



OFFICE OF THE DISTRICT OF COLUMBIA AUDITOR

717 14TH STREET N.W., SUITE 900

WASHINGTON, D.C. 20005

TEL. 202-727-3600 • FAX: 202-724-8814

Deborah K. Nichols
District of Columbia Auditor
004:03:DKN:TEB:gk

**\$1 Million Lease and Proposed \$12.5 Million
Purchase of 4800 Addison Road: An Example of
Misfeasance and Malfeasance**

May 15, 2003

Table of Contents

<i>EXECUTIVE SUMMARY</i>	-i-
PURPOSE	-1-
Sole Source, Noncompetitive \$998,250 Annual Lease Of 4800 Addison Road Circumvented Council Review, Lacked Coordination, and Was Principally Driven by Negative Press Reports	-4-
District Was Forced to Reprogram Funds to Pay Lease and Renovation Costs for 4800 Addison Road	-9-
District Paid \$ 260,919 For the Cost of Renovation Performed by the Owner of 4800 Addison Road Pursuant to An Arrangement with OPM's Former Deputy Director That Did Not Comply With The Terms of the Lease	-10-
District Decides to Purchase 4800 Addison Road for \$12.5 Million	-11-
OPM Attempted to Purchase 4800 Addison Road Without Funding Having Been Appropriated	-12-
Office of the Chief Financial Officer Provided a Defective and Inadequate Fiscal Impact Statement for the Purchase of 4800 Addison Road	-13-
OPM Officials Failed to Exercise Due Diligence in Attempting to Enter Into an Agreement to Purchase 4800 Addison Road	-15-
Competitive Procedures Were Not Used In Acquiring Initial Appraisals of 4800 Addison Road or 438 Massachusetts Avenue, N.W..	-15-
Former Deputy Director of OPM Provided False and Misleading Information to Appraisers to Inflate Appraised Value for 4800 Addison Road	-17-
Agreement of Purchase and Sale Indicated Properties to be Transferred "AS IS" Notwithstanding Extraordinary Assumption Contained in Appraisal Regarding Fire Damage	-21-
Addison Road Property May Not Be Available for the District's Use as Intended	-22-
Proposed Structured Transaction Was Not in the District's Best Financial Interest Due to Inadequate Planning, Coordination and Oversight	-23-
District Lost Almost \$1 Million In Revenue During FY02 Due to Inability to Tow Vehicles to Addison Road	-23-
New Appraisals for 4800 Addison Road and the Firehouse Found Substantially Lower Value for 4800 Addison Road and Substantially Higher Value for 438 Massachusetts Avenue	-24-
District Did Not Use Competitive Procedures to Determine the Firehouse's Highest and Best Use	-25-
OPM'S Inept Management and Lack of Adequate Oversight Created Poor Internal Control Environment over Real Property Acquisition Process	-26-
Director of OPM Failed to Exercise Command and Control of Subordinate	-26-
Deputy Director of OPM May Have Been Subject to Improper Influence and Conducted a Private Business With an Off-Shore Bank Using District Equipment and Facilities	-27-
Purchase and Sale Agreement May Have Authorized Broker's Fees to be Paid to the Same Firm That Performed the Appraisals	-29-
RECOMMENDATIONS.....	-30-
CONCLUSION	-32-

EXECUTIVE SUMMARY

PURPOSE

Pursuant to P.L. 93-198, Section 455, and a request from Councilmember Carol Schwartz, the Office of the District of Columbia Auditor conducted a review of the circumstances surrounding the proposed, but now canceled, purchase of real property located at 4800 Addison Road in Prince George's County, Maryland, and the proposed sale of a District firehouse located at 438 Massachusetts Avenue, N.W., as part of a structured transaction between the District of Columbia government and Douglas Development Corporation (DDC).

CONCLUSION

The Auditor's examination of the events leading to and including the lease and proposed purchase of 4800 Addison Road and proposed sale of 438 Massachusetts Avenue, N.W. revealed a series of management lapses, deficiencies, and in some respects ill-advised decisions that jeopardized District financial resources and assets. The haste with which the sale of the Brentwood site proceeded, coupled with: (a) a lack of stable leadership in the Department of Public Works in early 2000 and the Office of Property Management beginning in 2000; (b) the lack of adequate coordination and advanced planning among affected and accountable executive branch managers; (c) failure to perform any cost-benefit or other financial analyses which assessed the costs, risks, and benefits of selling the Brentwood site and finding a suitable replacement; and (d) the lack of regard for the vital importance of and need to ensure the uninterrupted continuation of District government operations then existing at the Brentwood site, resulted in a major upheaval within the District's traffic enforcement and impoundment operations. This disruption inevitably generated substantial and unnecessary costs and avoidable revenue losses to the District. The sale of the Brentwood site was based, at least in part, on the assumption that it would generate additional tax revenues and provide jobs to District residents, however, the executive branch has not issued any assessments that demonstrate the degree to which these, and other assumptions were achieved.

The adverse impact of the sale of the Brentwood impoundment lot upon the District's traffic enforcement and vehicle impoundment operations quickly became apparent when DPW was forced to tow vehicles for parking infractions to legal parking spaces on residential streets, thereby aggravating residents already adversely affected by limited legal residential parking. The manner in which the District had to alter its vehicle towing and impoundment operations with the loss of the Brentwood impoundment lot also resulted in adverse press reports which placed pressure on the executive branch to quickly find a solution to this preventable situation.

During the Auditor's review, a consistent theme emerged wherein the former Deputy Director of the Office of Property Management was allowed unfettered authority to pursue the lease of numerous properties on the District's behalf including the lease and proposed purchase of 4800 Addison Road and proposed sale of 438 Massachusetts Avenue NW. The Office of the Deputy Mayor for Planning and Economic Development provided the impetus for these actions through the uncoordinated implementation of various aspects of the District's economic development plan. The Director of OPM allowed the former Deputy Director to circumvent applicable laws, regulations, and ethical standards, and apparently to avoid all management oversight. Further, the Director of OPM indicated that the former Deputy Director was permitted to operate singularly and without any discernible oversight whatsoever by his superiors. The Director of OPM justified this disinterested management approach to his belief that the Deputy Director was an experienced real estate professional with the requisite skills to perform without his oversight or monitoring.

The Auditor found that the former Deputy Director and Director lacked the requisite governmental experience and appreciation for the need to adhere to longstanding ethics in government rules and standards to ensure honesty and integrity in the performance of their official duties and responsibilities including their decision-making. During an interview, the Director stated that at no time did he seek detailed information from or provide detailed instructions to the former Deputy Director in regard to the proposed purchase of 4800 Addison Road. Despite this assertion, communications from and to the Director indicate that he was not totally uninformed nor did he lack input into the proposed purchase of 4800 Addison Road. However, if the Director's assertions regarding his lack of knowledge and disinterested management approach are accurate, he should be immediately terminated from his position as the District's Chief Property Management Officer and Director of the Office of Property Management for misfeasance.

There were no records made available to the Auditor which set forth how the terms of the proposed lease of 4800 Addison Road were formulated or that described the former Deputy Director's role in negotiating the initial terms set forth in the proposed lease. There was also no written evidence made available to the Auditor which described and justified how the lease rate was reached. Further, neither the OPM Director nor Deputy Director obtained a market rent analysis to establish an objective per square foot fair market lease value for the land or building at 4800 Addison Road. Finally, neither OPM nor DPW managers prepared a financial analysis to determine the full range of operating costs that would likely be incurred by relocating DPW's impoundment operation to this distant site in Capitol Heights, Maryland. Instead, it appears that the terms of the lease were forged by a perception that the District had few, if any, alternatives. OPM management's failure to assess the reasonableness of the per square foot lease rate for 8.33 acres of vacant land at 4800 Addison Road exhibited a callous, unprofessional disregard for determining whether the lease agreement was in the overall best interest of the District government.

The Auditor found that, notwithstanding the existence of a tenant representation contract between the District and two property management firms at the time Addison Road was initially leased, the Deputy Director of OPM did not utilize the services of either of the two tenant representatives to handle the leasing

of 4800 Addison Road. Instead, the entire transaction appeared to be handled, in most respects, exclusively by the former Deputy Director.

Evidence was unavailable to the Auditor indicating that accountable executive branch officials and managers performed reasonable and prudent due diligence with regard to examining the details of the process by which Mr. Lorusso found 4800 Addison Road, negotiated the price and terms of the lease, determined the reasonableness of the lease price, and ensured that a written record was created to support this entire transaction. We could not find evidence that one official in the executive branch, other than Michael Lorusso, was fully informed of the details of the lease transaction from identifying the site to execution of the formal lease. There is ample evidence that the \$998,250 annual lease price for 8.33 acres at 4800 Addison Road was intentionally manipulated to circumvent review and approval by the Council of the District of Columbia. This ill-advised approach had the effect of concealing this transaction from Council and public scrutiny and provided fertile ground for the former Deputy Director's continued unfettered freelancing.

Section 1.04(b) of the formal lease entitled, "Landlord's Obligations," required the landlord, in relevant part, to: "(ii) provide fencing and landscaping for the District's initial operation." The Auditor's review of invoices and payments made to DDC for improvements to 4800 Addison Road indicated that the District paid the owner \$25,410 for fencing that should not have been charged to the District under the terms of the lease. Further, according to the lease, any improvements performed by the landlord were to be billed by the owner at cost plus 15%. There were no provisions in the lease allowing the owner to bill specifically for overhead or profit. However, the Auditor found that the landlord billed the District \$21,563.58, or 10%, overhead plus \$23,719.95, or 10%, profit not authorized by the lease but paid upon the Deputy Director's approval of the invoice. The total \$45,283.53 paid in fees for overhead and profit exceeded the 15% allowance provided under the lease by \$12,938 and exceeded the \$35,000 cap on fees under the lease by \$10,283.53.

