and Diorama—for the audit period by matching the amounts reported to Parks to the amounts in the Mets accounts receivable billing history and general ledger entries. We confirmed that advertising revenue reported on the Mets’ books and records matched the amounts on the contracts between the Mets and their advertisers.

To determine whether the Mets reported the net income for the Skybox suites accurately, we compared the revenue and expenses reported for the Skybox rentals to the Mets supporting schedules and general ledger entries. To determine whether Skybox concession revenue was accurate and was reported correctly, we traced the reported revenue amounts to the revenue on Aramark’s operating statements for Skybox concessions. We also reviewed the mathematical accuracy of the overhead costs calculations pertaining to Skybox deductions and the correctness of the deducted amounts by tracing those amounts to the general ledger and to corresponding invoices for calendar year 2002. We then determined whether those deducted expenses were correct and allowable under the agreement.

We reviewed the contract between Fox Sports Network and the Mets as it related to cable television receipts. We traced reported cable television receipts to the amounts posted in the Mets’ general ledger and on their bank statements.

We determined whether the deductions for revenue-sharing were in accordance with the lease’s sixth amendment by recalculating the amounts allowable for deduction based on the percentage of total revenue as those payments related to ticket sales and cable television.

To determine whether new stadium planning costs were reported accurately by the Mets on their rent statements for calendar year 2002 and were expended in accordance with the lease’s second amendment, we reviewed the Mets Stadium Planning Costs statements. Specifically, we determined whether that the Mets incurred these costs for the purpose of planning a new stadium, whether the costs were accurate and reasonable, whether the costs submitted matched the underlying payment records, invoices, and receipts, and whether the costs were incurred solely in 2002. Furthermore, we reviewed the planning costs submitted to Parks to determine whether there were any duplicate costs directly reimbursed by the New York City Economic Development Corporation under separate agreements.

To determine whether the Mets maintained the proper insurance coverage that named the City as an additional insured party, we examined the Mets certificates of insurance. To determine whether the Mets received the appropriate insurance credit deduction, we reviewed their insurance policies and payments they made to their insurance carriers.

Furthermore, we determined whether the Mets made their monthly payments for scoreboard maintenance and made their minimum rental payments to Parks by tracing those payments to the amounts listed in the Parks Accounts Receivable Ledger. We determined whether the Mets accurately calculated Watchmen credits—the cost of security personnel at Shea Stadium when no baseball games were scheduled—by tracing the amounts reported to Parks to the respective

supporting schedules and payroll reports. We also determined whether the Mets accurately calculated sales taxes deducted from reported revenue.

Finally, to determine whether Parks was reimbursed for all utility charges incurred by the Mets during the baseball season, we reviewed invoices and copies of canceled checks for electricity and for water and sewer use, and traced the amounts to the amounts listed in the Parks Accounts Receivable Ledger.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller, as set forth in Chapter 5, §93, of the New York City Charter, and §11.2 of the lease between the City and the Mets, which gives the City Comptroller the right to audit.

Discussion of Audit Results

The matters covered in this report were discussed with Mets and Parks officials during and at the conclusion of this audit. A preliminary draft report was sent to Mets and Parks officials and was discussed at an exit conference on March 28, 2006. On May 15, 2006, we submitted a draft report to Mets and Parks officials with a request for comments. We received written responses from Parks officials on May 31, 2006, and from Mets officials on June 7, 2006.

Mets officials responded that they have read the draft report and “will be processing payment totaling \$11,873 to satisfy the amounts due.”

Parks officials responded that Parks has issued a Notice to Cure to the Mets requiring that they pay \$11,873 in additional fees. They disagreed with our finding and recommendation regarding the requirement that lease amendments be submitted to the Comptroller’s Office for registration. Parks officials also responded that “we take exception to the report’s characterization that the sixth amendment was not in the best interest of the City. In fact, we believe that all of the lease’s amendments in the context of the City’s overall relationship with the Mets should be seen as in the City’s best interest.”

