

# AUDIT REPORT



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

## **Audit Report on Department of Parks and Recreation Oversight of Capital Improvements by Concessionaires**

*EW03-136A*

**January 20, 2004**



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

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WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

Pursuant to Chapter 5, Section 93 of the New York City Charter, we have examined whether the Department of Parks and Recreation is effectively monitoring its concessionaires to ensure that they comply with the capital improvement requirements of their agreements. The results of our audit, which are presented in this report, have been discussed with agency officials, and their comments have been considered in preparing this report.

Audits such as this provide a means of ensuring that the Department of Parks and Recreation is providing the necessary oversight to ensure that private concerns conducting business on City property comply with the terms of their agreements.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please contact my audit bureau at 212-669-3747 or e-mail us at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov).

Very truly yours,

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

William C. Thompson, Jr.

WTC/GR

**Report:** EW03-136A  
**Filed:** January 20, 2003

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

**Audit Report on Department of  
Parks and Recreation Oversight of  
Capital Improvements by Concessionaires**

**EW03-136A**

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**AUDIT REPORT IN BRIEF**

We performed an audit on the oversight of concessionaire capital improvements by the Department of Parks and Recreation (Department). The Department oversees various City concessions for ice rinks, marinas, golf courses, restaurants, etc. Under the terms of their agreements with the Department, concessionaires are, in many instances, required to make and pay for specific capital improvements to the facilities they operate. In Fiscal Year 2003, the Department had agreements with 91 concessionaires in which capital improvements were required.

The Department's Revenue Division (Division) is responsible for monitoring concessionaires to ensure that capital improvements are completed in accordance with requirements of their agreements. Any modifications to the capital improvement requirements require Department approval. If a concessionaire fails to perform required improvements, the Department may issue a "notice-to-cure," requiring that the concessionaire comply with the provisions of its agreement. If a concessionaire does not comply, the Department may terminate the agreement. After the Department determines that a concessionaire has completed the required improvements, the Department issues a certificate-of-completion to the concessionaire. Most agreements include a provision that requires concessionaires who complete—based on Department approval—capital improvements at a cost lower than the amount specified in their agreements, to remit the difference to the Department as additional fees.

**Audit Findings and Conclusions**

The Department does not effectively monitor concessionaires to ensure that they comply with the capital improvement provisions of their agreements. As a result, capital improvements totaling nearly \$10 million were not completed at 37 of the 58 concessions we visited. Moreover, the failure to undertake capital improvements resulted in a loss to the City of at least \$290,000 in concessionaire fees from improvements that would have generated revenue. In addition, 10 of the 37 concessionaires who have not completed their capital improvements claimed that the Department had authorized them to modify or cancel improvements specified in their agreements. However, neither the concessionaire nor the Department could provide

evidence that such changes were requested by the concessionaires and formally approved by the Department.

Based on our observations, we believe that capital improvements were completed at 18 of the 58 facilities visited. However, the Department has certified that capital improvements at only one of these facilities were complete. As a result, 16 of the remaining concessionaires were not required to submit final drawings, and 13 were not required to provide the Department a certified statement of actual construction costs accompanied by supporting documents and to remit moneys to the City if improvements cost less than the amount stipulated in their agreements.

Moreover, Department files did not indicate whether six concessionaires were assessed liquidated damages when capital improvements were not completed on time as required by the agreements. The audit also noted that although the Department receives invoices and canceled checks from concessionaires, in order to substantiate capital improvement work performed, it does not appear that the Department reviews the documentation submitted. Finally, we found poor conditions at 12 of the concessions that require correction.

### **Audit Recommendations**

This report makes a total of nine recommendations. The major recommendations are as follows:

The Department should:

- Establish a project management system to monitor the progress of concessionaires in completing required capital improvements.
- Issue notices-to-cure to concessionaires who have not completed the capital improvements required by their agreements.
- Ensure that the City receives compensation equivalent to the value of the capital improvements it is forgoing before it approves any modifications to concession agreements. In that regard, the Department should ensure that modifications are documented with formal agreements.
- Issue certificates-of-completion to those concessionaires who have completed their capital improvements.
- Assess liquidated damages when concessionaires fail to complete capital improvements in accordance with their agreements.
- Ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed.

## INTRODUCTION

### Background

The Department of Parks and Recreation (Department) operates a municipal park system that covers more than 28,000 acres of parkland and includes playgrounds, ball playing fields, tennis courts, swimming pools, and beaches. In addition, the Department oversees various City concessions for ice rinks, marinas, golf courses, restaurants, etc.<sup>1</sup> Under the terms of their agreements with the Department, concessionaires are, in many instances, required to make and pay for specific capital improvements to the facilities they operate. The Department defines a capital improvement as “all construction, reconstruction or renovation of the Licensed Premises.” According to New York State Tax Law, a capital improvement is “an addition or alteration to real property that substantially adds to the value of the real property.” In Fiscal Year 2003, the Department had agreements with 91 concessionaires in which capital improvements were required.

The Department’s Revenue Division (Division) is responsible for determining the types of capital improvements and the amounts required to be spent; preparing and soliciting requests-for-proposals from prospective concessionaires; and awarding and administering concession agreements. Some agreements that contain capital improvement requirements considered to be “minor” may not indicate a specific dollar amount to be spent. The Division is also responsible for monitoring concessionaires to ensure that capital improvements are completed in accordance with requirements of their agreements. The Division’s architect reviews plans and specifications (when required) for capital improvements, conducts periodic visits to concession facilities, and prepares progress reports. In addition, the architect determines whether invoices and other documentation submitted by concessionaires represent actual work completed at the facilities. The Department also has a Capital Projects Division consisting of engineers and architects who, at the request of the Division, reviews plans or provides other technical assistance on capital improvements.

Any modifications to the capital improvement requirements of concession agreements require the approval of the Department’s Assistant Commissioner for Revenue. If a concessionaire fails to perform required capital improvements, the Department may issue a “notice-to-cure,” requiring that the concessionaire comply with the provisions of its agreement. If a concessionaire does not comply, the Department may terminate the agreement. Most agreements require that concessionaires notify the Department when capital improvements are substantially complete. After the Department determines that a concessionaire has completed the required capital improvements, the Department issues a certificate-of-completion to the concessionaire. Many agreements include a provision that requires concessionaires who complete capital improvements—based on Department approval—at a cost lower than the

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<sup>1</sup>The Department must obtain approval for its concessions from the City’s Franchise and Concession Review Committee, whose role according to the City Charter is to: “adopt rules establishing procedures for granting concessions through public bidding...; review and approve the granting of concessions that are proposed to be granted...; and determine whether each franchise agreement proposed by a city agency is consistent with the request for proposal or other solicitation...”

amount specified in their agreements, to remit the difference to the Department as additional fees.