It is clear that the Deputy Director violated existing District law concerning the acquisition of appraisal services, and either illegally broadened the scope of services in the tenant representation contract or improperly procured appraisal services for the acquisition of real estate by purchase, not lease, from Cushman and Wakefield in violation of the District's procurement law and regulations. This was likely facilitated by what the Auditor views as considered and negligent indifference by the Director of OPM, who was ultimately responsible for exercising the requisite degree of management supervision and control of the Deputy Director's activities given his position of public trust and the critical importance of this transaction.

The former Deputy Director of OPM knowingly provided false and misleading information to the first appraisers by instructing them to include in the appraisal the assumption that a 9-year extension of an existing lease had been or would be executed. The Auditor believes that the sole intent of the former Deputy Director in providing the misleading information was to establish an appraised value that more closely reflected the owner's \$12.5 million offer to sell the property. The draft 9-year lease extension reviewed by

the Auditor appears to have been provided as an attachment to an e-mail from a Douglas Development employee to the former OPM Deputy Director on December 13, 2001. The day before the appraisal report was issued in final. (See Attachment I) The draft 9-year lease accompanying this e-mail was altered in Section 1.04(a) by changing the expiration date of the lease from September 2004 to September 2013. (See Attachment II)

The appraisers informed the Auditor that at no time did they see an executed 9-year lease extension. By providing false and misleading information to the appraisers, the former Deputy Director, at a minimum, violated his fiduciary duty to the taxpayers of the District of Columbia and the District government. Further, by providing the appraisers with the draft 9-year lease extension, it appears that Mr. Lorusso purposely engaged in conduct designed to manipulate the outcome of the appraisal. It is unknown, at this time, why the former Deputy Director embarked on this improper course of action which was contrary to the best interest of the District of Columbia government.

The appraisal went to great lengths to highlight the fact that the valuation arrived at for 4800 Addison Road¹ was almost entirely dependent on the existence of a 9-year extended lease for the 8.33 acres and 10,000 square feet of building space. In fact, the appraisers informed the Auditor that following the issuance of the final appraisal report they fully expected to be contacted by District officials regarding the extraordinary assumptions contained in the appraisal. However, no one from the District government called to inquire about the findings and assumptions stated in the appraisal for 4800 Addison Road until after Proposed Resolution 14-0911, "4800 Addison Road Purchase and 438 Massachusetts Avenue, NW Disposition Disapproval Resolution of 2002," was filed with the Council on September 18, 2002, and questions were raised in an October 2001 hearing conducted by the Council's Committee on Public Works and the Environment and the Subcommittee on Human Rights, Latino Affairs, and Property Management and reported in the media.

The \$12.5 million appraised value, which ultimately became the proposed purchase price stated in the agreement submitted for Council approval, was based on an extraordinary assumption that a fire damaged building would be repaired and renovated by Jemal's within a one year time frame at a cost of approximately \$1.87 million. In stating that "the District hereby accepts the Jemal property in its "AS IS" condition..." and not reducing the purchase price by the same amount, Jemal's was provided an unjustified additional \$1.87 million profit and relieved of the obligation to repair and renovate the fire damaged building.

The Auditor's examination revealed sufficient information to recommend this matter to appropriate law enforcement authorities for further investigation.

¹The 4800 Addison Road property consists of 34.275 acres of land and 334,308 square feet of building space, part of which was fire damaged.

MAJOR FINDINGS

1. Sole source, noncompetitive \$998,250 annual lease circumvented Council review, lacked coordination, and was principally driven by negative press reports.
2. District was forced to reprogram funds to pay lease and renovation costs for 4800 Addison Road.
3. District Paid \$ 260,919 for the cost of renovation performed by the owner of 4800 Addison Road pursuant to an arrangement with OPM's former Deputy Director that did not comply with the terms of the lease.
4. OPM attempted to purchase 4800 Addison Road without funding having been appropriated.
5. Office of the Chief Financial Officer provided a defective and inadequate fiscal impact statement for the purchase of 4800 Addison Road.
6. OPM officials failed to exercise due diligence in attempting to enter into an agreement to purchase 4800 Addison Road.
7. Competitive procedures were not used in acquiring initial appraisals of 4800 Addison Road or 438 Massachusetts Avenue, NW.
8. Former Deputy Director of OPM provided false and misleading information to appraisers to inflate appraised value for 4800 Addison Road.
9. Agreement of purchase and sale indicated properties to be transferred "AS IS" notwithstanding extraordinary assumption contained in appraisal regarding fire damage.
10. Addison Road property may not be available for the District's use as intended.
11. Proposed structured transaction was not in the District's best financial interest due to inadequate planning, coordination and oversight.
12. District lost almost \$1 million in revenue during FY02 due to inability to tow vehicles to 4800 Addison Road.
13. New appraisals for 4800 Addison Road and the firehouse found substantially lower value for 4800 Addison Road and substantially higher value for 438 Massachusetts Avenue, NW.
14. District did not use competitive procedures to determine the firehouse's highest and best use.

15. OPM's inept management and lack of adequate oversight created poor internal control environment over real property disposal and acquisition processes.
16. Chief Property Management Officer failed to exercise command and control of subordinate.
17. Deputy Director of OPM may have been subject to improper influence and conducted a private business with an off-shore bank using District equipment and facilities.
18. Purchase and sale agreement may have authorized broker's fees to be paid to the same firm that performed the appraisals

MAJOR RECOMMENDATIONS

1. The Director of OPM's claimed lack of knowledge as well as his inept management and oversight of the former Deputy Director's leasing and purchase activities, among other deficiencies noted throughout this report that were the direct responsibility of the OPM Director necessitate his immediate termination as the District's Chief Property Management Officer and Director of the Office of Property Management for misfeasance.
2. The responsibility for obtaining and overseeing the performance of appraisal services for the acquisition of real property by lease and purchase as well as the disposal of surplus District real property should be reassigned to a qualified entity within the District government other than the Office of Property Management and Office of the Deputy Mayor for Economic Development in order to remove the potential for conflict of interest and to ensure the integrity of appraisal results.
3. All real property acquisitions by the District government, and dispositions of District government owned property, should be publicly advertised for a sufficient length of time using the widest circulation feasible. Public notice should be given to as many potential sellers and purchasers as possible. Bids and offers should be thoroughly evaluated by a panel of District government managers and executives; written determinations and findings should be developed and signed by responsible District government officials; and all approvals obtained from the Council or any other entity prior to consummating any sale or purchase.
4. The Mayor and Chief Property Management Officer must develop and implement a multi-year facilities need, use and maintenance plan and strategy within 90 days of the date of this report. This plan should project the real property needs, both leases and purchases, of the District government, including the projected benefits and costs and appropriations necessary for acquiring the needed interests in real property. The Auditor will assess the compliance status of this recommendation at the end of the 90-day period.

5. All appraisals for real property needed by the District government should be procured in strict compliance with the Procurement Practices Act of 1985, as amended, and Title 27 of the District of Columbia Municipal Regulations.
6. All planned relocations of District government facilities and operations must be accompanied by a thorough cost-benefit analysis taking into consideration all material, operational, and other direct costs as well as indirect costs such as anticipated lost revenues likely to be incurred in relocating District government facilities and operations.
7. The Director of the Office of Property Management, with the assistance of the Office of Contracting and Procurement, must competitively procure all construction, renovation, or rehabilitation services to be performed on District government owned or leased facilities after a formal solicitation. Alternative methods of procurement should only be utilized where fully and adequately justified in writing and where such method of procurement is demonstrably in the best interest of the District government. Further, all payments for such services must be processed through the District's System of Accounting and Reporting (SOAR).
8. Prior to attempting to purchase an interest in real property, the Mayor, Deputy Mayor for Operations, City Administrator, Chief Property Management Officer, and the Corporation Counsel should certify that they have reviewed all assessments, evaluations, opinions, fiscal impact statements, appraisals, and all agreements or other documents relating to or effecting such purchase, and specifically state in a writing signed by all parties and supported by written findings that the proposed purchase is in the best interests of the District government.
8. The Mayor, City Administrator, Deputy Mayor for Operations, Deputy Mayor for Planning and Economic Development, and Chief Property Management Officer should develop and adopt for the District government written procedures and guidelines mandating and prescribing detailed processes and benchmarks to ensure an adequate degree of planning and coordination whenever economic development initiatives will displace or substantially impact any aspect of District government facilities or operations.
10. The former Deputy Director of OPM repay the District government \$20,000 paid from the Commission Pool for appraisal services that were improperly authorized and appraisal results that were based on false and misleading information provided by him. If the former Deputy Director fails or refuses to voluntarily repay these funds, the Office of the Corporation Counsel should initiate the appropriate legal measures to obtain these funds.
11. The executive branch establish a credible process under which a suitable site for the District's vehicle impoundment operation can be located.