Auditor Comment: Parks is incorrect that the Charter registration requirements apply only to procurements under Chapter 13 and, by cross-reference, to Chapter 14 agreements. New York City Charter §93(p) and §328 provide that “no contract or other agreement executed pursuant to this charter or other law shall be implemented until . . . a copy has been filed with the comptroller and . . . the comptroller has registered it,” unless the Comptroller has a basis set forth in the Charter for not registering the contract or agreement. Neither §93(p) nor §328 are limited to procurements under Chapters 13 or franchises, concessions, and revocable consents entered into under Chapter 14. Parks has in fact submitted leases to the Comptroller for registration and is similarly required to submit lease amendments.

Also, we need only to cite the first lease amendment that eliminated the rent due from advertising revenues pertaining to the rotating signs behind home plate and to those signs on parapet walls between the home team and visiting team dugouts as an example of how the amendments cost the City revenue. For the 2002 year alone, the Mets received \$5.3 million in

advertising revenues for these signs—\$4.2 million for home plate and \$1.1 million in revenues for the side wall signs. Accordingly, by applying the standard practice of a 10 percent advertising fee requirement (which the Mets and City used for negotiating other advertising fees, i.e., for Trivision Boards, Diorama advertising panels, etc.) to the \$5.3 million received by the Mets for the 2002 season, the result is that the first amendment allows the Mets *not* to pay approximately \$530,000 in rent to the City.

The second amendment cost the City \$5 million a year in lost rent by allowing the Mets to deduct \$25 million from rent due the City for expenses incurred in the planning of a new stadium.

The third, fourth, and fifth amendments extended the period that the credits would be allowed (in case the Mets could not spend their planning money within the calendar year), and permitted the Mets to include the costs for a new scoreboard as a deduction in the new stadium planning costs.

The sixth amendment allowed the Mets to further lower their rent payments due the City for the use of Shea Stadium by permitting them to use early estimations rather than the actual amounts paid to Major League Baseball. It is a highly unconventional and uncommon practice in any business to allow an entity to use artificial amounts rather than the actual amounts recorded on one's books and ledgers to calculate a rent formula, especially if the lease specifically states, as this lease does, that only actual payment amounts be used. Yet, the sixth amendment of the lease granted the Mets the benefit of doing just that. Furthermore, Parks has been aware of our position concerning the Mets not using actual amounts to calculate revenue sharing deductions. This was a major matter, which we indicated in our prior two audits (Reports FN02-125A, issued January 16, 2003, and FN03-115A, issued June 30, 2003) that emphasized that the Mets were using purported amounts to calculate revenue sharing deductions. In fact, it was Parks and the Law Department that negotiated a settlement in favor of the City as a result of our last two audits. Nevertheless, they developed and added the sixth amendment specifically to eliminate this issue, which significantly reduced rent fees to the City.

As we previously stated, each amendment granted the Mets additional privileges and reduced their financial obligations, either directly or indirectly, to the City, even as their revenues increased. Since the first amendment went into effect on December 28, 2001, the Mets rent for the use of Shea Stadium has steadily declined, while Mets revenues significantly increased. In the audit that covered the five years 1996 through 2000, the Mets reported an average of \$100 million in gross revenues each year, and paid the City an average of \$7.3 million a year in rent (a 7.3 percent annual average).¹ For the 2001 audit, the Mets reported gross revenues totaling \$155.8 million and paid the City \$7 million (4.5 percent, which is 2.8 percent less than the average they paid in rent during the previous audit period). For this audit, covering 2002, the Mets reported gross revenues totaling \$160.2 million and paid the City \$4 million, which is only 2.5 percent of reported gross revenues (significantly less than the 7.3 percent and

¹ The audit (FN02-125A) for the period April 1, 1996, through December 31, 2000, stated that the Mets reported gross revenues totaling \$499.4 million and paid the City \$36.6 million (7.3%).

4.5 percent specified in the previous audits). The result, consequently, is that one of the City's two major stadiums is leased for a mere 2.5 percent of the lessee's revenues.

All the lease amendments were adopted at a time when the Mets gross revenues increased from an average of \$100 million to \$160.2 million while their rent payments declined from an average of \$7.3 million to \$4 million (*a 45 percent decrease in rent payments*).

The full texts of the Mets and Parks comments are included as addenda to this final report.

