

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 The New York Mets with Their Lease Agreement January 1, 2003–December 31, 2007

FN09-063A

July 15, 2009



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 Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has audited the compliance of the New York Mets with their lease agreement with the New York City Department of Parks and Recreation (Parks).

Under the provisions of the agreement, the Mets are required to pay the City fees based on reported revenue for the exclusive use of Shea Stadium during the baseball season. The agreement allows the Mets to deduct new-stadium-planning costs up to \$5 million each year. We audit entities such as this that operate under agreements with the City as a means of ensuring that they comply with the terms of their agreements, properly report revenue, and pay all fees due the City.

The results of our audit, which are presented in this report, have been discussed with Mets and the Parks officials, and their comments have been considered in preparing this report. Their complete written responses are included in 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,



William C. Thompson, Jr.

WCT/fh

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

**Audit Report on the Compliance of
The New York Mets
With Their Lease Agreement
January 1, 2003–December 31, 2007**

FN09-063A

AUDIT REPORT ON BRIEF

In 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 August 2002, a change in ownership assigned the lease to Sterling Mets, L.P. (doing business as the New York Mets). The lease has been amended 13 times since its inception through August 22, 2006, granting the Mets additional privileges.

Under 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. 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 objectives of this audit were to determine whether the Mets accurately reported all gross receipts in accordance with the lease, 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).

Audit Findings and Conclusions

The Mets owe the City a total of \$2,676,764 in additional rent consisting of \$2,495,044 in new-stadium-planning costs inappropriately deducted from the rent submitted to the City, \$139,821 resulting from a \$2,839,456 overstatement of revenue-sharing deductions, and \$41,899 from \$2,627,077 in unreported concession revenue. The Mets, however, submitted their rent statements and related payments to the City on time, and generally adhered to the other non-

revenue requirements of their lease agreement with the City, such as maintaining the required property and liability insurance that named the City as an additional insured party and reimbursing the City for their annual electricity, water, and sewer use, and paid the prior audit assessment of \$11,873.

Audit Recommendations

Based on our findings, we make three recommendations:

We recommend that the Mets:

- Pay the City \$2,676,764 in additional fees due.
- Ensure that planning cost expenses are appropriate and well documented, as required by the agreement.

We recommend that Parks:

- Ensure that the Mets pay \$2,676,764 in additional fees as recommended in this report and comply with the other recommendations.

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, which include the stadium's restaurant, bar, catering, and souvenir operations.

The lease has been amended 13 times since its inception through August 22, 2006, granting the Mets additional privileges. The first and second amendments, signed in 2001, provided for five one-year renewal options and allowed the Mets to exclude revenues received from certain cable television broadcasts and advertising, and to deduct \$5 million in new-stadium-planning costs from their rent payments to the City for calendar years 2001 through 2005. In 2003, the third and fourth amendments extended the new-stadium-planning cost credit to February 16, 2004, and allowed the Mets to include new scoreboard costs as part of the new-stadium-planning cost credit. The fifth amendment signed on February 27, 2004, extended the new-stadium-planning cost credit to March 1, 2004.

The sixth amendment signed on September 1, 2004, 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, provided the Mets remitted \$400,000 to the City for each year of the lease. In addition, the sixth amendment required that the Mets pay the City 10 percent of the gross revenues received from the new television boards.

The seventh, eighth, ninth, and tenth amendments extended the deadline for the "First Renewal Option" term to December 15, 2005. The 11th amendment extended the initial term of the lease to December 31, 2008. The amendment also allows for two consecutive renewal options to be exercised at the discretion of the Mets. Additionally, the amendment extended the new stadium planning cost credits to cover calendar years 2006, 2007, and 2008. Finally, the 11th amendment allowed the Mets to defer up to \$5 million of rent due for 2005. The deferral is to be repaid by March 10 of the calendar year following the termination of the lease, with interest being assessed at a rate of 4.6 percent per year.

The 12th amendment stipulates that if the City decides not to proceed with the new stadium project, the lease is automatically extended through December 31, 2010, with specific rent provisions regarding payment from the skybox agreement, supplemental rent payments, and baseball parking charges during the extension term.