12. The Director of the Department of Public Works perform an analysis of the costs incurred by DPW in operating a vehicle impoundment lot at 4800 Addison Road in comparison with conducting the same operation at the Brentwood site. The analysis should be detailed and take into consideration the lowest level of costs, including the costs of towing each impounded vehicle to Addison Road and to Brentwood, the length of time to tow impounded vehicles to Addison Road and Brentwood from different parts of the City. The analysis should also include labor, equipment, fuel, and maintenance costs, at a minimum, for a one-year period.
13. The Office of the Chief Financial Officer adhere to Council Rule 443 in preparing fiscal impact statements. Fiscal impact statements should be sufficiently detailed financial analyses of the impact of legislation on the revenues and budget of the District government rather than vague perfunctory missives that serve no legitimate use.

PURPOSE

Pursuant to P.L. 93-198, Section 455, and a request from Councilmember Carol Schwartz, the District of Columbia Auditor conducted a review of the circumstances surrounding the proposed, but now canceled, purchase of real property located at 4800 Addison Road in Prince George's County, Maryland, and the proposed sale of a District firehouse located at 438 Massachusetts Avenue, NW, as part of a structured transaction between the District of Columbia government and Douglas Development Corporation (DDC).

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the review were to determine whether:

1. the proposed purchase of 4800 Addison Road complied with applicable laws, regulations, and procedures;
2. the proposed sale of the District firehouse at 438 Massachusetts Avenue, NW complied with applicable laws, regulations, and procedures;
3. the District performed adequate due diligence regarding the proposed purchase of 4800 Addison Road; and
4. adequate internal controls were in place to assure: (a) integrity in the procurement of appraisal services, the decision to lease and then purchase 4800 Addison Road, and the decision to lease and then sell 438 Massachusetts Avenue, NW; (b) that District assets were adequately safeguarded; and (c) that the acquisition of 4800 Addison Road served the best interest of the District of Columbia.

The scope of the review included transactions and activities relevant to the lease, appraisal, and proposed purchase of 4800 Addison Road, as well as the lease, appraisal, and proposed sale of a historic firehouse located at 438 Massachusetts Avenue, NW. In conducting this examination, the Auditor reviewed available documentation, including appraisals, leases, and the proposed purchase and sale agreement for the Addison Road property and 438 Massachusetts Avenue, NW; and interviewed individuals and officials in the District of Columbia Office of Property Management, Office of the Deputy Mayor for Operations, Office of the Deputy Mayor for Planning and Economic Development, Office of the City Administrator, the Department of Public Works, the Office of the Corporation Counsel, as well as other knowledgeable individuals. The Auditor also interviewed principal officers or employees of Douglas Development Corporation and Cushman and Wakefield.

BACKGROUND

In December 2000, the Council of the District of Columbia enacted D.C. Law 13-312, the “Brownfield Revitalization Amendment Act of 2000,” effective June 13, 2001. The purpose of D.C. Law 13-312, among others, was to promote economic development by encouraging the reuse of contaminated properties, known as “brownfields”, in the District of Columbia. The District of Columbia government owned a significant number of brownfield properties which housed numerous Department of Public Works’ facilities. The Brentwood impoundment lot was one of these properties.

Prior to the enactment of D.C. Law 13-312, District officials, with the concurrence of the District of Columbia Financial Responsibility and Management Assistance Authority (Control Board), decided to make sites owned by the District government available for economic development. The Brentwood impoundment lot was one of the District-owned sites targeted for economic development. The Brentwood site consisted of approximately 23 acres of land on which the Department of Public Works (DPW) operated an impoundment facility on approximately 9 acres to store vehicles towed for parking violations, a salt storage facility, and a driver license road test facility. Since these operations were conducted on District-owned land, the District avoided significant operating costs associated with leasing or purchasing land suitable for these uses.

As early as 1998, if not earlier, it was a known fact that as a result of the unique land and logistical requirements that the Brentwood site served for DPW’s impoundment operation, it could not be replaced easily or inexpensively within the District of Columbia. The Brentwood site, while not the most desirable activity for this particular piece of District-owned property, was unmatched in size, location, and its low operating costs to the government as a site for DPW’s impoundment and other operations. Despite concerns raised by some elected officials, specifically the Chairperson of the Council’s Committee on Public Works and the Environment, and some District residents, the executive branch’s resolve to move forward on the disposal of the Brentwood site for economic development purposes remained unchanged.

As early as 1999, the beginning of the Williams Administration and during a Control Period, the then-Director of DPW sought the assistance of the then-Director of the Office of Property Management (OPM) to find a minimum of 12 acres of suitable land to relocate DPW’s impoundment operation. The land had to be conveniently located to public transportation and capable of storing 1,000 vehicles. In an October 14, 1999, memo to the Director of OPM, the

Director of DPW warned that the loss of the Brentwood impoundment lot would result in DPW having to leave an unacceptable number of vehicles on District streets for parking violations.

In December 1999, the Director of OPM informed the Deputy Mayor for Planning and Economic Development of the need to commence the surplus real property disposal process for the Brentwood Road site. This communication was made in the absence of a definite relocation plan, relocation site, or a financial plan setting forth the estimated costs and source of funding to relocate DPW's impoundment and other operations. In late December 1999, OPM was directed by the Deputy Mayor for Planning and Economic Development to proceed with the disposal of the Brentwood site.²

Between 1999 and 2001, a number of properties were considered for the impoundment lot prior to OPM's decision to first lease and then attempt to purchase 4800 Addison Road. In late 1999, the District began receiving unsolicited offers of acreage within the District of Columbia to serve as an alternate site for relocated DPW operations. The first offer, according to records reviewed by the Auditor, involved 7.3 acres that had previously served as the site of Steuart Petroleum, which was offered for sale at \$4 million. This site was deemed unacceptable because of its size even though the District ultimately leased only 8.33 acres at 4800 Addison Road, Capitol Heights, Maryland for \$998,250 annually. Other sites considered and rejected for various reasons included, but were not limited to: New York and Montana Avenue, NE; 65 I Street, SE; 19th and Independence Avenue, SE; and RFK Stadium located at 20th and East Capitol Street, SE. All searches and suitability determinations were made by OPM but not documented in a public record.

²In May 2000, pursuant to Section 5 of the National Capital Planning Act of 1952, 40 USC 72c, the National Capital Planning Commission concurred with the District's determination that the Brentwood Road site, along with others noted, was no longer required for public purposes and could be disposed of in the best interest of the District.

FINDINGS

SOLE SOURCE, NONCOMPETITIVE \$998,250 ANNUAL LEASE OF 4800 ADDISON ROAD CIRCUMVENTED COUNCIL REVIEW, LACKED COORDINATION, AND WAS PRINCIPALLY DRIVEN BY NEGATIVE PRESS REPORTS

In January 2000, staff in the Office of the Deputy Mayor for Planning and Economic Development requested OPM to solicit a consultant to prepare a detailed plan for the possible relocation of all DPW facilities. The Auditor saw no documents or other records indicating that a consultant was ever engaged for this purpose. Further, on November 29, 2000, the Council's Committee on Public Works and the Environment conducted a public roundtable to determine the long term logistical support needs of the Department of Public Works and to ensure adequate sites for public facilities displaced by economic development. At the roundtable, in sworn responses to the Committee, the Director of the Office of Planning and the Director of the Office of Property Management stated that they had been asked by the Deputy Mayor/City Administrator to put together a master facilities plan and strategy pertaining to the relocation of District government facilities. As late as March 2001, OPM still had not identified a site to which the impoundment lot could be relocated and a master facilities plan had not been completed as promised by executive branch officials. (See Attachment III)

The haste with which the sale of the Brentwood site proceeded, coupled with: (a) a lack of stable leadership in DPW and OPM beginning in 2000³; (b) the lack of adequate coordination and advanced planning among affected and accountable executive branch managers; (c) failure to perform any cost-benefit or other financial analyses which assessed the costs, risks, and benefits of selling the Brentwood site and finding a suitable replacement; and (d) the lack of regard for the vital importance of and need to ensure the uninterrupted continuation of District government operations then existing at the Brentwood site, resulted in a major upheaval within the District's traffic enforcement and impoundment operations. This disruption inevitably generated substantial and unnecessary costs and avoidable revenue losses to the District.

³Between January 2000 and January 2001, the individuals initially serving as Directors of the Department of Public Works and the Office of Property Management in the Williams Administration resigned, thus creating a leadership vacuum in these agencies. On September 26, 2000, the current Director of OPM, Timothy Dimond, was appointed acting Director. Michael Lorusso, the former Deputy Director, joined OPM in November 2000. According to statements made by Mr. Dimond on February 11, 2003, in a hearing before the Council of the District of Columbia's Subcommittee on Human Rights, Latino Affairs, and Property Management, he and Mr. Lorusso had attended real estate school together and had known each other for many years.

At the time of the sale of the Brentwood impoundment lot, the executive branch had failed to identify a suitable alternative location for the District's vehicle impoundment operation, and had not realistically considered the operational and financial impact of the sale of the Brentwood site and forced relocation of DPW's operations. Also, accountable Williams Administration officials and managers failed to assess the fiscal impact of disrupting and relocating DPW's Brentwood operations upon the District treasury and the budget of the Department of Public Works.