### **Objective**

The audit's objectives were: to determine whether the Department effectively monitors concessionaires to ensure that they comply with the capital improvement provisions of their agreements, and to determine whether certain concessionaires have made capital improvements as required by the concession agreements and, when required, have remitted payment to the City.

### **Scope and Methodology**

The scope of this audit covered concession agreements that required capital improvements in effect during Fiscal Year 2003. Of 91 agreements with capital improvement requirements, seven were excluded because prior Comptroller's Office audits confirmed that the concessionaires had completed all required improvements. Accordingly, our review covered 84 concession agreements: 46 containing capital improvements valued at more than \$100,000, nine containing capital improvements valued at less than \$100,000, and 29 containing capital improvement requirements with unspecified amounts to be spent.

For each of the 84 agreements, we reviewed scopes of work, the dollar amounts to be spent, and the time frame to complete the work. We inspected the facilities of 58 concessions consisting of the 46 requiring capital improvements valued at more than \$100,000 each, and 12 of the 29 concessions requiring capital improvements without specific dollar amounts to be spent. The 12 concessions were selected based on our estimate that costs of the required improvements exceeded \$100,000. (See Appendix II for a list of the 58 concessions inspected.) We conducted field inspections of the concession capital improvements from March 19, 2003, to April 29, 2003. Our inspections were limited to visual observations of completed work because we were unable to inspect underground, in-wall, or other construction work that was covered by finishing materials. Our observations were limited to work that should have already been completed by March 2003. We determined whether work was performed in accordance with requirements of the agreement, whether the quality of the work was satisfactory, and whether projects were completed on schedule. We also inspected the general condition of the facilities. Using cost information from construction industry sources and manufacturers, we calculated the value of the capital improvements not yet completed.

For a random sample of 20 of 55 concession agreements that had specified dollar amounts for the required capital improvements, we reviewed invoices, receipts, and other supporting documentation submitted by the concessionaires to the Department. (See Appendix III for a list of the 20 agreements.)

We contacted both the Department of Buildings and the New York City Arts Commission to determine whether concessionaires had obtained appropriate building permits and approvals prior to beginning capital improvements.

Finally, we reviewed various Department records, including requests-for-proposals, status reports, design documents, and other related documentation, to evaluate the Department's efforts in monitoring concessionaires.

Because each concession is independent and has different operational needs and capital improvement requirements, the field observations and invoice review results cannot be projected to all concessions. However, the results are generally indicative of whether the Department is adequately monitoring its concessionaires to ensure that they comply with their capital improvement requirements.

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.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials and an exit conference was held on June 17, 2003. Department officials refused to discuss the audit findings and recommendations at the exit conference. Therefore, no changes were made to the preliminary draft of this report. On June 18, 2003, we submitted a draft report to Department officials with a request for comments.

We received written comments from the Department on July 2, 2003. In their response, Department officials strongly disagreed with the report's findings. Specifically, Department officials stated that "the audit report failed to accurately represent the facts and, as a result, is misleading and flawed." Also, according to the response, "the Report contains numerous inaccuracies, omissions, and other serious errors . . ."

The Department's specific comments and our rebuttals are contained in the relevant sections of this report. However, the nature of the Department's response calls for the following general comments.

The Department's response attempted to obfuscate the issues raised in this report by: providing unrelated documentation; focusing on dollars spent rather than on required contractual improvements; including concessions not cited in the report; including misleading photographs; submitting information that contradicts information in its files; ignoring the conditions cited while pointing to improvements not cited in the report; using irrelevant information from prior Comptroller's Office audits; and, claiming documentation was provided when in fact it was not.

In addition, much of the Department's response was predicated on information requested and received from the individual concessions after the Department received the preliminary draft report. The fact that the Department had to obtain information from concessionaires to support its position further substantiates the report's primary finding that the Department does not have an adequate project management system in place to effectively monitor its concessionaires. If such a system were in place, the Department would have had various documents in its

possession, such as inspection reports, progress schedules, and financial documents clearly showing the status of each capital improvement item.

The full text of the Department's response is included as an addendum to this report.

## **FINDINGS AND RECOMMENDATIONS**

The Department does not effectively monitor concessionaires to ensure that they comply with the capital improvement provisions of their agreements. As a result, capital improvements totaling nearly \$10 million were not completed at 37 of the 58 concessions we visited. Moreover, the failure to undertake capital improvements resulted in a loss to the City of at least \$290,000 in concessionaire fees from improvements that would have generated revenue. In addition, 10 of the 37 concessionaires who have not completed their capital improvements claimed that the Department had authorized them to modify or cancel improvements specified in their agreements. However, neither the concessionaire nor the Department could provide evidence that such changes were requested by the concessionaires and formally approved by the Department.

Based on our observations, we believe that capital improvements were completed at 18 of the 58 facilities visited. However, the Department has certified that capital improvements at only one of these facilities were complete. As a result, 16 of the remaining concessionaires were not required to submit final drawings, and 13 were not required to provide the Department a certified statement of actual construction costs accompanied by supporting documents, and to remit moneys to the City if improvements cost less than the amounts stipulated in their agreements.

Moreover, Department files did not indicate whether six concessionaires were assessed liquidated damages when capital improvements were not completed on time, as required by the agreements. The audit also noted that although the Department receives invoices and canceled checks from concessionaires, in order to substantiate capital improvement work performed, it does not appear that the Department reviews the documentation submitted. Finally, we found poor conditions at 12 of the concessions that require correction.

Table I on page 7 lists the 58 concessions visited. The Table also includes the following information: capital improvements not completed; poor conditions noted; final approved plans required; certified statement of cost required; liquidated damages provision.