FINDINGS

The Mets generally adhered to the provisions of their lease with the City. In addition, the Mets reimbursed Parks for electricity and water and sewer use; had the required property and liability insurance that named the City as an additional insured party and deducted the appropriate amount as a credit; and accurately calculated sales tax deducted from reported revenue. The Mets, however, did make some minor errors on their rent report to Parks for 2002 that resulted in the underreporting of certain revenue categories by \$97,685 by which the Mets owe the City \$11,873 in additional fees, as shown in Table II, below.

Table II
Summary of Additional Rental Fees Due
January 1–December 31, 2002

	Underreported Revenue	Additional Fees Due the City
Errors in Reported Revenue		
Cable Television Revenue	\$ 41,655	\$ 4,166
Concession Receipts	28,790	1,313
Advertising Revenue	18,063	1,806
Skybox Revenue	9,177	4,588
Total	\$ 97,685	\$11,873

These matters are discussed in the following section of this report.

Minor Errors in Reported Revenue

Our review of the Mets books and records for the 2002 baseball season disclosed the following minor errors in reporting of revenue to the City:

Cable Television Receipts Underreported by \$41,655 Resulting in Additional Fees of \$4,166. On their 2002 rent statement to the City, the Mets reported Home Game Cable Television receipts of \$9,325,926, but their books and records for home game cable television receipts totaled \$9,367,581, a difference of \$41,655. Accordingly, the Mets owe the City \$4,166 in additional rent.

Concession Revenue Underreported by \$28,790 Resulting in Additional Fees of \$1,313. In 2002, the Mets reported concession revenue of \$29,376,106. However, according to the books and records of Aramark Sports Entertainments Services, Inc., concession revenue amounted to \$29,404,896, a difference of \$28,790. Based on the lease's formula for calculating rent due for concession revenue, the Mets owe the City an additional \$1,313.

Advertising Revenue Underreported by \$18,063 Resulting in Additional Fees of \$1,806. The Mets took an unallowable deduction of \$18,063 from advertising revenue on their rent statement to the City. Consequently, the Mets underreported advertising revenue by this amount and owe the City additional fees totaling \$1,806.

Skybox Revenue Underreported by \$9,177 Resulting in Additional Fees of \$4,588. For 2002, the Mets reported that Skybox luxury suite net income totaled \$2,998,046. However, their books and records indicated that Skybox luxury suite net income amounted to \$3,007,223, a difference of \$9,177, which pertained to over-deducting expenses. Skybox net income is derived by luxury suite rental and concession sales revenue, less the cleaning, maintenance, and overhead expenses that directly relate to the Skyboxes. Therefore, based on the 50-percent payment provision in the lease, the Mets owe the City \$4,588 in additional fees.

Other Issue

As previously mentioned, six amendments to the lease were executed between December 28, 2001, through September 1, 2004, granting the Mets additional privileges. However, none of the amendments were ever submitted by Parks to the Comptroller's Office for registration. Since each of these amendments deals with the amount of revenue the City is to receive, Parks should have submitted these amendments to the Comptroller's Office for registration when each amendment was established in order to maintain transparency in the financial interactions between Parks and the Mets.

The submission of the amendments for registration provides for an independent assessment of the implementation of the amendments, thereby also providing accountability for the City's receipt of a fair share of rent for its leased properties. Indeed, this was not the case with regard to the lease's sixth amendment. This amendment allowed the Mets to calculate allowable deductions and credits against all rent payable under the lease in accordance with the methodology the Mets used in submitting previous annual rent statements to the City. Additionally, the sixth amendment states that the City *cannot contest* such methodology provided that the Mets remit \$400,000 to the City. As discussed hereafter, this language cost the City \$164,379 in lost revenues.

Before the sixth amendment went into effect, Article VIII, §8.1, and Article IX, §9.4 (a) (ii), of the lease allowed the Mets to deduct only the actual payments made to Major League Baseball that applied to gross admission receipts and cable television receipts, from their calculation of rent due the City. What we have always questioned, even in the prior two audits, FN02-125A, issued January 16, 2003, and FN03-115A, issued June 30, 2003, was the difference between the actual payments, for which the lease allows, and those amounts for which the Mets *claim* they made to Major League Baseball when they calculated their deduction. These audit reports clearly state that the amounts used by the Mets to calculate their revenue-sharing deductions were not the actual payments as defined in the lease and therefore should not have been used in the calculation of the deduction. It was this difference that became the catalyst in creating the sixth amendment.