The adverse impact of the sale of the Brentwood impoundment lot upon the District's traffic enforcement and vehicle impoundment operations quickly became apparent when DPW was forced to tow vehicles for parking infractions to legal parking spaces on residential streets, thereby aggravating residents already adversely affected by limited legal residential parking. The manner in which the District had to alter its vehicle towing and impoundment operations with the loss of the Brentwood impoundment lot also resulted in adverse press reports which placed pressure on the executive branch to quickly rectify the situation.⁴

Based on information provided to the Auditor in an interview with OPM's former Deputy Director, Mr. Michael Lorusso, the identification of 4800 Addison Road as a potential site for DPW's impoundment operation resulted from an informal conversation between the former Deputy Director and an employee of Douglas Development Corporation (DDC). During this conversation, the former Deputy Director was informed of a site owned by DDC in Capitol Heights, Maryland, that was suitable for DPW's impoundment operations. According to Mr. Lorusso, upon receiving this information, he and the DDC employee visited 4800 Addison Road, which Mr. Lorusso apparently found suitable for DPW's needs. This informal exchange exclusively between the former Deputy Director of OPM and the DDC employee resulted in an unsolicited⁵ DDC proposal to lease 8.33 acres of land at 4800 Addison Road, Capitol Heights, Maryland for DPW's impoundment operation.

By letter dated May 21, 2001, DDC sent to the former Deputy Director the unsolicited proposal to lease 8.33 of 34.275 acres at 4800 Addison Road at an annual price of \$998,250, or \$2.75 per square foot (psf), as described in the lease, for a three year period beginning August 1, 2001 and ending on September 30, 2004. In an interview with the audit team, Mr. Lorusso described the \$2.75

⁴June 26, 2001, e-mail from a high ranking executive branch official indicated that the administration needed to execute a lease of 4800 Addison Road as quickly as possible since the press kept asking when the impoundment lot would be reopened. The official also noted that the District was losing revenues as well.

⁵27 DCMR 1699.1 defines unsolicited proposal as "a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the District and that is not in response to a solicitation" - request for proposals (RFP).

psf price as a “blended rate” reflecting the cost of the land and 10,000 square feet of building space that would be used by the District. There were no records made available to the Auditor which set forth how the terms of the proposed lease were formulated or that described the former Deputy Director’s role in negotiating the initial terms set forth in the proposed lease. There was also no written evidence made available to the Auditor which described and justified how the \$2.75 psf “blended” rate was reached. Further, OPM did not obtain a market rent analysis of the property in order to establish an objective per square foot fair market lease value for the land or building at 4800 Addison Road. Had this been done it may have revealed that the \$2.75 per square foot price Mr. Lorusso was about to enter into on behalf of the District was overpriced. Finally, neither OPM nor DPW managers prepared a financial analysis to determine the full range of operating costs that would likely be incurred by relocating DPW’s impoundment operation to Capitol Heights, Maryland.

The Cushman and Wakefield appraisal of 4800 Addison Road states, in relevant part, the following:

We concluded based on our opinion of market rent (as detailed below) that the District lease does not reflect market rent...

According to testimony provided by representatives of Cushman and Wakefield (C&W), the typical per square foot cost for the rental of vacant land is 8% to 12% of the value of vacant land. In the case of 4800 Addison Road, the District entered into a lease to pay approximately 59% (\$2.75) of the \$4.63 per square foot purchase price, cited in the C&W appraisal, that Jemal’s Fairfield Farm (Jemal’s) paid for the property. The Auditor conservatively estimates that under the current lease of 4800 Addison Road, the District may be annually paying as much as \$794,970 more than would typically be charged in an arm’s length transaction for the lease of vacant land.

The lease of 4800 Addison Road, negotiated and executed by the former Deputy Director as the District’s Chief Property Management Officer, enabled the owner to obtain 66.58% of the \$1.5 million purchase price through lease payments from the District in a 12-month period and the full purchase price in the first 18 months of the lease.

The lease proposal for 4800 Addison Road further provided that the premises would be delivered “as-is”, but that the landlord would secure the certificate of occupancy, provide fencing and landscaping, and provide a dry roof for interior spaces. Additionally, the proposal stated that the landlord could make any renovations requested by the District inclusive of furnishings, at cost plus 15%.

In August 2001, the former Deputy Director of OPM, acting as the District's Chief Property Management Officer,⁶ executed a formal lease on behalf of the District with DDC for 8.33 acres of the Addison Road property that included 10,000 square feet of building space. As previously noted, information obtained by the Auditor strongly indicated that the District was overpaying for the lease of the subject property, in spite of the "uniqueness" of the property and the District's need of the property, as frequently publicized by District officials and referenced in an appraisal report. The appraisal performed by Cushman and Wakefield Valuation Advisory Services in anticipation of the District's purchase of the Addison Road property again noted that:

... the rental rate is significantly above what "typical" landlords and tenants would agree to in the normal course of business...

The Auditor found that notwithstanding the existence of a tenant representation contract between the District and two property management firms at the time Addison Road was initially leased, the Deputy Director of OPM did not utilize the services of either of the two tenant representatives to handle the lease of 4800 Addison Road. Instead, the entire transaction appeared to be handled, in most respects, exclusively by the former Deputy Director of OPM. The Auditor has been advised that the tenant representation contract in effect at the time established an exclusive right of the brokers to handle the lease needs of the particular agencies assigned to each broker. At least one tenant representative interviewed by the Auditor stated that they were surprised to learn of the leasing of 4800 Addison Road without the involvement of a tenant representative, but never sought or was provided an explanation as to why a tenant representative was not used. Further, the tenant representative indicated that if they had been involved they would have ensured that a lease valuation was performed to determine the fair market value rent for the property.

The Auditor has received no information or documentation indicating that the Deputy Director or Director of OPM ever attempted to determine the reasonableness of the rent to be charged for 4800 Addison Road. The failure to obtain such an independent valuation left open the question as to whether the District was paying fair and reasonable rent for the property and whether District funds were adequately and properly protected at the time this lease was negotiated and executed. OPM management's failure to assess the reasonableness of market rent exhibited a callous, unprofessional disregard for determining whether the lease agreement was in the best interest of the District government.

⁶Evidence of a written delegation of authority to the former Deputy Director of OPM to act on behalf of the legally appointed Chief Property Management Officer of the District of Columbia was unavailable to the Auditor.

Finally, an official in the Office of the Corporation Counsel, intimately involved in the drafting of the lease, indicated that it was his impression that OPM, specifically Mr. Lorusso, negotiated a lease rate that would not require Council review. The Auditor's review of documentation on this issue indicates the following:

- ▶ The former Deputy Director deemed 8.33 acres of land at 4800 Addison Road suitable for DPW's impoundment operation even though it was less than the 12 acres that DPW initially determined it needed.
- ▶ On August 2, 2001 an attorney in the Office of the Corporation Counsel informed the former OPM Deputy Director that:

“After extensive review and thorough consideration and discussion, the Addison Road Lease as is cannot be executed absent Council approval for the following reasons:

- (1) The Additional Rent that may result from increases in real estate taxes may cause the gross rent to exceed \$1 million

Solution - limit Additional Rent so that at no time total rent will exceed \$1 million.

- (2) Inclusive of the Expansion Option (additional warehouse space at \$5.00 SF, triple net), the gross rent exceeds \$1 million and requires Council approval pursuant to D.C. Code (1981 Ed.) Sec. 1-336.

Solution - delete Expansion Option from the Lease.

- (3) Option to Extend - again, Rent cannot exceed \$1 million.”

- ▶ On August 3, 2001, the same attorney in the Office of the Corporation Counsel informed the attorney for Douglas Development, in relevant part, as follows:

The fee cap is inserted to comply with D.C. Code (1981 Ed.) Sec. 1-1183.9. If annual rent, inclusive of options, is to exceed \$1 million, Council approval is required by D.C. Code (1981 Ed.) sec. 1-336. Thus, the \$1 million cap and the deletion of the expansion option for additional warehouse space. The expansion option can be drafted as a stand alone option with separate consideration if the parties wish...”

While this appears to provide guidance and assistance with regard to avoiding Council approval of the Addison Road lease, it also appears to have assisted the District in reducing the potential cost of the Addison Road lease, thereby saving the District money. Nevertheless, as noted earlier, the District still appeared to be paying an excessive lease amount.

District Was Forced to Reprogram Funds to Pay Lease and Renovation Costs for 4800 Addison Road

According to management within DPW, at the time the lease for Addison Road was entered into in August 2001, DPW did not have funds identified for the lease costs or for the renovations required to make the property operational. On numerous occasions, the Director of DPW informed city officials of DPW's need for additional funding for the Addison Road property, and specifically inquired about financial assistance from the economic development cluster since DPW was forced into incurring unbudgeted expenses as a result of the sale of Brentwood for economic development purposes. Nevertheless, District officials did not attempt to supplement DPW's budget initially. Further, the Auditor was informed by DPW managers that officials in the Office of the Deputy Mayor for Planning and Economic Development basically took a "not our problem" stance with regard to making available some or all of the proceeds from the sale of the Brentwood site to finance some or all of DPW's relocation costs.⁷ DPW ultimately identified and paid a total of \$283,187 from its funds during fiscal year 2001 for rent and build-out related to 4800 Addison Road. This entire amount was transferred to OPM from DPW's budget by the Office of Finance and Resource Management (OFRM) for expenditure by OPM.