Finally, the 13th amendment requires the Mets to provide replacement parking areas during the construction of the new stadium. The amendment allows the City to collect a baseball parking charge of \$13 per vehicle in 2006, \$14 per vehicle in 2007, and \$15 per vehicle in 2008, as well as a reasonable incremental cost to maintain the replacement parking area.

Under 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. 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 the audit period 2003 through 2007 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 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.
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 and 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 annual statements of rent, reserved parking fees, scoreboard maintenance, and skybox net income for the preceding year. For the audit period, the Mets reported gross revenues totaling \$886.1 million and, after deductions, paid the City \$18.1 million.

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 and paid them 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

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

This audit covered the period January 1, 2003, through December 31, 2007. 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, 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 the Mets internal control procedures through memoranda. We then conducted a trend analysis of all the revenue categories to identify significant fluctuations.

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 the amounts of rain-check revenue to determine whether they 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 the Aramark¹ 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 general ledger, 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. Additionally, we judgmentally selected a sample of 32 sponsors to confirm 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 skybox season rental revenue reported to the Mets invoices, contracts, and general ledger entries for calendar year 2007. To determine whether all skybox concession revenue was properly reported, we traced the amounts from the general ledger to the revenue on Aramark's operating statements for skybox concessions. We also traced skybox expenses from the general ledger to corresponding invoices for calendar years 2003 through 2007 to determine whether expenses were properly deducted and in accordance with 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. Finally, we compared these amounts to the amounts reported to the City for accuracy.

We determined whether the deductions for revenue-sharing payments made to Major League Baseball were accurately reported by comparing the amounts the Mets paid to Major League Baseball as detailed on the revenue-sharing reports to the payments made by wire transfer on the corresponding bank statements. Using the Mets' methodology for allocating the deductions for revenue-sharing, we recalculated the amounts related to ticket sales and cable television revenue that were allowable for deduction based on their percentage of total revenue.

To determine whether new-stadium-planning costs were accurately reported and in accordance with the agreement, we reviewed the Mets new stadium planning cost statements for calendar year 2003 through 2007. We determined whether the costs were accurate, reasonable, and allowable under the agreement, whether the costs submitted agreed with the underlying payment records, invoices, and receipts, and whether the costs were incurred in the allowable periods.

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

¹ The Mets subcontract their food and merchandise concessions to Aramark Sports Entertainment Services, Inc. (Aramark).

whether the Mets calculated the appropriate insurance credit deduction, we reviewed their insurance policies and the payments 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.

Finally, to determine whether the Mets reimbursed Parks 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.

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 discussed at an exit conference held on June 1, 2009. After the exit conference, Mets officials submitted additional information in support of their interpretation regarding the planning cost issue addressed in the report. On June 9, we submitted a draft report to the Mets and Parks officials with a request for comments.

We received written responses from the Mets and Parks officials on June 23, 2009. In their response, Mets officials agreed with the findings related to revenue-sharing deductions and concession revenue, but they disagreed with the audit conclusion that insurance on the new stadium is an inappropriate planning cost deduction.

In their response, Parks officials stated that “After consulting with the City’s Law Department, Parks has been advised that these NSPC [New Stadium Planning Costs] deductions are appropriate under the 11th Amendment of the lease, which does not restrict insurance costs to ‘planning’ of the New Stadium for the year 2007. Consequently, Parks will not seek payment from the Mets for the \$2,495,044 NSPC deduction.”

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

FINDINGS

The Mets owe the City a total of \$2,676,764 in additional rent consisting of \$2,495,044 in new-stadium-planning costs inappropriately deducted from the rent submitted to the City, \$139,821 resulting from a \$2,839,456 overstatement of revenue-sharing deductions, and \$41,899 from \$2,627,077 in unreported concession revenue, as detailed in Table II, below.

The Mets submitted their rent statements and related payments to the City on time, and generally adhered to the other non-revenue requirements of their lease agreement with the City, such as maintaining the required property and liability insurance that named the City as an additional insured party and reimbursing the City for their annual electricity, water, and sewer use, and paid the prior audit assessment of \$11,873.

