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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 26, 2004

Mr. Adrian Benepe
Commissioner
New York City Department of Parks and Recreation
The Arsenal, Central Park
New York, NY 10021

Re: Report 2003-F-55

Dear Mr. Benepe:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Article III of the General Municipal Law, we have followed up on the actions taken by officials of the New York City Department of Parks and Recreation (Parks) to implement the recommendations contained in our audit report, *Oversight of Public-Private Partnerships* (Report 2000-N-16).

Background, Scope and Objectives

Parks maintains one of the oldest and largest municipal park systems in the country with approximately 28,000 acres of developed, natural, and undeveloped parkland. During the 1970s, New York City (City) experienced financial difficulties that led to budget reductions. As a result of these cuts, many of the City's parks were in a state of disrepair or neglect due to the lack of sufficient funding to provide the necessary level of maintenance and upkeep. The need to continue providing upkeep led Parks to initiate agreements with private, civic-minded, not-for-profit organizations, which would maintain the parks. The agreements between Parks and the not-for-profit organizations became known as partnerships. Essentially, Parks and the organizations agreed to begin sharing the responsibility for maintenance and upkeep of the City's parks.

The role of these partnerships in upkeep of the City parks has increased over the years. Many of the partnerships in existence were formed directly as a consequence of the need to support Parks, and have done so by providing financial and/or other support to a City park, recreation facility, historic site, or tennis center. One example of a partnership viewed as successful is the Central Park Conservancy, which was formed in 1980 for the purpose of promoting and assisting in the restoration, maintenance, and management of Central Park.

Our initial audit report, which was issued on June 11, 2002, assessed Parks' efforts to effectively monitor the activities of its public-private partnerships. We found that Parks did not

have formal agreements with 7 of the 19 organizations that had partnerships, and that Parks did not monitor the activities of the 12 partnerships with which it had written agreements. Although the terms of some agreements provided for audits by Parks, none were done, and one concession contract was let without Parks following the City's rules and regulations. We also noted that Parks lacked specific criteria for determining the amounts sponsors paid for special events. The objective of our follow-up, which was conducted in accordance with Generally Accepted Government Auditing Standards, was to assess the extent of implementation as of February 25, 2004 of the seven recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Parks has made progress in implementing the recommendations contained in our prior audit. Of the seven prior audit recommendations, four recommendations have been implemented, one recommendation has been partially implemented, and two recommendations have not been implemented.

Follow-up Observations

Recommendation 1

Negotiate partnership agreements that give Parks the right to conduct financial audits and conduct such audits.

Status - Partially Implemented

Agency Action - Parks has taken steps to implement formal agreements with three of the seven partnerships cited in our initial audit report, and is currently in negotiation with two other partnerships. However, Parks has not negotiated agreements with two other partnerships, Riverside Park Fund and the Friends of Van Cortlandt Park, because Parks' Legal Department has indicated that both entities are somewhat independent of Parks and that agreements with them may not be appropriate.

On January 14, 2004, Parks issued an annual audit plan for the year 2004. The plan includes ten audits of concessions (one of which, the Greenbelt Conservatory, we cited in our initial report as not having a formal agreement) and three follow-up reviews.

Recommendation 2

Establish a formal process for administering partnership agreements. This process should provide for monitoring partnerships' activities and require formal reporting, including reporting of funds raised and expended for upkeep of all facilities.

Status - Implemented

Agency Action - As noted in Recommendation 1, Parks has taken steps to implement formal agreements with three of the seven partnerships cited in our original audit report, and is

currently in negotiation with two other partnerships. All of the agreements require the partnerships to have annual audits and to prepare and submit annual financial statements.

Recommendations 3 and 4

Revisit the agreements where Parks' employees also receive salary from the Partnerships to determine whether they are appropriate.

Determine whether a conflict of interest exists because of dual employment of the Parks administrator who is also employed by the Randalls Island Sports Foundation.

Status - Not Implemented

Agency Action - Parks officials stated that they continue to disagree with these two recommendations and feel their position is justified because the City's Conflict of Interest Board (Board) ruled that the work arrangements were not a conflict of interest. However, regarding Recommendation 3, the concern was whether the employees were being paid twice for the same hours worked, not the conflict of interest issue. This has still not been addressed. Regarding Recommendation 4, we noted in our initial audit report that, in granting its approval, "the Board could not foresee every possible situation and did not know that the Randalls Island Sports Foundation would bid on a contract when the Board granted approval. Such an action could be viewed as questionable given the dual roles, which are as a Park administrator, and also as an employee of Randalls Island." Parks officials did not provide documentation that this new information was shared with the Board.

Recommendation 5

Establish objective, specific standards that can be used to determine the payments due from sponsors based on the answers to the 11 factors.

Status - Implemented

Agency Action - Officials provided us with a new fee schedule revised in October 2003. The new fee schedule contains additional considerations and rates that were not used in the past to charge sponsors for special events. We reviewed a concession contract dated after the fee schedule was revised and found that the contract was prepared in accordance with the new standards.

Recommendations 6 and 7

Comply with the requirements in the City regulations regarding contracts awarded to significant concessions and fully document such compliance.

Update the RFP mailing lists to reflect other vendors who are interested in being placed on Parks' mailing list.

Status - Implemented

Agency Action - Parks officials maintain that they have always complied with the City regulations when awarding new contracts. They continue to point out that in the case cited in our initial audit report, although they received only one proposal, Parks mailed the Request for Proposal (RFP) to several hundred names and companies on its mailing list and advertised the concession in at least seven newspapers, as well as the City Record. In addition, five prospective bidders sent representatives to a site meeting for the tennis facility, but only one of the companies submitted a bid. On February 8, 2000, Parks Assistant Commissioner for Revenue sent a memo to members of the Franchise and Concession Review Committee describing how Parks performed an extensive inquiry into why many of the tennis operators solicited did not bid on the concession. The non-bidders said that they did not think they could make money on the facility. We examined a recent RFP for a Golf concession and concluded that Parks followed the City's regulations regarding contract awards. In addition, we compared the bidding list used when Parks awarded the Tennis concession and its current bid list and determined that it has been updated to include about 70 additional prospective bidders.

Major contributors to this report were Joel Biederman and Don Wilson.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the New York City Department of Parks and Recreation's management and staff for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Frank J. Houston
Audit Director

cc: David Stark, Chief Financial Officer, Department of Parks and Recreation
George Davis, Mayor's Office of Operations