At the beginning of fiscal year 2002, DPW had only \$294,000 budgeted for rent, leaving a shortfall of \$1,001,357 to cover projected rent and utility costs for the Addison Road facility during the fiscal year. According to DPW officials, OFRM, using its authority, unilaterally removed \$1,001,357 from DPW's appropriated budget, thus forcing DPW into a budget deficit. In April of 2002, the Council of the District of Columbia approved Resolution 14-421 to reprogram \$1 million from the operating budget of the Department of Transportation to DPW. As of September 30, 2002, DPW had expended a total of \$1,529,087 for rent, build-out, and utilities for the subject property during fiscal year 2002.

⁷According to the Deputy Mayor for Economic Development, the District realized approximately \$3 million from the sale of the Brentwood acreage.

District Paid \$ 260,919 For the Cost of Renovation Performed by the Owner of 4800 Addison Road Pursuant to An Arrangement with OPM's Former Deputy Director That Did Not Comply With the Terms of the Lease

As previously noted, 4800 Addison Road required substantial renovations in order to make the property operational for DPW's use as an impoundment lot. According to the lease, any improvements were to be performed and billed by the owner at cost plus 15%. There were no provisions in the lease allowing the owner to bill specifically for overhead or profit. In lieu of soliciting bids for this work, the Deputy Director of OPM entered into a sole source arrangement whereby the owner of the Addison Road property was allowed to perform required renovations under terms different from those spelled out in the lease. At the direction of the former Deputy Director, OPM was required to pay the owner for any renovation work billed. The Auditor reviewed documentation indicating the District was billed, and OPM paid, \$260,919 for work performed by the owner at 4800 Addison Road. Table I sets forth the itemized costs incurred by the District.

**Table I
Renovation Costs
Incurred by the District for
4800 Addison Road**

Items Charged	Amounts Charged By Owner	Auditor's Calculation
Electrical labor	\$ 12,730.00	\$ 12,730.00
Fencing	25,410.00	No Charge
Rental Equipment	35,120.82	35,120.82
Fuel	5,884.56	5,884.56
Paving	136,490.38	136,490.38
Subtotal	\$ 215,635.76	\$ 190,225.76
Overhead (10%)	21,563.58	No Charge
Subtotal	\$ 237,199.34	\$ 190,225.76
Profit (10%)	23,719.95	No Charge
15% Fee Under Lease		28,533.86
Total Invoice	\$ 260,919.29	\$ 218,759.62
Unallowable Excess		\$42,159.67

Source: Department of Public Works and Douglas Development

The Auditor found no evidence and was offered no explanation by OPM officials as to why competitive procedures were not utilized to acquire the necessary renovation work. OPM, as the entity responsible for acquiring and overseeing the work performed, should have sought bids for the performance of the needed tasks. Instead, OPM's Deputy Director relied on sole source acquisition of the services from DDC, thus not ensuring that the District incurred the lowest cost for the work performed and that the expenditures strictly complied with the terms of the lease. D.C. Code, Section 2-303.05, Sole Source Procurement, authorizes sole source procurement in only four instances, none of which applied in this case. As there are numerous businesses and persons that perform the type of work obtained by OPM, a solicitation should have been issued by the Office of Contracting and Procurement, or some other permissible source selection should have been used to ensure the price to be paid was competitive.

Further, the Auditor found that Section 1.04(b) of the formal lease entitled, "Landlord's Obligations," required the landlord, in relevant part, to: "(ii) provide fencing and landscaping for the District's initial operation." The Auditor's review of invoices and payments made to DDC for improvements made to Addison Road indicated that the District paid the owner \$25,410 for fencing that should not have been charged to the District under the terms of the lease. Further, Section 1.04(c) of the lease states, in relevant part, the following:

All Improvements shall be constructed by Landlord on a cost plus 15% basis, with all charges payable by the District within fifteen (15) days after presentment of invoices from Landlord. Said 15% represents the fee paid to Landlord for constructing Improvements and shall not exceed, in aggregate, \$35,000 (thirty-five thousand) during the term of this lease and any extension thereof.(Auditor's Emphasis)

The Auditor determined that the 10% overhead of \$21,563.58 plus the 10% profit of \$23,719.95 were not authorized by the lease. Further, the total \$45,283.53 paid in overhead and profit fees exceeded the 15% allowance provided under the lease by \$12,938 and exceeded the \$35,000 cap on fees under the lease by \$10,283.53.

District Decides to Purchase 4800 Addison Road for 12.5 Million

Upon the recommendation of the Director and Deputy Director of OPM, the Mayor ultimately proposed to purchase the property located at 4800 Addison Road, consisting of 34.275 acres. The proposed seller, Jemal's Fairfield Farms,⁸ offered to sell the land, a part of which was

⁸Jemal's is a business entity of local developer Douglas Jemal.

already under lease to the District, and improvements existing thereon for \$12.5 million. The transaction also provided that the District would transfer to DDC, another Douglas Jemal entity, a District-owned historic firehouse located at 438 Massachusetts Avenue, NW, which was adjacent to property owned by DDC⁹ that was being developed as residential housing.¹⁰

Jemal's purchased the Addison Road property in December 1998 for \$1.5 million. The Office of Tax Assessment in Prince George's County, Maryland, assessed the property, both land and improvements, at \$1,499,800 in calendar year 2001. No substantial alterations had been performed on the property since it was acquired by Jemal's in 1998. However, the District paid \$260,919 for improvements of the leased portion of the property in order to prepare it for use as an impoundment lot. Further, on September 27, 2001, there was a 3-alarm fire at 4800 Addison Road involving a warehouse adjacent to, but not part of, the property leased by the District.

According to the Agreement of Purchase and Sale between the District and Jemal's, the \$12.5 million purchase price was based on an appraisal of the property at its fair market value for its highest and best use. The purchase and sale agreement also indicated that the overall purchase price would be reduced to \$11.8 million as a result of the owner's agreement to allow rent paid by the District in fiscal year 2002 to be credited against the purchase price.

OPM Attempted to Purchase 4800 Addison Road Without Funding Having Been Appropriated

Based on interviews with OPM personnel, testimony provided by the Director of OPM, and documents authored by OPM management, it was OPM's intent to purchase 4800 Addison Road with proceeds realized by the District from the sale of District-owned land to the U.S. Customs Services' Alcohol, Tobacco, and Firearms Division (ATF).¹¹

⁹In December 2002, DDC sold property adjacent to 438 Massachusetts Avenue to Graystar Atlantic for \$15 million.

¹⁰February 4, 2002 e-mail from Michael Lorusso to an employee in the Office of the Deputy Mayor for Economic Development states, in relevant part, the following: "In an effort to go the sole source route, we are working with Jemal on a land swap [sic] we have been looking at District needs and requirements, OCC has informed me that both the swap or sole source will have to go to DC Council...Please advise if you want me to concentrate on sole source instead of land swap." Further, in explaining the proposed purchase of 4800 Addison Road and swap of the firehouse at 438 Massachusetts Avenue, NW, Mr. Lorusso stated, in relevant part, the following: "...At the direction of economic development, OPM leased a long vacant and unutilized firehouse to the owner of 4800 Addison Road, Douglas Development Corporation."

¹¹In a document dated December 7, 2001, which was sent to executive branch officials, including the former Deputy Director of OPM, the Director of OPM stated:

"As we have discussed on several occasions, we believe that we now have an opportunity to purchase the Addison Road location ...We believe that this acquisition can and will meet the District's operational needs for years to come.

According to testimony provided to a Council oversight subcommittee by the Office of the Chief Financial Officer, these proceeds were deposited into the General Fund, and there was no authority for OPM to use the funds for the purchase of the Addison Road property.¹² Further, the Office of the Corporation Counsel had previously informed OPM management that an appropriation for such a purpose would be required. It appears that OPM management took no steps to determine the legality of using the ATF proceeds to purchase Addison Road, and took no steps to seek an appropriation of funds for the purchase of 4800 Addison Road.

OFFICE OF THE CHIEF FINANCIAL OFFICER PROVIDED A DEFECTIVE AND INADEQUATE FISCAL IMPACT STATEMENT FOR THE PURCHASE OF 4800 ADDISON ROAD

On July 1, 2002, the Office of the Chief Financial Officer of the District of Columbia issued a fiscal impact statement entitled, “Negotiated Purchase of Property at Addison Road Approval Resolution of 2002.”(See Attachment IV) Section 602(c)(3) of the Home Rule Act requires the preparation and submission of a fiscal impact statement with legislation enacted by the Council. Section 602(c)(3) states:

(3) The Council shall submit with each Act transmitted under this subsection an estimate of the costs which will be incurred by the District of Columbia as a result of the enactment of the Act in each of the first 4 fiscal years for which the Act is in effect, together with a statement of the basis for such estimate.

Further, Council Rule 443(c) states, in relevant part, the following:

(c) Except for emergency declaration, ceremonial, confirmation, and sense of the Council resolutions, no bill, resolution, or amendment to a bill or resolution may be enacted or approved by the Council without a Council fiscal impact statement and worksheet, if applicable, which

In that the ATF (Lot 710) sale has not closed, we have the opportunity to utilize proceeds from that sale to acquire Addison Road...We would respectfully request that the settlement company hold the funds in escrow until such time as we can close on Addison road (sic). We are confident that we can purchase the property for less than the sale proceeds on ATF. We are awaiting the appraisal next week to finalize the negotiations. We expect to close eminently (sic).

Again, we ask for your cooperation in getting the money to be held in escrow until such time as we can finalize the sale and close. We believe given the current and increasing demand for properties of this type, this represents an opportunity worth capitalizing on given the ever diminishing land availability in the District. Should you have any questions, please feel free to call me.”