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

Table II
Summary of Additional Rental Fees Due
January 1, 2003–December 31, 2007

Revenue Categories	Revenue Reported Under/(Over)	Total Due the City
New-Stadium-Planning Costs Inappropriately Deducted	\$ -	\$ 2,495,044
Revenue-Sharing Deductions	\$ 2,839,456	\$ 139,821
Concession Revenue	\$ 2,627,077	\$ 41,899
Total	\$ 5,466,533	\$ 2,676,764

\$2,495,044 in Inappropriate Rent Deduction

As part of the planning cost deductions reported to the City, the Mets inappropriately included \$2,495,044 in insurance premium paid on the new stadium facility. The planning costs are defined as all costs and expenses incurred by the Mets with respect to *planning* of the new stadium. Although the 11th amendment of the lease does permit deductions for “insurance (to the extent not otherwise taken as a credit under the Lease)” associated with planning the new stadium, as of the effective dates of the insurance coverage, August 22, 2007, to August 22, 2008, the stadium construction was well underway and the insurance was clearly not associated with planning the new stadium.

At the audit exit conference, Mets officials stated that insurance, as a “soft cost” associated with building the new stadium, was an allowable planning cost deduction. Subsequent to this meeting, Mets officials provided us with documentation of their correspondence with the City Law Department and with Parks regarding the Mets’ proposal to include insurance costs as part of planning costs. However, in our view, the final 11th amendment requires that the insurance be related to planning in order qualify as a planning cost deduction. Accordingly, we

maintain our position that the insurance deduction taken by the Mets is not a legitimate planning cost deduction under the 11th amendment of the lease insofar as it appears to be for general liability insurance on the new stadium and not related to planning. As a result, the Mets owe the City \$2,495,044 in additional rent.

Mets Response: “Sterling Was Entitled to Take A Rent Credit for Insurance Premium in Connection with the New Ballpark Project.”

“Sterling and the City specifically agreed in an amendment to the Lease that Sterling could take such a credit, and in light of the language of the amendment and the history of the party’s negotiations of that amendment, there is no basis for the Audit report’s conclusion to the contrary.

“The definition of ‘Planning Costs’ in the Eleven Amendment, covering the 2005 through 2008 calendar years, was clarified in three significant ways:

“First, for the first time it specifically included within ‘Planning Costs’ not only costs and expenses incurred by or on behalf of Sterling, but also costs and expenses incurred by or on behalf of Stadium LLC (as defined in the MOU) or any affiliate of [Sterling].

“Second, for the first time the City and Sterling specifically included costs incurred for ‘insurance (to the extent not otherwise taken as credit under the Lease)’ in the list of costs that are eligible to be ‘Planning Costs.’

“Third, at the same time that ‘insurance’ was added to the definition of ‘Planning Costs,’ the definition was clarified to ensure that costs of activities other than ‘planning’ itself were intended to be included . . . Thus, it was made clear that costs and expenses incurred by Queens Ballpark Company are eligible to be ‘Planning Costs’ and included in the \$5 million Sterling was entitled to take as a credit against rent.

“The Negotiations to Add ‘Insurance’ to ‘Planning Costs’

“Apart from the plain language of ‘Planning Costs,’ as reflected in correspondence between Sterling and the City during negotiation of the Amendment, the parties specifically agreed that Sterling could include fees for insurance in its rent credit. As the negotiation of the Amendment were concluding and the parties were specifically discussing the scope of the definition of ‘Planning Costs,’ Sterling specifically expressed to City representatives its intention to use a portion of the negotiated rent credits for project insurance premiums, and requested that clarifying changes be made to the agreement in order to avoid any doubt as to the eligibility of such costs for rent credits.” (Emphasis in original.)

Parks Response: Parks officials agreed with the Mets. In their response, Parks officials stated that “After consulting with the City’s Law Department, Parks has been advised that these NSPC [New Stadium Planning Costs] deductions are appropriate under the 11th Amendment of the lease, which does not restrict insurance costs to ‘planning’ of the New

Stadium for the year 2007.” Parks officials stated that “Parks was informed the definition of planning costs in Section 3(b) of the 11th Amendment was intended to cover, among other things, insurance costs during and relating to the construction of the New Stadium and not only those insurance costs related to planning of the new Stadium. Consequently, Parks will not seek payment from the Mets for the \$2,495,044 NSPC deduction.”

Auditor Comment: We concur with the first and second arguments of the Mets response that Sterling affiliates and costs incurred for insurance were covered under the terms of the 11th amendment to the agreement. However, we disagree with the third argument in the response, that “costs of activities other than ‘planning’ itself were specifically included” in the 11th amendment.