The sixth amendment states that "issues have arisen with respect to how certain calculations of revenues, deductions, and credits should be made under the Lease," without referring to what these issues were. Nevertheless, the sixth amendment was signed by Parks and approved as to form by the Law Department even though our analysis reveals definitively that the sixth amendment was not in the best interest of City.

For 2002, the Mets' books and records and Major League Baseball Revenue Sharing Reports indicated that they remitted revenue-sharing payments totaling \$17,366,067 to Major League Baseball, which should have been the starting point for the Mets to begin their revenue sharing deduction calculation. However, the sixth amendment allowed the Mets to use \$30,399,516—the purported amount arbitrarily formulated by Major League Baseball at the beginning of the 2002 season that had no bearing to the actual amount paid by the Mets to Major League Baseball—as the starting point to calculate their revenue sharing deduction calculation.² Therefore, under the sixth amendment, the Mets were able to apply an additional \$13,033,449 (an amount that was not actually paid to Major League Baseball) in their calculated deduction, and pay \$164,379 in less rent to the City.

Parks Response: Parks officials responded: “we take exception to the report’s characterization that the sixth amendment was not in the best interest of the City. In fact, we believe that all of the lease’s amendments in the context of the City’s overall relationship with the Mets should be seen as in the City’s best interest.”

Auditor Comment: It is a highly unconventional and uncommon practice in any business to allow an entity to use artificial amounts rather than the actual amounts recorded on one’s books and ledgers to calculate a rent formula, especially if the lease specifically states, as this lease does, that only actual payment amounts be used. Yet, the sixth amendment of the lease granted the Mets the benefit of doing just that. Furthermore, Parks has been aware of our position concerning the Mets not using actual amounts to calculate revenue sharing deductions. This was a major matter, which we indicated in our prior two audits (Reports FN02-125A, issued January 16, 2003, and FN03-115A, issued June 30, 2003) that emphasized that the Mets were using purported amounts to calculate revenue sharing deductions. In fact, it was Parks and the Law Department that negotiated a settlement in favor of the City as a result of our last two audits. Nevertheless, they developed and added the sixth amendment specifically to eliminate this issue, which significantly reduced rent fees to the City.

Each amendment granted the Mets additional privileges and reduced their financial obligations, either directly or indirectly, to the City, even as their revenues increased. Since the first amendment went into effect on December 28, 2001, the Mets rent for the use of Shea Stadium has steadily declined, while Mets revenues significantly increased. In the audit that covered the five years 1996 through 2000, the Mets reported an average of \$100 million in gross revenues each year, and paid the City an average of \$7.3 million a year in rent, (a 7.3 percent annual average).³ For the 2001 audit, the Mets reported gross revenues

² Without the sixth amendment and the \$400,000 fixed payment, and by applying only those amounts paid to Major League Baseball, i.e., \$17,366,067 for 2002, the Mets would have had to pay the City an additional \$564,379 in rent.

³ The audit (FN02-125A) for the period April 1, 1996, through December 31, 2000, stated that the Mets reported gross revenues totaling \$499.4 million and paid the City \$36.6 million (7.3%).

totaling \$155.8 million and paid the City \$7 million (4.5 percent, which is 2.8 percent less than the average they paid in rent during the previous audit period). For this audit, covering 2002, the Mets reported gross revenues totaling \$160.2 million and paid the City \$4 million, which is only 2.5 percent of gross revenues (significantly less than the 7.3 percent and 4.5 percent specified in the previous audits). The result, consequently, is that one of the City's two major stadiums is leased for a mere 2.5 percent of the lessee's revenues.

Moreover, we need only to cite the first lease amendment that eliminated the rent due from advertising revenues pertaining to the rotating signs behind home plate and to those signs on parapet walls between the home team and visiting team dugouts as an example of how the amendments cost the City revenue. For the 2002 year alone, the Mets received \$5.3 million in advertising revenues for these signs—\$4.2 million for home plate and \$1.1 million in revenues for the side wall signs. Accordingly, by applying the standard practice of a 10 percent advertising fee requirement (which the Mets and City used for negotiating other advertising fees, i.e., for Trivision Boards, Diorama advertising panels, etc.) to the \$5.3 million received by the Mets for the 2002 season, the result is that the first amendment allows the Mets *not* to pay approximately \$530,000 in rent to the City.