¹²D.C. Code, Section 10-802(a), requires that the net proceeds realized from the sale of District owned land be deposited into the District Treasury.

has been reviewed and approved by the Council Budget Director or the Chief Financial Officer in the measure, committee report, presented to the Council, at the time of its consideration...The statements shall include the following:

- (1) A general statement of the effects the measure will have on the operating and capital budgets for the current and next 4 fiscal years;
- (2) A quantitative estimate of the expenditures needed to implement the measure;
- (3) An identification of the revenues and funds currently available, or likely to be available from existing revenue sources to implement the measure, if it is to be implemented within the current fiscal year;
- (4) A statement on the extent to which current appropriations are available to finance implementation of the measure, if it is to be implemented within the current fiscal year; and
- (5) An identification of the specific funding source to be recommended in the forthcoming fiscal years to implement the measure, if the cost of implementation is estimated to exceed \$100,000 in that fiscal year.

The Office of the Chief Financial Officer prepared an inaccurate, poorly drafted fiscal impact statement to support the proposed resolution submitted for the Council's approval to purchase 4800 Addison Road, and failed to address the sale of 438 Massachusetts Avenue, NW. The first section of the statement entitled, "Conclusion," begins with the following vague sentence: "Funds are sufficient in the FY 2002 through FY 2005 budget and financial plan." The actual "Financial Plan Impact" section of the fiscal impact statement fails to comply with Council Rule 443(c)(4) regarding a statement addressing the extent to which current appropriations are available to finance implementation of the measure, if it was to be implemented within fiscal year 2002. Although proceeds from the sale of District-owned property to the Bureau of Alcohol, Tobacco, and Firearms were intended to be used to purchase 4800 Addison Road, there had been no appropriation of these funds by the Council or Congress for this purpose. The fiscal impact statement failed to address this fact. The statement further inaccurately states:

The proposed legislation approves the negotiated purchase of property at 438 Massachusetts Avenue for multiple use by District agencies. The District is currently leasing this property at a cost of \$83,175.50 per month.

In fact, 438 Massachusetts Avenue was not being purchased by the District for use by multiple agencies. The District was not leasing 438 Massachusetts Avenue at a cost of \$83,175.50 per month, as the District already owned 438 Massachusetts Avenue. In fact, OPM had entered into a sole source lease of 438 Massachusetts Avenue, NW with DDC at the direction of the Office of the Deputy Mayor for Planning and Economic Development for \$35,000 per year to be paid in equal monthly installments of \$2,916.66. Only once throughout the entire fiscal impact statement is a reference made to 4800 Addison Road, which only appears in the subject line of the memorandum. The remainder of the statement does not contain any reference to 4800 Addison Road.

The Office of the Chief Financial Officer should have prepared a more substantial, factually correct, detailed, analysis-driven fiscal impact statement for the proposed purchase of 4800 Addison Road and sale of 438 Massachusetts Avenue, NW. Had this been done properly, questions should have been raised, at a minimum, regarding the financial prudence of this transaction.

OPM OFFICIALS FAILED TO EXERCISE DUE DILIGENCE IN ATTEMPTING TO ENTER INTO AN AGREEMENT TO PURCHASE 4800 ADDISON ROAD

Competitive Procedures Were Not Used In Acquiring Initial Appraisals of 4800 Addison Road or 438 Massachusetts Avenue, NW

Chapter 19 of Title 27 of the District of Columbia Municipal Regulations (DCMR) sets forth requirements for the acquisition of real property appraisal services.

Further, according to the Office of Corporation Counsel, appraisal services can be acquired by an agency using its small purchase authority when done consistent with the policies and procedures set forth in Chapter 18 of Title 27 of DCMR. 27 DCMR 1915.1 provides that:

The contracting officer shall publicly announce all requirements for real property appraisal services in accordance with Chapter 13 of this title.[Auditor's Emphasis]

Chapter 19 of Title 27 of the DCMR contains additional requirements relating to the acquisition of appraisal services, including but not limited to:

- the establishment of a real property appraisal evaluation board to review data on eligible firms and their responses to public notices for appraisal services, evaluate the firms or individuals, and prepare selection reports for the contracting officer's consideration;

- procedures for the evaluation and selection of firms and individuals to perform real property appraisals;
- collection and maintenance of appraisal qualification data;
- preparation of independent appraisal cost estimates; and
- the preparation of real property performance evaluations.

Based on discussions with personnel in OPM and other District government officials, OPM did not comply with the provisions of Chapter 18 or Chapter 19 of Title 27 of the DCMR in acquiring appraisal services from Cushman and Wakefield. According to OPM, the appraisers performing the appraisals on both 4800 Addison Road and 438 Massachusetts Avenue, NW were selected under the then existing tenant representation contract. The primary purpose of the tenant representation contract was to obtain the services of a private sector tenant representative to reduce current leasing costs, achieve long term operational efficiencies, develop and maintain an asset portfolio of “best value” space, and develop and implement a state-of-the-art fully automated lease management and space forecasting system.

The specific services to be provided by the tenant representative, as set forth in the contract, included but were not limited to:

- analysis and recommendations of existing lease portfolio(s);
- market research and site identification;
- inspections and suitability determinations;
- space planning;
- preparation and negotiation of leases;
- coordination and supervision of tenant improvements; and
- move coordination.

The tenant representation contract did not, in the Auditor’s opinion, appear to include appraisal services pertaining to the District’s acquisition of real property by purchase. Based upon a review of the tenant representation contract and interviews with OPM and Cushman and Wakefield management, the Auditor believes that there was no authority contained within the tenant representation contract which would have even arguably allowed OPM’s former Deputy Director to order such an appraisal from Cushman and Wakefield. The Auditor found no provisions within the contract authorizing the District to request, and Cushman and Wakefield to perform, appraisal services for the proposed purchase of real property. Further, OPM used \$20,000 in funds set aside

under the tenant representation contract's "Commission Pool" to pay for the appraisal services, thus rendering this an "off book" financial transaction unavailable to official scrutiny.¹³ The Auditor determined that payment for appraisal services for 4800 Addison Road and 438 Massachusetts Avenue, NW from the Commission Pool was an inappropriate use of these funds.

According to the Director of OPM, he "believed" the contract permitted OPM to obtain appraisal services from Cushman and Wakefield's Valuation Services Division, however, he was admittedly unfamiliar with any provisions of the contract permitting appraisal services and claimed to be unfamiliar with the methodology used by the Deputy Director to obtain appraisal services. Cushman and Wakefield indicated that it was "unclear" to them whether appraisals for proposed real estate purchases were allowed under the tenant representation contract.

The Auditor saw no provisions and heard of no official legal interpretations that would have permitted OPM to acquire appraisal services under the terms of the then existing tenant representation contract. It is clear that the Deputy Director violated existing District law concerning the acquisition of appraisal services, and either illegally broadened the scope of services in the tenant representation contract or improperly procured appraisal services from Cushman and Wakefield in violation of the District's procurement law and regulations. This was likely facilitated by what the Auditor views as considered and negligent indifference by the Director of OPM, who was ultimately responsible for exercising the requisite degree of management supervision and control of the Deputy Director's activities given his position of public trust and the critical importance of this transaction.

Former Deputy Director of OPM Provided False and Misleading Information to Appraisers to Inflate Appraised Value for 4800 Addison Road

As noted above, the Agreement of Purchase and Sale provided that the purchase price for 4800 Addison Road was to be based on its appraised market value for its highest and best use. The initial appraisal obtained by OPM for the 4800 Addison Road property contained two critical "extraordinary assumptions." As defined by the Uniform Standards of Professional Appraisal Practice, an extraordinary assumption is an assumption made by the appraiser that, if not true, will substantially alter the fair market value appraisal of the property. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or

¹³The Commission Pool is an escrow account maintained by Cushman and Wakefield consisting of commission funds earned and received from executed lease transactions performed on behalf of the District government, and is used to also pay allowable expenses such as architectural and engineering fees and payments due subcontractors for work performed on premises leased by the District government.

trends; or about the integrity of data used in an analysis. The appraisal valued 4800 Addison Road at \$12.5 million, an 833% increase over a three year period from the \$1.5 million purchase price paid by Jemal's. The \$12.5 million appraised value was based on the following two assumptions:

1) that contemporaneous with the District's contemplated acquisition of the property, an existing three-year lease between the District and Jemal's was extended for an additional nine years for \$1 million annually. The appraisal noted that the rental rate appeared uniquely appropriate because of the District's unique need and the few potential sites available to meet the District's needs. The appraisal did state that ***"the rental rate is significantly above what typical landlords and tenants would agree to in the normal course of business, and therefore the appraiser's opinion of the market value of the leased fee interest as reported is substantially higher than the opinion of the market value of the fee simple interest"*** which the appraiser placed at about \$7.8 million, assuming renovation of a fire damaged building. The appraisal indicated that the appraiser specifically assumed that the lease was consummated upon the same terms as the original lease, which it was not, and that in the absence of this extraordinary assumption, the value conclusion would be much lower; and

2) fire damaged improved premises on the subject property would be repaired and renovated by Jemal's within a one-year time frame at a cost of approximately \$1.87 million. This cost estimate was provided by the proposed seller. The document containing the cost estimate did not contain a written explanation as to how the estimate was determined, e.g., whether it was based on an estimate obtained from the insurer of the burned building or whether it was based on a methodology generally used in the construction industry. More importantly, the Auditor found no evidence that the District performed its own independent cost estimate for the renovations or sought to determine the accuracy or reasonableness of the owner's estimate. Of equal importance is the fact that this information was never provided to attorneys in the Office of the Corporation Counsel who were charged with drafting the purchase and sale agreement. As a consequence, no provisions were included in the purchase agreement requiring rehabilitation of the fire damaged portion of the premises.