The 11th amendment’s section 3(b) provided that insurance (to the extent not otherwise taken as a credit under the Lease), could be a legitimate deduction. However, it is our position that the insurance cost would have had to be incurred “with respect to the planning of the New Stadium,” a requirement that was acknowledged in the 11th amendment.

The challenged \$2.49 million insurance premium relates to a certificate-of-insurance that provided general liability insurance to an affiliate of Sterling Mets (i.e., Queens Ballpark Company, LLC,) “while working at this project site” (i.e., New York Mets Stadium, Flushing, NY). Clearly, the language of the insurance certificate and the type of coverage (e.g., fire damage, medical expenses, etc.) pertained to activities that are customarily connected with construction—rather than activities connected with stadium planning. Thus, the Mets cannot show that this specific type of insurance is a legitimate planning cost that adheres to the standard established in the MOU and 11th amendment.

In its response, the Parks Department asserted that insurance costs “during and relating to the construction of the New Stadium” were considered planning costs by the 11th amendment, and that this is reflected by the fact that the term “planning” was deleted from the end of the first sentence in Section 3(b) of the 11th Amendment. We do not find this argument compelling, however, as the 11th amendment maintained the term “planning” at the beginning of the first sentence in Section 3(b), thereby serving to qualify the allowable deductions associated with insurance to those related to planning. Moreover, if the intent of the parties was simply to grant the Mets an annual \$5 million rent credit during stadium construction, they could have simply stated this in the 11th amendment. The public is entitled to clear information and documentation regarding the extent to which taxpayer dollars are supporting the development of the new stadium. It is inappropriate for public officials to repeatedly describe the City’s obligation as a \$5 million potential rent credit to off-set “planning costs” if the intent of the parties was essentially to guarantee an annual \$5 million dollar credit for “soft costs” associated with the construction of the new stadium.

Overstated \$2,839,456 in Revenue-Sharing Payments to Major League Baseball

In accordance with a 1997 agreement between Major League Baseball and all the professional baseball teams, the Mets participate in a revenue-sharing program. Article VIII, §8.1, and Article IX, §9.4 (a) (ii) of the lease allow the Mets to deduct from their calculation of rent due the City the payments made to Major League Baseball that apply to gross admission receipts and cable television receipts. Moreover, the sixth amendment allows the Mets to continue calculating allowable deductions and credits against all rent payable under the lease in accordance with the methodology they used in submitting previous annual rent statements to the City, and states that the City cannot contest such methodology provided that the Mets remit \$400,000 to the City for every year of the lease.

Our review found that for the period 2003 through 2007, the Mets overstated revenue-sharing payment deductions by \$2,839,456 in their rent statements submitted to the City. This overstatement was due to a timing difference in the schedule of payments made to Major League Baseball and the rent statement submitted to the City. On the statements of rent submitted to the City, the Mets deducted a total of \$187,769,210 in revenue-sharing payments. However, based on our calculation, the amount for revenue-sharing deductions should have been \$184,929,754. Therefore, the Mets understated the gross revenue reported to the City by \$2,839,456 (\$187,769,210 – \$184,929,754) and owe the City \$139,821 in additional rent, as shown in Table III, following.

Mets Response: The Mets agreed with the assessment and paid Parks the additional revenue of \$139,821 on June 15, 2009.

Table III
Revenue-Sharing Deductions and
Additional Fees Owed from 2003-2007

Reported Deductions for Revenue-Sharing	2003	2004	2005	2006	2007	Total
Reported Payments to Major League Baseball	\$51,729,255	\$40,357,000	\$57,785,000	\$68,139,000	\$77,477,000	\$295,487,255
% of Revenue Pertaining to Gross Admissions and Cable TV Receipts Applied by the Mets	57.35782%	56.70543%	59.88779%	67.08698%	70.85364%	
Reported Deductions for Revenue-Sharing	\$29,670,772	\$22,884,609	\$34,606,159	\$45,712,398	\$54,895,272	\$187,769,210
Audited Deductions for Revenue-Sharing						
Final Payments to Major League Baseball	\$49,355,000	\$40,327,000	\$58,238,000	\$69,955,000	\$77,104,000	\$294,979,000
Final % of Revenue Pertaining to Gross Admissions and Cable TV Receipts	58.40576%	54.21398%	59.12540%	65.49738%	70.02046%	
Audited Deductions for Revenue-Sharing	\$28,826,165	\$21,862,873	\$34,433,450	\$45,818,694	\$53,988,572	\$184,929,754
Amount Overstated/(Understated) as Deductions on Rent Statements to the City	\$ 844,607	\$ 1,021,736	\$ 172,709	\$ (106,296)	\$ 906,700	\$ 2,839,456
Additional Fees Due the City/(the Mets) for Revenue-Sharing	\$ 58,015	\$ 28,839	\$ (3,889)	\$ (4,824)	\$ 61,679	\$ 139,821