**Table I**  
**58 Concessions Visited and Status of Capital Improvements,**  
**Conditions, and Key Requirements of Agreements**

Licensee	Capital Improvements Not Completed	Poor Conditions Noted	Final Approved Plans Required	Certified Statement of Cost Required	Liquidated Damages Provision
Pars & Strikes	X		X	X	X
S I Hockey, Inc.	X		X	X	X
M&T Marketing	X				
Randall's Island Golf			X	X	X
Spring Rock Golf			X	X	X
PBE Golf	X		X	X	
American Golf-Dyker Beach Golf Mgt. Corp.	X		X		
American Golf-Clearview	X		X		
Forest Golf.	X		X	X	X
Global Golf - Kissena.	**		X	X	X
Leisure Management	X		X	X	X
Flushing Golf			X	X	X
American Golf-South Shore	X		X		
American Golf-La Tourette	X		X		
American Golf-Silver Lake		X	X		
American Golf-Pelham Bay	X		X		
First Tee New York	X		X		
American Golf-Van Cortlandt	X		X		
Mobil Oil*	X	X	X	X	X
City Ice Sports.			X	X	
Wollman Rink	X	X	X	X	
City Ice Sports			X	X	X
Prospect Park Tennis	X	X	X	X	X
Oceanview Tennis			X	X	X
New York Tennis	X		X	X	
York Avenue Tennis			X	X	X
Hemco-Alley Pond	X		X	X	
Cunningham Tennis		X	X	X	X
Mullaly Park Tennis	X		X	X	X
Donato DiMeglio			X	X	
Dyckman Marine Group	X	X	X	X	X
Lemon Creek Mariners	**		X	X	
Cyclone Coasters			X		X
Shea Stadium Parking.	X				
Central Park Boathouse	X		X		X
Merissa Restaurant	X		X	X	X
The Crystal Ball Group	X	X	X	X	
Food Craft	**		X	X	X
Toto's South Shore			X	X	X
Harbor Lights	X		X	X	
SBR & C .	X		X	X	
Lake Restaurant	X	X	X	X	
Ferrara Central Park			X	X	
Bella Vista Café	X		X	X	
Catango	X	X	X	X	X
Barrier Oil			X	X	X
Prospect Park Alliance					
City Ice Sports			X	X	
Hudson River Yacht	X		X	X	
Midget Squadron Yacht	X		X	X	
Diamond Point Yacht	X		X	X	
Sebago Canoe Club	X		X	X	
Paedergat Squadron	X		X	X	
Peter Kiefer	X	X			
TAC Catering	X		X	X	
McDonald's			X	X	
Shung Chin Ghim	X				
<b>GRAND TOTAL</b>	<b>37</b>	<b>12*</b>	<b>53</b>	<b>42</b>	<b>23</b>

\* Poor Conditions were noted at three of six Mobil Oil facilities. \*\* Capital improvements completion not yet required.

**Department Comment:** “Parks strongly disagrees . . . that ‘[t]he Department does not effectively monitor concessions to ensure that they comply with the capital improvements provisions of their agreements.’ In fact, Parks effectively monitors the capital improvements required by its concessionaires as evidenced by field verification, document review policies, and policy procedures. Almost all concessions with capital requirements in their contracts exceed the amount stipulated in the contract, many at dollar values significantly higher than the dollar amount stated in the contract . . .

“In addition, the Department questions the \$10 million in capital improvements that were not completed and the projected amount of lost concession fees. With regard to the improvements not completed, the Department stated that “it is hard to understand how the auditors even came up with such a dollar amount since concessionaires have actually spent **\$15 million in excess** [emphasis in original] of their required capital commitment.”

**Auditor’s Comment:** Although the Department stated that it effectively monitors capital improvements it did not provide any documentation to support its claim. Such documentation would include formal policies and procedures for monitoring capital improvements, records showing that concessions were routinely inspected, and documents used to track the status of each concessionaire’s capital improvements. As stated earlier, our calculation of the \$10 million in incomplete improvements was based on amounts and specified projects contained in the concession agreements as well as cost information from construction industry sources and manufacturers for the types of improvements required by the agreements that were not completed at the time of our inspections.

### **The Department Does Not Effectively Monitor Capital Improvement Work**

The Department does not have an adequate project management system in place to effectively monitor whether its concessionaires complete the capital improvements required by their agreements. An effective project management system would include:

- Tracking the progress of capital improvements against start and completion dates prescribed in the agreements;
- Conducting routine inspections of capital improvement work performed;
- Reviewing invoices, canceled checks, and other related documentation submitted by concessionaires;
- Obtaining and reviewing building plans and specifications that have been approved by the Department of Buildings;
- Updating tracking documents to reflect any changes in capital improvement requirements.

However, interviews with Department staff and a review of records indicates that the Department takes none of these steps to ensure that capital improvements are completed in accordance with the concession agreements. As a result, as discussed in the following section, many concessionaires have not completed the required capital improvements.

**Department Comment:** “The Report lists five bullet points, which it cites as steps necessary for an ‘effective project management system.’ The Report then goes on to state, ‘. . . the Department takes none of these steps to ensure that capital improvements are completed in accordance with the concession agreement.’ This statement is not reflective of Parks’ monitoring practices. In fact, Parks routinely tracks the progress of capital improvements, conducts routine inspections of the capital work performed, obtains and reviews building plans and specifications, and updates documents to reflect any changes in capital improvement requirements.”

**Auditor Comment:** Based on the documentation provided, we question the Department’s assertion that capital improvements are tracked and that work performed by concessionaires is routinely inspected. The only documentation provided by the Department was monthly progress reports (see sample report on page 63 in Appendix VIII), which contain limited information about the status of capital improvements. In fact, our review of those reports for the period April 2002 through March 2003 disclosed that 19 of 37 projects we cited were not even mentioned in the reports. Those reports indicated that inspections were conducted for 15 of the remaining 18 projects, and that the 15 sites were inspected by the Department just one to three times during the 12-month period reviewed. We do not consider this number of inspections to be, as the Department maintains, “routine inspections of the capital work performed.”

### **Recommendation**

1. The Department should establish a project management system to monitor the progress of concessionaires in completing required capital improvements. In that regard, the Department should:
  - track the progress of capital improvements against start and completion dates prescribed in the agreements;
  - routinely inspect capital improvement work performed;
  - review invoices, canceled checks, and other related documentation submitted by concessionaires;
  - obtain and review building plans and specifications.
  - update tracking documents to reflect changes in capital improvement requirements.

**Department Response:** “Parks monitors capital improvements utilizing Management Personnel, Architects, Financial Personnel and Project Managers to ensure compliance

with all capital requirements. Parks’ management system tracks the progress and completion of capital work through a combination of field verification and document review. The Revenue Division’s Architect (RDA) closely monitors construction time lines. However, the Report interpreted customary delays in the complex design and construction process to mean that Parks was not adequately monitoring its contracts, which is not the case. The RDA routinely inspects and tracks all capital work performed. In consultation with the RDA, the Deputy Director of the Revenue Division reviews all documentation submitted by concessionaires to verify capital expenditures. The RDA then obtains and reviews all building plans and specifications.”