The second amendment cost the City \$5 million a year in lost rent by allowing the Mets to deduct \$25 million from rent due the City for expenses incurred in the planning of a new stadium.

The third, fourth, and fifth amendments extended the period that the credits would be allowed (in case the Mets could not spend their planning money within the calendar year), and permitted the Mets to include the costs for a new scoreboard as a deduction in the new stadium planning costs.

Finally, as we stated above, the sixth amendment allowed the Mets to further lower their rent payments due the City for the use of Shea Stadium by permitting them to use purported amounts rather than the actual amounts paid to Major League Baseball.

All the lease amendments were adopted at a time when the Mets gross revenues increased from an average of \$100 million to \$160.2 million while their rent payments declined from an average of \$7.3 million to \$4 million (*a 45 percent decrease in rent payments*).

RECOMMENDATIONS

We recommend that the Mets:

1. Pay the City \$11,873 in additional fees due.
2. Ensure that revenue from cable television, concessions, advertising, and Skyboxes is accurately reported to the City, and all appropriate fees are paid.

Mets Response: Mets officials responded that they have read the draft report and they “will be processing payment totaling \$11,873.”

Parks Response: Parks responded that it: “has issued the attached ‘Notice to Cure’ (NTC) requiring the Mets to pay \$11,873 in additional fees, Recommendation 1, and to implement record keeping and reporting Recommendation 2.”

We recommend that Parks:

3. Ensure that the Mets pay the additional fees recommended in this report and comply with the audit’s recommendations.
4. Ensure that all amendments to the lease are submitted to the Comptroller’s Office for registration.

Parks Response: Parks did not respond specifically to recommendation 3, but rather to findings that resulted in the recommendation.

In response to Recommendation 4, Parks stated, “We believe that the requirement of registering agreements with the Comptroller’s Office does not apply to these lease amendments, but, rather, it only applies to Chapter 13 procurements, and, through an express cross-reference, to Chapter 14 agreements under the Charter. Therefore, we believe that leases may be amended based on business terms when working out disputes with tenants, without the need to go through registration.”

Auditors Comment: Parks is incorrect that the Charter registration requirements apply only to procurements under Chapter 13 and, by cross-reference, to Chapter 14 agreements. New York City Charter §93(p) and §328 provide that “no contract or other agreement executed pursuant to this charter or other law shall be implemented until . . . a copy has been filed with the comptroller and . . . the comptroller has registered it,” unless the Comptroller has a basis set forth in the Charter for not registering the contract or agreement. Neither §93(p) nor §328 are limited to procurements under Chapters 13 or franchises, concessions, and revocable consents entered into under Chapter 14. Parks has, in fact, submitted leases to the Comptroller for registration and is similarly required to submit lease amendments.

NEW YORK



NATIONAL LEAGUE BASEBALL CLUB

Leonard S. Labita
Vice President & Controller

June 7, 2006

Mr. John Graham
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007-2341

*Re: Audit Report on the Compliance of Sterling Mets, L.P.
(New York Mets) With Their Lease
January 1 – December 31, 2002
FN05-116A*

Dear Mr. Graham:

We have read the draft audit report issued by the New York City Office of the Comptroller covering the lease period January 1 – December 31, 2002. We will be processing payment totaling \$11,873 to satisfy the amounts due.

Very truly yours,

Leonard S. Labita
Vice President & Controller

Cc: Mr. David Cohen, Executive Vice President & General Counsel (New York Mets)
Mr. David Howard, Executive Vice President, Business Affairs (New York Mets)
Mr. Mark Peskin Chief Financial Officer (New York Mets)
Mr. Joseph Bonaono – Audit Department – City of New York (by fax: 212-669-8109)



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

The Arsenal
Central Park
New York, New York 10021

Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

May 30, 2006

BY FAX AND MAIL

Mr. John Graham
Deputy Comptroller
The City of New York
Office of the Comptroller
Executive Offices
1 Centre Street
New York, NY 10007

**Re: Draft Audit Report on Sterling Mets, L.P. (New York Mets)
January 1, 2002 - December 31, 2002 FN 05-116A, Dated May 15, 2006**

Dear Mr. Graham:

This letter represents the Parks Department's ("Parks"), response to the recommendations contained in the subject audit report on Sterling Mets, L.P. ("Mets").