Did Not Report \$2,627,077
In Concession Revenue

The Mets underreported food and souvenir concession revenues by \$2,627,077. According to the agreement with the City, the Mets are required to pay a percentage of the gross concession receipts reported from their concessionaire. For the period 2005 through 2007, the Mets reported concession revenue totaling \$122,458,889. However, our analysis of the books and records of the Mets and their concessionaire Aramark Sports Entertainments Services, Inc., found that concession revenue amounted to \$125,085,966, a difference of \$2,627,077. Based on the lease's formula for calculating rent due for concession revenue, the Mets owe the City an additional \$41,899.

Mets Response: The Mets agreed with the assessment and paid Parks the additional revenue of \$41,899 on June 15, 2009.

RECOMMENDATIONS

We recommend that the Mets:

1. Pay the City \$2,676,764 in additional fees due.

Mets Response: In their response, the Mets agreed to pay Parks only \$181,720 in additional revenue due the City in connection with the revenue-sharing and concession revenue assessments. With regard to the remaining \$2,495,044, resulting from the inappropriate inclusion of new insurance as planning costs, as noted above, the Mets argued that they are entitled to deduct the cost of insurance on the New Stadium.

Parks Response: Parks officials agreed with the Mets. In their response, they stated that “After consulting with the City’s Law Department, Parks has been advised that these NSPC [New Stadium Planning Costs] deductions are appropriate under the 11th Amendment of the lease, which does not restrict insurance costs to ‘planning’ of the New Stadium for the year 2007.” Parks officials stated that “Parks was informed the definition of planning costs in Section 3(b) of the 11th Amendment was intended to cover, among other things, insurance costs during and relating to the construction of the New Stadium and not only those insurance costs related to planning of the new Stadium. Consequently, Parks will not seek payment from the Mets for the \$2,495,044 NSPC deduction.”

2. Ensure that planning cost expenses are appropriate and well documented, as required by the agreement.

We recommend that Parks:

3. Ensure that the Mets pay \$2,676,764 in additional fees as recommended in this report and comply with the other recommendations.

Parks Response: “The Mets have submitted payment to the City in the amount of \$181,720 to address the Report’s findings related to revenue-sharing deductions and concessions revenue. Further, because the City believes that the Mets \$2,495,044 NSPC deduction is allowable, we consider the Mets to have paid the full amount due related to this Report.”



ADDENDUM I

(Page 1 of 5)

David P. Cohen
Executive Vice President &
General Counsel
dcohen@nymets.com

June 23, 2009

VIA OVERNIGHT MAIL

John Graham
Deputy Comptroller – Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
1 Centre Street
New York, NY 10007-2341

Re: Audit Report for Shea Stadium Lease (2003–2007)

Dear Mr. Graham:

I am writing in response to your letter of June 9, 2009, soliciting our comments to the Office of the Comptroller's ("Comptroller") draft Audit Report on the Compliance of the New York Mets with Their Lease Agreement,¹ January 1, 2003-December 31, 2007, FM09-063A (the "Audit Report").

The Audit Report covers a five year period (2003-2007) of the Lease for Shea Stadium between Sterling Mets, L.P. ("Sterling") and the City of New York (the "City"). While the Comptroller's audit of Sterling was extremely broad in terms of both the scope of the audit and the time frame covered, there is only one issue in the Audit Report – pertaining to a portion of a rent credit in a single year – that remains to be addressed. The following summarizes our position with respect to the outstanding issue.