**Auditor Comment:** As stated earlier, the Department did not provide any evidence that projects are routinely inspected and tracked to ensure that concessionaires are fulfilling their contractual obligations.

**Capital Improvements Not Completed**

We found that 37 of the 58 concessions that we visited did not complete approximately \$10 million of capital improvements.<sup>2</sup> (See Appendix IV and V for a list of those concessionaires who have not completed the required capital improvements.) We should note that based on the concessionaires’ revenue estimates that were included in their proposals, improvements to five of these concessions, if completed, would have resulted in at least \$290,000 in additional fees to the City (as of May 1, 2003) as well as \$155,586 for the coming year as shown in Table II.<sup>3</sup>

**Table II**  
Concessions Where Completed Capital Improvements  
Would Have Resulted In Additional Fees

<b>Facility</b>	<b>Fees Forgone</b>	<b>Fees—Coming Year</b>
<b>Fresh Kills Batting Range</b>	<b>\$18,362</b>	<b>\$6,800</b>
<b>Schmidts Lane Recreational</b>	<b>117,380</b>	<b>34,000</b>
<b>Wolfe’s Pond Park Restaurant</b>	<b>68,358</b>	<b>22,786</b>
<b>FDR South Beach Restaurant</b>	<b>60,000</b>	<b>60,000</b>
<b>Hudson River Café, W. 70<sup>th</sup> St.</b>	<b>26,000</b>	<b>32,000</b>
<b>Totals</b>	<b>\$290,100</b>	<b>\$155,586</b>

**Department Response:** “Parks disagrees with these [the Table’s] conclusions . . . . The Report included no methodology to support how the amounts were calculated. In any

<sup>2</sup>Capital improvements for three concessions were not scheduled for completion at the time of our visits.

<sup>3</sup>The improvements to the five concessions included a laser tag arena, a go-kart track, two restaurants and a snack bar, which would have generated additional revenue of about \$5.4 million for the concessionaires and about \$290,000 in additional fees to the City.

event, Parks questions these numbers based on our analysis of each concession . . . which is summarized in Parks' Response to Table II."

**Auditor Comment:** We do not understand the Department's confusion about the methodology used to arrive at the data presented in Table II. It is clearly stated above that the amounts in Table II are based on the concessionaires' own revenue estimates. These amounts were included in the concessionaires' submissions to the Department and were presumably used in its determination of the best proposal for each concession granted. If, as the Department states, these estimates are unrealistically high, the fault lies with the concessionaires and with the Department's acceptance of the proposals it received.

For example, the Crystal Ball Group was required to construct a new roof addition and elevators at the Terrace on the Park catering facility in Queens. This improvement, which was included in the contract agreement and which the concessionaire agreed to complete by May 2000, had an estimated cost of at least \$2.3 million. However, as of April 3, 2003, this improvement had not started.

**Department Response:** "The Report states that '. . . the Crystal Ball Group was required to construct a new roof addition and elevators at Terrace on the Park catering facility in Queens . . . which the concessionaire agreed to complete by May 2000 . . . .' This date is not mentioned anywhere in the Crystal Ball Group's license agreement with Parks. In fact, the Crystal Ball Group's license went into effect on April 1, 2000. The Crystal Ball Group is in the 3<sup>rd</sup> year of a 20-year license term, and has already spent \$5 million of their \$8 million capital commitment, i.e., in the first 15% of their license term they have spent over 60% of their required capital expenditures."

**Auditor Comment:** The Department's response to this issue is at the very least disingenuous and defies logic, as follows:

- The license agreement was dated April 24, 1998 and indicated that the term of the agreement was from January 1, 2000 to December 31, 2019. The agreement stated that "Prior to the beginning of the term, however, the licensee is granted a right of entry onto the Licensed Premises for purposes of performing capital work thereon...such Construction Period shall begin on July 1, 1998 and end on December 31, 1999. A modification to the agreement, also dated April 24, 1998 and accepted by Crystal Ball on April 27, 1998, modified the Construction Period to be from June 30, 1998 to March 31, 2000. (See modification on page 72 in Appendix VIII.) This time frame is consistent with Crystal Ball's January 6, 1997 proposal for the renovation of the facility, which indicated that construction would be completed by May 15, 2000.
- During the construction period Crystal Ball was required to pay the Department only nine percent of its gross receipts, with no required minimum, as opposed to a \$2 million minimum yearly payment or 20 percent of gross receipts beginning April 1, 2000, when the construction period ended. Therefore, Crystal Ball paid the Department \$751,476 in fees during the construction period rather than at least

\$3,750,000 that would have been due. Clearly, the Department considered that construction would take place at the beginning of the agreement, not over its 20-year life as stated in its response.

- According to the Department, “the Crystal Ball Group is in the 3<sup>rd</sup> year of a 20-year license term, and has already spent \$5 million of their \$8 million capital commitment.” However, our review of the documentation submitted to the Department by Crystal Ball with regard to the capital improvements revealed that only \$2.559 million of the \$5,346,961 claimed was actually capital improvements paid for by Crystal Ball. The remainder claimed was unallowable because of the nature of the expense or was for items not paid for by Crystal Ball and which could not be verified as having been spent for the facility. For example, Crystal Ball included in its reported capital improvements \$824,039 in purchases of expendable equipment such as draperies, tables, chairs, and outdoor patio furniture. These items are not “capital” in nature and are not included in the approved list of capital improvements included in the agreement. The types of capital improvements included in the agreement included: carpentry, plumbing, asbestos removal, demolition, electrical and lighting, flooring, etc. Also, Crystal Ball submitted \$1,735,047 in canceled checks from the Marangos Construction Corporation. The expenses paid for by these checks could not be directly attributed to capital improvement work for the facility. Accordingly, we calculated that Crystal Ball has expended only \$2,787,874.05 on capital improvements.

As another example, the Prospect Park Tennis Group Inc., was required to construct a state-of-the-art clubhouse on the premises. This improvement, which we estimated would cost more than \$400,000, was supposed to be complete by December 31, 1998. However, as of April 1, 2003, this work had not started. (See photograph #9 in Appendix VI.)

**Department Response:** “After a series of delays in the design approval process, Parks sought to terminate the concessionaire. A judicial stay preventing this termination was still in effect at the time of the audit. . . . Eventually, Parks was successful in terminating this license agreement on May 12, 2003.”