Parks has issued the attached "Notice To Cure" (NTC) requiring the Mets to pay \$11,873 in additional fees, **Recommendation 1**, and to implement record keeping and reporting **Recommendation 2**.

Recommendation 4 states that Parks should "Ensure that all amendments to the lease are submitted to the Comptroller's Office for registration. The report indicated that none of the six amendments to the Mets lease were ever submitted by Parks to the Comptroller's Office for registration. We believe that the requirement of registering agreements with the Comptroller's Office does not apply to these lease amendments, but, rather, it only applies to Chapter 13 procurements, and, through an express cross-reference, to Chapter 14 agreements under the Charter. Therefore, we believe that leases may be amended based on business terms when working out disputes with tenants, without the need to go through registration. Furthermore, we take exception to the report's characterization that the sixth amendment was not in the best interest of the City. In fact, we believe that all of the lease amendments in the context of the City's overall relationship with the Mets should be seen as in the City's best interest.

John Graham
May 30, 2006
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We wish to thank the Comptroller's audit staff for their work and efforts in performing this review.

Sincerely,

A handwritten signature in black ink, appearing to read "Joanne Imohiosen". The signature is written in a cursive style with a large initial "J".

Joanne Imohiosen

cc: Comm. Adrian Benepe
David Stark
Alessandro Olivieri
Betty Woo (NYC Law Dept.)
Francisco Carlos
Jeffrey Kay, Mayor's Office of Operations



**City of New York
Parks & Recreation**

Adrian Benepe
Commissioner

The Arsenal
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Joanne G. Imohiosen
Assistant Commissioner
Revenue

(212) 360-3404
joanne.imohiosen@parks.nyc.gov

May 26, 2006

BY FAX AND MAIL

Mr. Dave Howard
Sr. Vice President
Sterling Mets, L.P.
Shea Stadium
Flushing, NY 11368

**Re: Draft Audit Report on Sterling Mets, L.P. (New York Mets)
January 1, 2002 - December 31, 2002 FN 05-116A**

Dear Mr. Howard:

This letter addresses the findings and recommendations contained in the subject audit report on Sterling Mets, L.P. (Mets). In general, the auditors confirmed that the Mets adhered to the provisions of their lease with the City. However, the examination of the Mets books and records for the 2002 baseball season did disclose certain minor errors related to cable television, concessions, advertising, and Skybox revenues on their rent report to Parks totaling \$97,685, which resulted in additional fees of \$11,873 due to the City.

Specifically, the report recommends that the Mets:

Recommendation 1. Pay the City \$11,873 in additional fees due.

The audit disclosed that additional fees are payable based on the following underreported revenue:

<u>Category</u>	<u>Underreported Revenue</u>	<u>Additional Fees</u>
• Cable Television	\$41,655	\$ 4,166
• Concession Receipts	28,790	1,313
• Advertising	18,063	1,806
• Skybox	<u>9,177</u>	<u>4,588</u>
TOTAL	<u>\$97,685</u>	<u>\$11,873</u>

Dave Howard

May 26, 2006

Page 2

To clear this audit recommendation Parks requests that the Mets remit to this office a check for \$11,873, made payable to the CITY OF NEW YORK PARKS AND RECREATION.

Recommendation 2. Ensure that revenue from cable television, concessions, advertising, and Skyboxes is accurately reported to the City, and all appropriate fees are paid.

The Mets should implement this recommendation by taking appropriate action to ensure that cable television, concessions, advertising, and Skybox receipts are properly reported in accordance with the Mets' lease and Skybox agreements.

We want to take the opportunity to thank the Mets for their cooperation during the audit review and anticipate their prompt payment and expeditious resolution of the outstanding issues.

Sincerely,



Joanne Imohiosen

cc: Comm. A. Benepe
D. Stark
A. Olivieri
F. Carlos
L. Labita (NY Mets)