Sterling Was Entitled to Take A Rent Credit for Insurance Premiums in Connection with the New Ballpark Project

The only outstanding issue raised by the Audit Report is whether Sterling properly included certain insurance costs incurred in connection with the new ballpark for the New York Mets as part of a credit it took against rent due under the Lease for 2007 calendar year. Sterling and the City specifically agreed in an amendment to the Lease that Sterling could take such a credit, and in light of the language of the amendment and the history of the parties' negotiations of that amendment, there is no basis for the Audit Report's conclusion to the contrary.

¹ "Lease" as used herein refers to the Restated Agreement between the City of New York and Sterling Mets, L.P. (as successor-in-interest to Doubleday Sports, Inc.) dated as of January 1, 1985, as amended. The Lease was for Shea Stadium in Flushing, New York.

Background

On June 23, 2005, Sterling Mets, L.P. and the City of New York entered into a Memorandum of Understanding (the "MOU") with respect to the design, development, financing, construction and operation of a new ballpark to be used by the New York Mets. Among other things, the MOU provided that there would be an extension of the Shea Lease (which was set to expire at the end of 2005) until December 31, 2008, and that the Mets would be permitted to apply a \$5 million annual credit against rent paid to the City for 2006, 2007, and 2008. The MOU expressly contemplated that the rent credit could be applied towards expenses incurred by an entity referred to in the MOU as "Stadium LLC" (now known as Queens Ballpark Company, L.L.C.), the Mets affiliate that would be the lessee of the new ballpark.

The Eleventh Amendment to the Lease

The lease extension addressed in the MOU was memorialized in the Eleventh Amendment to the Lease (the "Amendment"). The Amendment also reflected Sterling's entitlement to take an annual credit against payments due to the City under the Lease in the amount of \$5 million for each year from 2006 through 2008 for "Planning Costs," as that term is defined in the Amendment.

The Definition of "Planning Costs" in the Eleventh Amendment

Earlier amendments to the Lease addressed "Planning Costs" that could be taken as a rent credit by Sterling for each year from 2001 to 2005. However, the definition of "Planning Costs" in the Eleventh Amendment, covering the 2005 to 2008 calendar years, was clarified in three significant ways:

First, for the first time it specifically included within "Planning Costs" not only costs and expenses incurred by or on behalf of Sterling, but also costs and expenses incurred by or on behalf of "Stadium LLC (as defined in the MOU) or any affiliate of [Sterling]." Thus, it was made clear that costs and expenses incurred by Queens Ballpark Company are eligible to be "Planning Costs" and included in the \$5 million Sterling was entitled to take as a credit against rent.

Second, for the first time the City and Sterling specifically included costs incurred for "insurance (to the extent not otherwise taken as a credit under the Lease)" in the list of costs that are eligible to be "Planning Costs." Thus, it was made clear that insurance costs incurred by Queens Ballpark Company are eligible to be Planning Costs and included in the \$5 million Sterling was entitled to take as a credit against rent.

Third, at the same time that "insurance" was added to the definition of "Planning Costs," the definition was clarified to ensure that costs of activities other than "planning" itself were intended to be included. Whereas earlier drafts of the Amendment included

within Planning Costs “any other similar or related costs of any kind customarily incurred in planning new sports stadium facilities comparable to the New Stadium,” the parties broadened that scope in the final version to include “any other similar or related costs of any kind customarily incurred in connection with new sports stadium facilities comparable to the New Stadium.” Thus, it was made clear than costs other than those attributable to “planning” itself are eligible to be “Planning Costs” and included in the \$5 million per year Sterling was entitled to take as a credit against rent. (Indeed, fees incurred for “planning” are included within a longer list illustrating approximately a dozen types of fees that are acceptable “Planning Costs.” This would be redundant if “Planning Costs” were intended to be limited to those incurred for “planning” the new ballpark.)

The Negotiations to Add “Insurance” to “Planning Costs”

Apart from the plain language of “Planning Costs,” as reflected in correspondence between Sterling and the City during negotiation of the Amendment, the parties specifically agreed that Sterling could include fees for insurance in its rent credit. As the negotiations of the Amendment were concluding and the parties were specifically discussing the scope of the definition of “Planning Costs,” Sterling specifically expressed to City representatives its intention to use a portion of the negotiated rent credits for project insurance premiums, and requested that clarifying changes be made to the agreement in order to avoid any doubt as to the eligibility of such costs for rent credits. On December 29, 2005, Sterling’s General Counsel sent an email to the City’s representatives² stating as follows (with emphasis added):

I spoke briefly with our owners rep regarding the definition of planning costs. He said we can live with it assuming you agree that insurance is an acceptable planning cost. I told him that I assume it is, since it is obviously a soft cost, but we have asked Betty to add the word “insurance” to the list of specific items just to be on the safe side. Please confirm.