**Auditor Comment:** To its credit, the Department made numerous attempts to ensure that the concessionaire construct the clubhouse required by its contract. However, these efforts did not seriously begin until we cited this issue in an audit (Audit #FL01-118A) on April 27, 2001. As a result of the audit, the Department sent a notice-to-cure and a subsequent notice-of-termination (which was provisionally rescinded when a new construction schedule was received) to the concessionaire. On November 6, 2002, the Department again sent a notice-of-termination to the concessionaire mainly because clubhouse construction was not started. According to the Department, a judicial stay prevented the termination. If the story ended here we would believe that in this instance the Department made reasonable efforts to ensure the concessionaire constructed the clubhouse. However, on January 30, 2003, despite the fact it was trying to terminate this concession agreement, the Department inexplicably requested approval from the City’s Franchise and Concession Review Committee to extend this concessionaire’s agreement for three years. The Department eventually withdrew its request, based in part on strong

public opposition, and the concerns raised by this office. Given the past performance of this concessionaire we find it troubling that the extension request was even made.

As a third example, Staten Island Hockey Inc., was required to construct a go-cart track on the premises. This improvement, which had an estimated cost of \$100,000, was supposed to be completed by November 23, 1999. However, as of April 4, 2003, this improvement had not started.

**Department Response:** “As noted in a previous audit report, Staten Island Hockey Inc. has exceeded their minimum capital requirement. Nonetheless, they have commenced the construction of the ‘go-kart’ track and we anticipate that the track will be completed by fall 2003.”

**Auditor Comment:** Again the Department is somewhat disingenuous in its response. The Department of Building did not issue a building permit for construction of the go-cart track until July 16, 2003 — six weeks after we sent the preliminary draft of the present audit to the Department. The Department fails to mention that the previous audit took great exception to the fact that Staten Island Hockey was given a certificate-of-completion despite the fact that the go-cart track was not constructed. The audit report stated, “We are perplexed as to why Parks issued Staten Island Hockey a Certificate of Completion that stated ‘the required minimum capital expenditure of \$438,119, as stipulated in the contract agreement, has been met and the specified work has been completed satisfactorily’ even though this major undertaking had not even started.” In addition, the Department fails to note that despite its belief that Staten Island Hockey had exceeded its capital improvement expenditures, the Department issued a Notice to Cure, as a result of the audit, requiring that the go-cart track or other revenue-generating improvement (approved by the Department) be completed. The Department should take similar actions with regard to all concessions cited in the report that have not completed their individual capital improvement requirements, yet have spent more than the total minimum required.

As a final example, SBR&C Corp. was required to build a restaurant-cafe on the boardwalk in South Beach, Staten Island. This project had an estimated cost of more than \$1.1 million and, according to the agreement, was to be completed by April 1, 2002. However, as of April 2, 2003, construction of the facility had not started. (See photograph #s 18 and 19 in Appendix VI.)

**Department Response:** “Due to structural problems with the boardwalk pilings, which caused delays in the design process, Parks modified the license to have the construction completed by May 1, 2004. The Report completely ignored this documentation.”

**Auditor Comment:** We acknowledge that there may have been extenuating circumstances such as structural problems, that delayed the design process. Therefore, we agree that this concession should not have been cited in our finding pertaining to forgone fees. In fact, had the Department agreed to discuss our finding with us at the exit conference, this matter could have been resolved and the report would have been adjusted at that time.

Insofar as the license modification is concerned, based on a March 11, 2003 letter from the president of SBR&C Corp., the Department modified the SBR&C Corp. agreement to require completion of construction of the restaurant no later than May 1, 2004. According to the modification, SBR&C Corp. indicated that it needed “to redesign the restaurant facility due to structural issues.” We should note that the Department did not provide this modification during the course of the audit. Thus, we consider this another example of the Department’s failure to adequately document the way it monitors its concessionaires.

The Department’s response pertaining to other concessionaires who are cited in Appendices IV and V are discussed in Appendix I of this report.

### **Recommendation**

2. The Department should issue notices-to-cure to concessionaires who have not completed the capital improvements required by their agreements. If concessionaires do not comply, the Department should take appropriate action.

**Department Response:** “It is standard practice for Parks to issue notices-to-cure to correct poor conditions and to resolve any contract deficiencies, including capital improvement non-compliance. If any licensee fails to remedy a contract deficiency, additional action is taken including, if necessary, the termination of the contract.”

**Auditor Comment:** Based on our review of the Department’s files, notices-to-cure pertaining to incomplete capital improvements were issued to only nine of the 37 concessionaires cited in this report. In total, 22 notices were issued to these concessionaires—13 for improvements that were not completed and nine because concessionaires failed to provide architectural drawings, work schedules, or documentation of expenses. We note, however, that eight of the 13 notices that the Department issued for incomplete capital improvements were issued only after an audit by the Comptroller’s Office brought the deficiencies to the attention of the Department. Moreover, the inspections conducted during this audit revealed that concessionaires complied with only two of the 13 notices. Therefore, we question the Department’s statement that notices are routinely sent and that other action is taken for capital improvement noncompliance.

### **Modifications to Capital Improvement Requirements**

Ten of the 37 concessionaires who have not completed their capital improvements claimed that the Department had authorized them to modify or cancel the required capital improvements.<sup>4</sup> However, neither the concessionaire nor the Department could provide evidence

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<sup>4</sup>The concessionaires are Leisure Management Corporation, Hemco Inc., The Crystal Ball Group, Pars and Strikes, First Tee New York, Inc. and American Golf Corporation, which has five separate concession agreements for South Shore, LaTourette, Van Cortlandt, Pehlam Bay/Split Rock, and Dycker Beach golf courses.

that such changes were requested by the concessionaires and formally approved by the Department.

For example, the agreement with Pars and Strikes requires the construction of a laser tag arena at the Richmond Avenue Amusement Center in Staten Island. The laser tag arena was scheduled for completion by March 1, 2000. However, on March 19, 2003, we noted that the concessionaire had not started construction of the arena. According to the concessionaire, given the high estimated costs of building the laser tag facility, the concessionaire proposed an alternate, less expensive improvement—a moveable amusement ride. The concessionaire claimed that the Department agreed to this arrangement, but neither the concessionaire nor the Department provided us documentation of this agreement.