According to the appraisal, the failure of the above two conditions would result in the property's fair market value being reduced to approximately \$6 million. In reaching this conclusion, the appraisal indicated the following:

...our opinion of the market value of the leased fee interest as reported is substantially higher than our opinion of the market value of the fee simple interest which would fall near \$7.8 million assuming the renovation. **Pursuant to the client's instruction, we assumed that**

the lease is consummated upon essentially the same terms as were given to us in the draft document. In the absence of this extraordinary assumption, the value assumption would be much lower. [Auditor's Emphasis]

Staff in the OCC informed the Auditor that they had been advised in October 2001 that an appraiser had been requested to value the property based on a 3-year lease, that the owner was not going to accept responsibility for the cost of the \$1.87 million rehabilitation of the fire damaged portion, and that the appraiser had responded with a value of around \$6 million.

As noted above, the primary extraordinary assumption utilized by the appraisers involved the assumption that a 9-year lease extension of the property had been or was about to be executed by the District. While the appraisal report indicated that the appraisal was performed in accordance with a letter of engagement, the Auditor was informed by the appraisers that, in fact, there was no letter of engagement, and no other written instructions provided by any District official regarding the performance of the appraisal.

The appraisers stated that information, such as the existence of a 9-year lease and the estimated cost of repairing and renovating the fire damaged building, was provided by either OPM's former Deputy Director or staff of Douglas Development. Further, they indicated that all instructions regarding the appraisal were provided orally by OPM's former Deputy Director.

According to the appraisers, the former Deputy Director provided the appraisers a copy of a draft 9-year lease extension in an effort to increase the appraised value of the property to more closely reflect the owner's \$12.5 million offer to sell the property. By taking this action, the former Deputy Director, at a minimum, violated his fiduciary duty to the taxpayers of the District of Columbia and the District government.

The draft 9-year lease extension reviewed by the Auditor appears to have been provided as an attachment to an e-mail from a Douglas Development employee to the former OPM Deputy Director on December 13, 2001—the day before the appraisal report was issued in final. The draft 9-year lease accompanying this e-mail had been altered in Section 1.04(a) by changing the expiration date of the lease from September 2004 to September 2013. The appraisers informed the Auditor that at no time did they see an executed 9-year lease extension, and pursuant to the former Deputy Director's specific instructions, assumed that an executed 9-year extended lease was "consummated upon essentially the same terms as were given to us in the draft document." The Auditor interviewed management and personnel within OPM and OCC and was informed that no one in either of those

offices was aware of a proposal to enter into a 9-year lease extension, nor did they know of the existence of a written draft lease evidencing such intent.

The appraisal went to great lengths to highlight the fact that the valuation arrived at for 4800 Addison Road was almost entirely dependent on the existence of a 9-year extended lease for the 8.33 acres and 10,000 square feet of building space. Further, the appraisal stated in several places that if no lease was indeed in existence, the appraiser's stated opinion regarding the value of the property would be substantially reduced from \$12.5 million to approximately \$7.8 million, assuming renovation and repair of the fire damaged building. For example, the appraiser states the following on page 1 of the appraisal:

“The property is being marketed to the District of Columbia with a reported pricing around \$14 million. Such a sale would represent an 833% increase in value in 3 years. **Furthermore, the vast majority of the prospective current price arises from the District's \$1,000,000 annual lease [of] a portion of the subject for its impound lot.**”(Auditor's Emphasis)

In fact, the appraisers informed the Auditor that following the issuance of the final appraisal report they fully expected to be contacted by District officials regarding the extraordinary assumptions contained in the appraisal. However, no one from the District government called to inquire about the findings and assumptions stated in the appraisal for 4800 Addison Road until after Proposed Resolution 14-0911, “4800 Addison Road Purchase and 438 Massachusetts Avenue, NW Disposition Disapproval Resolution of 2002,” was filed with the Council on September 18, 2002, and questions were raised in an October 2001 hearing conducted by the Council's Committee on Public Works and the Environment and Subcommittee on Human Rights, Latino Affairs, and Property Management and reported in the media.

Based on interviews the Auditor conducted with District government officials and the appraisers, the Auditor is convinced that the former Deputy Director of OPM knowingly provided false and misleading information to the first appraisers by instructing them to include in the appraisal the assumption that a 9-year extension of an existing lease had been or would be executed. The Auditor interviewed the Director of OPM and the Deputy Corporation Counsel responsible for overseeing the drafting of lease extensions, and determined that no District official, other than the former Deputy Director, had any knowledge or involvement regarding a 9-year lease extension. In fact, no District government official indicated any knowledge of or intent to execute such an extension. Further, given Jemal's willingness to sell and the District's definite intent to purchase the property within a very short period of time, as evidenced by its formal submission for Council

approval, proposing or executing a 9-year lease extension just prior to purchase would have been nonsensical. The Auditor believes that the sole intent of the former Deputy Director in providing the information regarding a 9-year extended lease was to establish an appraised value that more closely reflected the owner's \$12.5 million offer to sell the property.

According to the appraisers, when the former Deputy Director was informed of the value the appraisers initially found, the former Deputy Director was disturbed that the value was lower than the \$12.5 million asking price. The Auditor believes this is when Mr. Lorusso purposely engaged in a course of conduct designed to manipulate the outcome of the appraisal. It is unknown at this time why the former Deputy Director embarked on this improper course of action which was favorable to the owner and contrary to the best interest of the District of Columbia government.

Agreement of Purchase and Sale Indicated Properties to be Transferred “AS IS” Notwithstanding Extraordinary Assumption Contained in Appraisal Regarding Fire Damage

As noted earlier, according to OCC personnel, details of the owner's responsibility to renovate the fire damaged building at 4800 Addison Road were never communicated to OCC's legal staff charged with preparing the purchase and sale agreement. According to the OCC counsel responsible for drafting the agreement, the first he learned of the terms regarding the fire damaged building was when he read the appraisal after it was issued and after the agreement had already been prepared and submitted to the former Deputy Director of OPM. The Auditor reviewed the proposed purchase and sale agreement for 4800 Addison Road, which also included the transfer of 438 Massachusetts Avenue, NW, and found that Article II, Section 2.2(b), provided the following:

Jemal makes no (sic) representation and warranty whatsoever with respect to the existing improvements on the Jemal Property (including but not limited to, any below grade basement area) And the District hereby accepts the Jemal property in its “AS IS” condition and releases Jemal from any and all liability for any Hazardous Materials (hereinafter defined) contained therein. **The District acknowledges that one section of the warehouse building on the Jemal Property is fire damaged and accepts the building is (sic) in that condition.**
[Auditor's Emphasis]

More importantly, the \$12.5 million appraised value, which ultimately became the purchase price stated in the agreement, included the extraordinary assumption that the fire damaged building would be repaired and renovated by Jemal's within a one-year time frame at a cost of approximately \$1.87 million. In stating that “the District hereby accepts the Jemal property in its “AS IS” condition...” and not reducing the purchase price by the same amount, Jemal's would have been

provided an additional \$1.87 million profit and relieved of the obligation to repair and renovate the fire damaged building. This error or omission should have been detected and corrected by the former Deputy Director of OPM upon his review of the draft and final agreement submitted to the Council for approval. However, either the former Deputy Director failed to detect the error or detected the error and intentionally failed or refused to correct it. Further, if the Director of OPM had exercised proper management oversight of this employee and the transaction, a process should have been developed and implemented to ensure the objective review of the appraisal and resulting agreement by a panel of disinterested fully informed employees within OPM specifically and the District government generally. Instead, the Director of OPM allowed the former Deputy Director to circumvent applicable laws, regulations, and ethical standards, and to avoid all management oversight.

Addison Road Property May Not Be Available for the District's Use as Intended

In preparation to lease 8.33 acres of the property at 4800 Addison Road to the District, Jemal's sought and obtained an occupancy permit on June 15, 2001. On July 5, 2001, the Development Review Division of the Maryland National Capital Park and Planning Commission sent a memorandum to the Department of Environmental Resources (DER), Permits and Review Division, requesting rescission of their approval of the permit application for a vehicle towing station, stating that a special exception should have been obtained prior to approval of the permit.

On July 9, 2001, DER wrote to Jemal indicating the permit was issued in error, and that the remedy was to have the permit validated by the Prince George's District Council, or to obtain a special exception to use the property as a vehicle storage lot.¹⁴ The matter was heard before the Zoning Hearing Examiner on November 30, 2001 and December 17, 2001. On February 1, 2002, the Zoning Hearing Examiner issued a decision denying the request for validation of the permit issued in error. Thereafter, Jemal filed exceptions to the decision with the County Council sitting as the District Council. The Council heard arguments on April 8, 2002, and issued an Order of Denial of Jemal's request on April 10, 2002. Jemal's then petitioned for review of the Council's decision to the Prince George's Circuit Court, and argument was held before the Court on March 14, 2003. The Auditor contacted the attorney handling the matter before the Prince George's County Council and was informed that the Circuit Court in Prince George's County ruled on March 14, 2003, in favor of the Zoning Commission, upholding the refusal to validate the permit.