A representative of the New York City Law Department responded that it had proposed to Parks Department representatives that the word “insurance” be added, along with further clarification that any credit taken for insurance would not be duplicative of other, existing credits permitted pursuant to the Lease for certain insurance costs relating to the operation of Shea Stadium.

The City later confirmed that it accepted the addition of the specific reference to “insurance” in the definition of Planning Costs, along with a parenthetical stating “(to the extent not otherwise taken as a credit under the Lease).”

² Sterling has provided copies of the emails in question to the Comptroller’s Office in connection with the current audit. In addition, at the exit conference held by the Comptroller’s auditors and Sterling representatives, a City representative confirmed that Sterling’s representations regarding the substance of the negotiations on this issue were consistent with the City’s understanding.

The City's attorney then followed up with a revised draft of the Amendment, making two changes to the definition of "Planning Costs" from the prior draft: first, to make clear that insurance was an acceptable Planning Cost, "insurance (to the extent not otherwise taken as a credit under the Lease" was added into the defined term; and second, the phrase "any other similar or related costs of any kind customarily incurred in planning new sports stadium facilities comparable to the New Stadium" was broadened to include "any other similar or related costs of any kind customarily incurred in connection with new sports stadium facilities comparable to the New Stadium." These two changes were then included in the final version of the Amendment.

The negotiation history of the parties thus clearly demonstrates that Sterling and the City specifically agreed that Sterling is entitled to deduct insurance premiums as a credit against rent under the Lease, as long as such insurance is incurred in connection with the new ballpark.

The 2007 Rent Credit

When Sterling paid its rent for 2007 under the Lease, it applied \$5 million in credits against rent, as it was permitted to do under the Amendment and as was originally contemplated in the MOU. Of that total, approximately \$2.495 million consisted of costs of insurance premiums paid by Queens Ballpark Company, L.L.C. in connection with the new ballpark project, and it is only this portion of the annual credit that the Comptroller disputes. As described above, the City agreed, and the Amendment specifically provides, that Sterling was entitled to include these insurance costs as part of its rent credit.

In light of the above, Sterling asks that the Comptroller revise its Audit Report before it issues the final version, and delete any reference to the erroneous conclusion that Sterling inappropriately deducted new stadium "Planning Costs" from its 2007 rent payment.

All Other Issues Have Been Resolved

The Audit Report also contends that Sterling owes rent due to inaccurate revenue sharing deductions and reporting of concession revenues. With regard to Major League Baseball revenue sharing, it became standard practice for the City and Sterling to adjust during the audit process Sterling's rent deductions due to revenue sharing, because annual rent payments were due to the City under the Lease at a time when only estimates of revenue sharing were available. Sterling and the City agreed that an additional \$139,821 of rent was due to the City, and Sterling paid that amount on June 15, 2009. With regard to concession revenues, Sterling based its rent payments on certain interim reports of Aramark, the Shea Stadium concessionaire. Based on final reports from Aramark that Sterling now has, Sterling and the City agreed that an additional \$41,899 of rent was due to the City, and Sterling paid that amount on June 15, 2009.

In light of Sterling's payments of these amounts raised by the Audit Report, Sterling asks that the Comptroller revise its Audit Report before it issues the final version and indicate that no amounts are due.

Conclusion

This letter should not be construed as taking any position with respect to the matters addressed in the Audit Report except as expressly stated herein, although in the interest of brevity Sterling has not included every argument in support of its positions. Sterling respectfully reserves all of its rights and remedies with respect to the matters addressed in the Audit Report and otherwise.

In light of the foregoing, Sterling recommends that the Comptroller revisit the conclusions embodied and recommendations made in the draft Audit Report and make changes to accommodate Sterling's objections, comments and corrections as stated above prior to issuing the final report.

Please feel free to contact me if you have any questions regarding the foregoing.