In another example, the agreement with American Golf Corporation requires that this concessionaire construct a driving range at the Pelham Bay/Split Rock golf course in the Bronx. This requirement was included in the concessionaire’s original agreement that expired in 1994 as well as in subsequent extensions of the agreement. Nevertheless, on March 28, 2003, we noted that the concessionaire had not started construction of the driving range. The concessionaire claimed that the Department had authorized it to cancel this improvement. However, neither the concessionaire nor the Department provided us documentation to substantiate this agreement.

**Department Response:** “American Golf’s license agreement gave them the right to build a driving range at the Pelham/Split Rock golf course; however, it was not a requirement. Parks did not approve the building of the driving range because of community opposition; however, additional work was completed that exceeded the capital commitment by **over \$1 million**. The license agreement is almost 20 years old; therefore, all paperwork pertaining to this concession could not be accessed. However, even in the cases where Parks provided the paperwork, such as a letter from Community Board #10 dated March 20, 1991 stating their opposition to a driving range at Dyker Beach golf course, the Report did not acknowledge this.” [Emphasis in original]

**Auditor Comment:** We do not dispute the Department’s assertion that Community Board #10 opposed the construction of the driving range. However, contrary to the Department’s response, American Golf’s contract required that a minimum of \$50,000 and a maximum of \$125,000 be spent on a driving range for Pelham Bay/Split Rock. Therefore, if as the licensee stated, the Department agreed to substitute the driving range with a different capital improvement item, such changes should have been documented in a modification to the agreement. We should note that the Department provided no documentation to support its assertion that the concessionaire exceeded its capital improvement commitment by over \$1 million.

If the Department has, as claimed by these concessionaires, changed the capital improvements required in the agreements, we believe that the integrity of the awards for these concessions may have been compromised. The other bidders for these concessions might have outbid the winning bidder if they knew that they would not be held to the capital improvement provisions of the agreements.

**Department Response:** “Awards for concessions license are not ‘bid’ on a required list of capital improvements. Although the Report uses the term ‘bidders,’ it must be pointed out that awards for concessions which require significant capital investment are done through Requests for Proposals (RFPs); therefore, these concessions are not awarded based on the highest fee offer (as in a ‘bid’) but are evaluated based on a number of criteria, including proposed capital investment and designs. In our RFPs, Parks outlines the minimum capital improvement required. However, proposers are encouraged to offer additional capital items in their proposals, and proposers often do. As stated in our RFPs, Parks’ acceptance of a proposal does not imply that it accepts all aspects of that proposal. Parks retains the right to substitute capital components based on the best interest of the concession (which is *de facto* in the best interest of the City). It is hard to understand how seeking the best designs and most appropriate capital improvements ‘taints the integrity of the award process.’”

**Auditor Comment:** It appears from the Department’s response that when it receives proposals in response to its RFPs, it may substitute capital improvements for the ones proposed. We have no problem with this practice. We do, however, have a problem if the Department changes the requirements after the contract is approved, if it does not modify the agreement to reflect the changes, and if the change is not in the best interest of the City. As previously stated, Pars and Strikes claimed that the Department allowed it to substitute a moveable ride for a laser tag facility that was included in the licensee’s proposal and in the approved agreement. The agreement was not modified to reflect the change. Moreover, since the laser tag facility would have been attached to the licensed premises, it would have become the property of the City at the expiration of the agreement, whereas the moveable ride would likely remain the property of the licensee.

Additionally, informal verbal agreements between Parks staff and concessionaires relieving concessionaires of high cost obligations to the City leaves the system susceptible to abuse and fraud.

**Department Response:** “Parks **never** relieves concessionaires of high cost obligations and Parks has **never** reduced the amount of capital expenditures required. As mentioned above, depending on the circumstance, we allow concessionaires to change a capital component. The fact that every one of the concessionaires cited in this Report has spent **considerably more** than their contractual obligation **refutes this allegation.**” [Emphases in original]

**Auditor Comment:** The fact that Department records sometimes indicate that the concessionaires have spent more than their total dollar requirement is irrelevant to this finding. Spending more on some required improvements does not relieve the concessionaires of their obligations to complete all the improvements specified in their concession agreements. In fact, most agreements state that the specified amount represents only the minimum amount to be expended by the concessionaires. In addition, our review revealed that the Department does not review the documentation it receives from concessionaires to ensure that the claimed expenditures were for items included in the concessionaires’ agreements. Therefore, the Department does not ensure that the

expenditures were truly capital in nature and that the expenditures were actually for the facility. Again, the fact that such modifications are not memorialized in license agreements represents a breach of proper internal controls.

### **Recommendations**

The Department should ensure that:

3. The City receives compensation (in the form of additional fees or alternate improvements) equivalent to the value of the capital improvements it is forgoing before it approves any modifications.
4. Modifications to capital improvement requirements are documented with formal agreements between the Department and the concessionaires.

**Department Response to Recommendations 3 and 4:** “Parks does not relieve any concessionaire of its capital cost obligations. In some instances, prudent business decisions are made to adjust the type of work completed, or, if insufficient investment was made, the concessionaire will be asked to reimburse the City in cash. Furthermore, the City does require and receive compensation (in the form of additional fees or alternate improvements) equivalent to the value of required capital improvements as a condition of any approved modification.

“Parks agrees that all modifications should be in writing and we will continue to comply with this practice.”

**Auditor Comment:** Although the Department claims that it complies with our recommendation concerning written contract amendments, it has not provided any documentation to support its position. As mentioned earlier, 10 of the 37 concessionaires who had not completed their capital improvements claimed that the Department had authorized them to modify or cancel the required capital improvements. However, to date, the Department has not provided evidence that these contracts were formally modified.

### **Certificates-of-Completion Not Issued**

Contract agreements generally require that a “Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described . . . including any amount needed above any estimated cost shown. In the event that Licensee performs all Capital Improvements for less than the amount listed. . . any excess monies shall be remitted to the city as additional license fees within thirty days following the Commissioner’s determination of final completion for the last improvement to be completed.” In addition, certain agreements require upon certification by Parks of final completion that, “Licensee shall provide Parks with one complete set of final approved plans.” Based on our observations, we believe that concessionaires of 18 of the 58 facilities visited completed the required capital improvements. However, the Department has certified that capital improvements at only one of

these facilities were complete.<sup>5</sup> As a result, 16 of the remaining concessionaires were not required to submit final drawings, and 13 were not required to provide the Department a certified statement of actual construction costs accompanied by supporting documents, and to remit moneys to the City if improvements cost less than the amounts stipulated in their agreements.<sup>6</sup>

In addition, according to their agreements, 13 concessionaires were to notify the Department when capital improvements were substantially complete so that a joint “punch-list” of items that required correction could be agreed to and corrected. However, we found no evidence in the Department’s files of adherence to this provision.

### **Recommendation**

5. The Department should issue certificates-of-completion to those concessionaires who have completed their capital improvements. After certificates are issued, the Department should obtain drawings, certified cost statements, and, if appropriate, collect moneys due when improvements cost less than the amounts stipulated in the agreements.

***Department Response:*** “It is the practice of the RDA to issue certificates-of-completion to concessionaires who have completed their capital improvements and have submitted plans and cost documents. Furthermore, as stated under recommendations 3 and 4 above, if insufficient investment has been made, the concessionaire will be asked to reimburse the City in cash.”

***Auditor Comment:*** The process described in the Department’s response contradicts the requirements stated in the concessionaires’ agreements. The agreements require that the Department issue certificates-of-completion to concessionaires **prior** to receiving drawings and cost statements from them. In any case, we found that despite completing their capital improvements, 16 concessionaires never received certificates-of-completion from the Department. Consequently, these concessionaires were not required to submit final drawings, and 13 were not required to provide the Department with a certified statement of actual construction costs accompanied by supporting documents, as required by their agreements. Therefore, it would be impossible for the Department to determine whether the improvements cost less than the amounts stipulated in the agreements and whether any money was due to the City.

### **Liquidated Damages Not Assessed**

Contract agreements generally state that “in the event the Licensee fails to Finally Complete a particular improvement by the date specified . . . and provided no extension has been granted . . . Licensee may be required to pay the City liquidated damages . . . until the outstanding improvement is completed.” Department files did not indicate whether six concessionaires were

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<sup>5</sup>The project for which a Certificate of Completion was issued was the Flushing Meadows Golf Course Pitch and Putt.

<sup>6</sup>The contract for one of the remaining concessionaires did not require the submission of final drawings; the contract for four of the remaining concessionaires did not require submission of certified cost statements.

assessed liquidated damages as allowed for by contract agreements when their capital improvements were not completed on time.<sup>7</sup> We calculated that the Department could have assessed \$1,453,800 in liquidated damages, as shown in Table III, following.

**Table III**  
Schedule of Liquidated Damages Not  
Assessed by the Department

Concessionaire	Location	Damages Per Day	Scheduled Completion Date	No. of Days Late	Amount Not Assessed through May 19, 2003
Staten Island Hockey	Schmidts Lane Recreation Facility	\$200	11/23/99	1,272	\$254,400
Pars and Strikes	Richmond Avenue Amusement Center	\$500	03/01/00	1,174	\$587,000
Mullaly Park Tennis Group	Mullaly Tennis Center	\$100	12/31/98	1,599	\$159,900
Catango Corporation	Van Cortlandt Park Stables	\$100	06/30/97	2,148	\$214,800
Central Park Boathouse	Loeb Memorial Boathouse	\$100	04/01/01	778	\$77,800
Prospect Park Tennis Group	Prospect Park Indoor Tennis	\$100	12/31/98	1,599	\$159,900
<b>Total =</b>					<b>\$1,453,800</b>

The practice of Parks staff to routinely relieve concessionaires of the obligation to pay liquidated damages without any documentation to support their decision leaves the system susceptible to abuse and fraud.

**Department Response:** “The operative word here is ‘may’; Licensee **may** be required to pay . . . liquidated damages. . .” The ability to assess liquidated damages is included in Parks’ license agreements as a way of ensuring that the process of design approval and construction proceeds in a reasonable time. Liquidated damages are not meant to generate revenue to the City. All of the concessionaires cited in Table III (Schedule of Liquidated Damages Not Assessed by the Department) with the exception of the Prospect Park Tennis Group have well exceeded their capital commitment. The quality of these capital improvements was well worth the additional time spent on design approval and construction. Parks’ ability to attract qualified businesses would be seriously hampered if concessionaires who were proceeding in good faith with the required process were assessed punitive damages. [Emphasis in original]

“We do not agree that additional fees should be assessed to concessionaires who have spent much more than they are contractually required to. The allegation that Parks’ decision not to assess liquidated damages could leave system open to abuse and fraud is without merit.”

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<sup>7</sup>There were 23 concessionaire contracts that contained provisions for assessing liquidated damages. At the time of our visits, work at 11 of the 23 concessionaires was either completed or not yet scheduled to be completed. Of the remaining 11 concessionaires, we determined that the magnitude of non-compliance at the above noted six, warranted the imposition of liquidated damages.

**Auditor Comment:** We agree that the Department is not required to assess liquidated damages. However, when concessionaires fail to meet their obligations under their agreements and the City is at risk of losing revenue, it is incumbent upon the Department to assess liquidated damages in order to protect the City's interest, or document the reasons why such damages were not assessed. If the Department deems it appropriate to waive liquidated damages in certain circumstances, such decisions should be formally documented. Without such documentation, the Department's system is susceptible to fraud and abuse.

In addition, as stated previously, spending more on some improvements does not relieve the concessionaires of their responsibility for performing all required improvements, nor is it an excuse for the Department not to assess liquidated damages.

### **Recommendations**

The Department should:

6. Assess liquidated damages when concessionaires fail to complete capital improvements in accordance with their agreements.
7. Determine whether liquidated damages should be assessed for the six cases noted in this report.

**Department Response to Recommendations 6 and 7:** "A misleading comment by the auditors is their allegation that, "The practice of Parks' Staff to routinely relieve concessionaires of the obligation to pay liquidated damages without any documentation to support their decision, leaves the system susceptible to abuse and fraud." To intimate that \$1.5 million in liquidated damages should have been collected is completely without merit. As mentioned earlier in Parks' response, the assessment of liquidated damages is an option of Parks, not a requirement. It is not the purpose of the 'liquidated damages' provision to generate revenue for the City, but rather to ensure that the design approval and construction process moves forward in a reasonable time. To imply that because Parks has not assessed these damages the system is susceptible to abuse and fraud is completely without foundation. We are troubled by this implication and take exception to it."

**Auditor Comment:** We did not imply that the Department should collect liquidated damages to generate revenue. Rather, we are recommending that the Department enforce liquidated damage provisions to prompt concessionaires to meet their contractual obligations and to minimize the City's risk of losing revenue. Although we did not find evidence of fraud or abuse, it is critical that decisions by Department officials to relieve concessionaires of the obligation to pay liquidated damages be documented to protect the integrity of the system and to reduce the risk of fraud and abuse. Again, without such documentation the system is susceptible to fraud and abuse.