Sincerely,



cc: Elizabeth Smith
Assistant Commissioner
Department of Parks & Recreation
of the City of New York
The Arsenal
830 Fifth Avenue
New York, NY 10021



**City of New York
Parks & Recreation**

Adrian Benepe
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June 23, 2009

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

Re: Comptroller's Draft Audit Report on the Compliance of the New York Mets with Their Lease Agreement, January 1, 2003 through December 31, 2007 FN 09-063A

Dear Mr. Graham:

This letter represents the response of the Parks Department ("Parks") to the Recommendations contained in the New York City Comptroller's Draft Audit Report ("the Report") dated June 9, 2009 on the compliance of Sterling Mets, L.P. ("Mets") with respect to the Restated Agreement dated as of January 1, 1985, as amended (the "Lease"). Generally, the Report found that the Mets submitted their rent statements and payments to the City on time and adhered to the other non-revenue requirements of the Lease.

However, the Report also determined that the Mets owe the City \$2,676,764 in additional rent related to certain New-Stadium-Planning Cost ("NSPC") deductions, overstated revenue-sharing deductions and underreported concession revenue. Specifically, the Report included the following recommendations to the Mets:

Recommendation 1: Pay the City \$2,676,764 in additional fees due.

The payment amounts due the City under Recommendation 1 are as follows:

Table 1

a. NSPC Inappropriately Deducted –	\$2,495,044
b. Revenue-Sharing Deductions –	\$ 139,821
c. Concession Revenue –	\$ 41,899
Total:	\$2,676,764

On June 17, 2009, Parks received payment from the Mets in the amount of \$181,720 to address the Report's findings related to revenue-sharing deductions and concessions revenue (lines b and c in Table 1). With respect to the Report's determination regarding the NSPC deductions (line a in Table 1), the Mets dispute this finding. Specifically, this finding relates to the Mets' general liability and workers compensation insurance costs related to the construction of the New Stadium (as defined in the Lease), and submitted as part of their NSPC deductions from 2007 rent. The Report states these types of insurance are not allowable deductions because they are not associated with planning the New Stadium.



After consultation with the City's Law Department, Parks has been advised that these NSPC deductions are appropriate under the 11th Amendment of the Lease, which does not restrict insurance costs to "planning" of the New Stadium for the year 2007.

The 11th Amendment changed the definition of planning costs from what was covered by the 2nd Amendment in order to recognize that the costs, and rent credits, associated with the New Stadium could extend beyond the narrower definition in the 2nd Amendment after 2004. Specifically, the word "planning" was deleted from the end of the first sentence in Section 3(b) of the 11th Amendment to allow for deduction of other "...related costs of any kind customarily incurred in connection with new sports stadium facilities comparable to the New Stadium", whereas the prior language in Section 1(a)(iv) of the 2nd Amendment allowed for deduction of "...related costs of any kind customarily incurred in *planning* (emphasis added) new sports stadium facilities comparable to the New Stadium." Therefore, Parks was informed that the definition of planning costs in Section 3(b) of the 11th Amendment was intended to cover, among other things, insurance costs during and relating to the construction of the New Stadium and not only those insurance costs related to planning of the New Stadium. Consequently, Parks will not seek payment from the Mets for the \$2,495,044 NSPC deduction.

Recommendation 2: Ensure that planning cost expenses are appropriate and well documented, as required by the agreement.

Parks agrees that all of the Mets planning cost expenses must be appropriate and well documented, as required by the 11th Amendment. Parks will work with the Mets to ensure that the 2008 planning cost expenses are well documented.

Recommendation 3: Ensure that the Mets pay \$2,676,764 in additional fees as recommended in this report and comply with the other recommendations.

As stated above, the Mets have submitted payment to the City in the amount of \$181,720 to address the Report's findings related to revenue-sharing deductions and concessions revenue. Further, because the City believes that the Mets \$2,495,044 NSPC deduction is allowable, we consider the Mets to have paid the full amount due related to this Report.

Finally, we wish to thank the Comptroller's audit staff for their work and efforts in performing this review.

Sincerely,



Elizabeth W. Smith

- Cc: Comm. Adrian Benepe
R. Garfola
A. Olivieri
B. Woo, New York City Law Department
B. Bernstein, Mayor's Office of Operations