### **Inadequate Review of Supporting Documentation**

The Department receives invoices and canceled checks from concessionaires in order to substantiate capital improvement work performed. However, based on our review of the documentation in the files, it appears that the Department does not review the documentation submitted. Specifically, we noted that some files lacked critical information, such as invoices and canceled checks, that is required to determine whether capital improvement work was actually performed. Also, we found documentation in the files for items such as vacuum cleaners, office supplies, fuel oil, plants, and topsoil that were clearly not capital improvements as defined by the agreements.

### **Recommendation**

8. The Department should ensure that concessionaires submit complete documentation needed to determine whether claimed capital improvement work was actually performed. The Department should carefully review the documentation to ensure that claimed capital improvement work conforms to the requirements of concession agreements.

**Department Response:** “The Report states that based on the auditor’s review of the documentation in Parks’ files, ‘. . .it appears that the Department does not review the documentation submitted.’ As mentioned earlier in this response, all documentation is reviewed by the Revenue Division’s Deputy Director in consultation with the RDA before the concessionaire is granted credit for work performed. Also, all work is field verified by the RDA. Indeed, Parks already is performing as standard operating practices the functions stated in recommendation 8.”

**Auditor Comment:** The Department did not provide evidence that it reviewed, questioned and ultimately accepted the invoices and other documentation submitted by concessionaires to support claimed capital improvement work. Such documentation would include reconciliations between invoice items and specific improvements required by the agreements, signatures or initials of Department officials indicating what documentation was accepted, and notations on invoices being questioned or disallowed. Therefore, we reaffirm our recommendation.

### **Other Issues: Poor Conditions at Certain Concessions**

We found the following conditions at 12 concessions, some of which may pose a risk to the public:

- Missing and cracked exterior façade panels at Terrace on the Park in Queens (see photograph #1 in Appendix VII).

- Missing fire suppression system at the World’s Fair Marina (see photograph #2 in Appendix VII).
- Fire protection, alarm, and suppression systems not installed at the Wollman Rink in Manhattan.
- Missing firestopping material at Clove Lakes Café in Staten Island (see photograph #3 in Appendix VII).
- Missing protective netting at the Silver Lakes Golf Course in Staten Island.
- Cracks in and missing handrails on concrete ramp for the disabled at the Cunningham Tennis Club in Queens (see photograph #4 in Appendix VII).
- Inaccessible restroom at Prospect Park Tennis Center.
- Horse stalls in poor condition at Van Cortland Park Stables in the Bronx (see photograph #5 in Appendix VII).
- Deteriorated traffic ramps at the Mobil Oil Corporation Gas Station on the Grand Central Parkway (see photograph #s 6 and 7 in Appendix VII).
- Raised and uneven concrete slabs over the gas storage tanks at two Mobil Gas Stations on the Major Deegan Expressway in the Bronx (see photograph #8 in Appendix VII).
- Rotting piles and an unstable bulkhead at the Dyckman Street Marina in Manhattan (see photograph #9 in Appendix VII).

We should note that these conditions (with the exception of netting at Silver Lakes Golf Course) would have been addressed had the required capital improvement been completed.

**Department Response:** “Parks’ architect and engineers have reviewed all 12 listed conditions and the findings by these professionals are in direct contradiction to the Report. In no case was a condition found that poses a risk to the public. In fact, in every case the stated deficiency was erroneously reported, misrepresented or had been previously corrected. The Report further states that the alleged poor conditions ‘would have been addressed had the required capital improvement been completed.’ With the exception of the Prospect Park Tennis Group, whose license has been terminated, the concessionaires successfully completed the capital improvement requirement that relates to the alleged poor condition. **Please see Exhibit E for more information regarding Parks’ findings and response to these accusations.**” [Emphasis in original.]

With regard to the conditions cited at Silver Lake Golf Course, the Department stated, “All required protective netting has been installed and is in excellent condition as is the

entire facility. Classifying this concession as being in poor condition is baseless. The audit report is erroneous.”

**Auditor Comment:** We disagree. Conditions such as the absence of a fire protection system at an ice skating facility, missing firestopping material at a restaurant, and cracked, crumbling concrete and missing handrails on an access ramp for the disabled clearly pose a risk to the public. In addition, no action had been taken by the Department or the concessionaires to address the problems cited in the report until after we inspected the facilities and reported our findings to the Department. For example, on June 5, 2003—six days after we submitted the preliminary draft to the Department—Terrace on the Park notified the Department that it would hire a contractor to remove and replace exterior façade tiles at the facility.

In addition, a June 16, 2003, internal Department e-mail confirmed the conditions we cited at the two Mobil Gas stations. Specifically, a Department engineer stated that “we think that the site exhibits evidence of both uplift and settlement particularly over the tank areas.” The e-mail goes on to recommend “immediate action” to correct the condition.

Moreover, in its response, the Department provided an undated photograph showing handrails on the access ramp at the Cunningham Tennis Club. However, as evidenced by a photograph taken during our inspection of this facility on April 1, 2003, there were no handrails on the ramp at that time. Obviously, the handrails were installed after our April 1<sup>st</sup> inspection—an important fact omitted from the Department’s response. (Our photograph #4 of the access ramp at Cunningham Tennis Club is included in Appendix VII of this report.)

Finally, the Department provided a photograph purportedly showing that all required protective netting has been installed at the Silver Lake Golf Course. However, the photograph does not cover the area of the golf course at which we found approximately 300 linear feet of frontage not protected by netting. In fact, according to golf course personnel, residents have complained about this condition. Therefore, we do not understand how the Department can claim that all required netting was installed.

### **Recommendation**

9. The Department should issue notices-to-cure requiring that the concessionaires correct the conditions noted in this report.

**Department Response:** “It is standard practice for Parks to issue notices-to-cure when a poor condition exists or to resolve any contract deficiencies. Moreover, the audit manager was given copies of notices sent regarding the Dyckman Marina and Prospect Park Tennis, but this information was omitted from the Report.”

**Auditor Comment:** We understand that it is the Department's standard practice to issue notices-to-cure to concessionaires to resolve poor conditions and contract deficiencies. Therefore, we maintain that the Department should issue such notices to any concessionaires that have not addressed the conditions cited in the report. The Department, however, failed to mention that these notices were issued after the Comptroller's Office raised issues about these concessionaires.