¹⁴In Prince George's County, the County Council sits as the District Council for the purpose of addressing zoning matters.

The result of the ruling is that the Prince George's County Department of Environmental Resources, Office of Community Standards, now has the authority to issue a cease and desist order as well as an infraction notice with regard to the District's impoundment operation at 4800 Addison Road. While Jemal's may still seek a special exception to use 4800 Addison Road as a vehicle storage lot, it is questionable whether such exception would now be granted given the history of the matter. It should be noted that Jemal also has a pending action before the United States District Court in Greenbelt, Maryland for declaratory judgment, injunctive relief, and compensatory damages against Prince George's County and a particular Prince George's County Councilmember.

The Auditor found no evidence that any official or employee of OPM or the District government investigated the need for or the propriety of the specific zoning or permits required to operate an impoundment lot at 4800 Addison Road. In fact, even after the proposed sale was withdrawn, several District officials indicated they knew nothing of this issue and expressed surprise regarding Prince George's County's actions contesting the validity of the permit. The Auditor reviewed documentation indicating that these officials' stated lack of knowledge regarding required permits is not entirely accurate.

PROPOSED STRUCTURED TRANSACTION WAS NOT IN THE DISTRICT'S BEST FINANCIAL INTEREST DUE TO INADEQUATE PLANNING, COORDINATION AND OVERSIGHT

District Lost Almost \$1 Million In Revenue During FY02 Due to Inability to Tow Vehicles to Addison Road

According to DPW officials within the Parking Services Administration (PSA), the location of the Addison Road property makes it impossible to tow all rush hour violators to this distant site. This is due to the fact that tow operators, after traveling to Addison Road, would basically be unavailable to tow other vehicles during rush hour given the time and distance involved in towing cars to Addison Road. This results in cars being towed to public space on nearby District streets. During fiscal year 2002, a period during which DPW used Addison Road, PSA informed the Auditor that 12,664 vehicles, mainly rush hour tows, were relocated to parking spaces on District streets because of the time and distance required to make a round trip to Addison Road. PSA estimated that DPW lost \$949,800 in revenue during fiscal year 2002 from towing fees that could have been assessed if vehicles had actually been impounded.

Further, DPW lost additional revenue from impoundment fees between February 2001, when DPW stopped impounding cars at Brentwood, until October 2001, when Addison Road became fully available. During the interim period, PSA was allocated space to store approximately 100 vehicles at the Blue Plains abandoned and junk vehicle impoundment facility. During this period, only booted vehicles were impounded. According to PSA representatives, approximately 1,100 vehicles would have been towed each month during the seven month period, and the Auditor estimates that DPW may have lost as much as an additional \$500,000 due to the inability to impound vehicles for much of calendar year 2001.¹⁵ Overall, the Auditor estimates that the District has lost in excess of \$1.5 million in revenue between February 2001 and September 30, 2002, and continues to lose revenue today as a result of the decision to sell the Brentwood site and to lease 4800 Addison Road. This estimate does not take into consideration the additional costs the District incurs in towing vehicles from the District to the Addison Road site or the administrative costs incurred in pursuing a purchase of the property.

New Appraisals for 4800 Addison Road and the Firehouse Found Substantially Lower Value for 4800 Addison Road and Substantially Higher Value for 438 Massachusetts Avenue, NW

Given the numerous questions raised regarding the initial appraisals, OPM contracted, through the General Services Administration Schedule, to have another appraisal performed for both 4800 Addison Road and 438 Massachusetts Avenue, NW. The most recent appraisal, which has not been finalized, assigns an “as is” fee simple value to 4800 Addison Road of \$4,250,000. This value disregarded the existing leases in effect, but took into account zoning/occupancy permit issues, site work, and the condition of an unoccupied building on the premises. Factoring in the existence of the leases, the appraisal assigns an “as-is” value of \$5,850,000. In either event, the most recent appraisal of 4800 Addison Road values the property at \$6.7 million less than the final \$12.5 million original appraised value, and \$1,950,00 less than the original appraisal’s lowest stated value of \$7.8 million assuming renovation and repair of the fire damaged building. In the absence of the fire damaged building being repaired and renovated, the value would fall to approximately \$5,930,000. Conversely, the firehouse was found to have been initially undervalued by \$200,000. The second appraisal found the “as-is”market value of the fee simple interest in the firehouse to be \$550,000 when compared with the first appraiser’s \$350,000 appraised value.

¹⁵ Estimate based on 13,400 vehicles impounded (as reported by PSA) in FY 2000, at \$75 per impoundment.

District Did Not Use Competitive Procedures to Determine the Firehouse's Highest and Best Use

D.C. Law 8-96, the "Disposal of District Owned Surplus Real Property Amendment Act of 1989", D.C. Code, Section 10-801 et seq. , authorizes the Mayor to dispose of District owned real property. Subsection (b) of D.C. Code, Section 10-801 requires that District owned real property be disposed of by the following methods:

- public or private sale to the highest bidder;
- negotiated sale to a for-profit or non-profit entity for specifically designated purposes;
- a lease for a period of greater than 20 years;
- a combination sale/leaseback for specifically designated purposes;
- an exchange of interests in real property; or
- any other means the Mayor finds to be in the best interest of the District.

The Auditor saw no evidence that the District sought bids for the purchase of the firehouse. Instead, the Deputy Mayor for Planning and Economic Development negotiated an oral agreement with Douglas Development that involved the sole source lease of the firehouse at 438 Massachusetts Avenue with an option to purchase, along with the District's promise to re-zone the old Woodward & Lothrop site for commercial use, in exchange for Douglas agreeing to build residential housing in the 400 block of Massachusetts Avenue, NW and F Street, NW. The transaction involving the firehouse and 4800 Addison Road was structured more closely to that of an exchange of interests in real property whereby the sale price of the firehouse, set at \$350,000 by an initial appraisal, would be credited to the District against the price the District was to pay for 4800 Addison Road. In an October 7, 2002 e-mail, the former Deputy Director stated:

The values of the properties were determined by independent appraisals from a MAI firm. OPM then negotiated the reduction of the sales price by the rent paid in '02, in order to reduce the price further...Because of the reduction for rent paid in '02 we are effectively getting \$1.35 million for the firehouse property this appraised at \$350,000 the 34+ acres property is valued at \$12.5 million...

As noted earlier, while an existing sole source lease with a right of purchase had been executed by Douglas Development and the District, Douglas officials maintained that Douglas' interest in purchasing the firehouse and the District's interest in purchasing 4800 Addison Road were not linked. However, an e-mail dated October 7, 2002 from the former Deputy Director contradicts this assertion. In this e-mail, the former Deputy Director states: "The only way that Douglas would

permit the sale of Addison Road was to include a partial exchange for the previously leased firehouse...This is a very good deal for the district [sic], as the alternative is to pay 1 million a year to rent part of the property.” Douglas Development officials stated to the Auditor that they had no issue in pursuing either transaction independent of the other. As noted earlier, the most recent appraisal did not agree with the \$350,000 fair market value of the initial appraisal, which was substantially low for a property of this type in this area. A value of \$550,000 of the fee simple interest was determined by the new appraisal.¹⁶ The Auditor found that by letter dated November 14, 2002, Douglas Development, through its legal counsel, informed the District that it was exercising its option to purchase 438 Massachusetts Avenue, NW. The Auditor also found that on December 6, 2002, Douglas Development sold property under development adjacent to 438 Massachusetts Avenue, NW to Graystar Atlantic for \$15 million. The Highest and Best Use section of the Summary of Salient Facts set forth in the appraisal of 438 Massachusetts Avenue, NW states:

...Note the use of the site would widen significantly if the lot could be a part of an assemblage, thus the site’s value would be enhanced.

OPM’S INEPT MANAGEMENT AND LACK OF ADEQUATE OVERSIGHT CREATED POOR INTERNAL CONTROL ENVIRONMENT OVER REAL PROPERTY DISPOSAL AND ACQUISITION PROCESSES

Director of OPM Failed to Exercise Command and Control of Subordinate

During the Auditor’s review of this matter, a consistent theme emerged wherein the former Deputy Director was allowed unfettered authority to pursue the lease of numerous properties as well as the proposed purchase of 4800 Addison Road and proposed sale of 438 Massachusetts Avenue, NW. Interviews conducted of numerous District government officials, including the Director of OPM, indicated that the former Deputy Director was permitted to operate singularly and without any discernible oversight whatsoever by his superiors. The Director of OPM justified this disinterested management approach to his belief that the Deputy Director was an experienced real estate professional with the requisite skills to perform without his oversight or monitoring. During an interview, the Director stated that at no time did he seek detailed information from or provide detailed instructions to the former Deputy Director in regard to the proposed purchase of 4800

¹⁶The Auditor also received information suggesting that federal Emergency Shelter Grant funds had been used to partially renovate the firehouse, and because the property was not being used as a homeless shelter, monies may have to be repaid to the federal government. However, the Auditor found that, based on information provided by the Department of Housing and Community Development (DHCD), no Emergency Shelter Grant funds were actually expended for firehouse renovation, although such funds had been sought as reimbursement by the entity performing the renovation. This request was denied by DHCD.

Addison Road. Despite his statement, written communications from and to the Director indicate that he was not totally uninformed nor did he lack input into the proposed purchase of 4800 Addison Road. If the Director's assertions regarding his lack of knowledge and inept management and oversight are accurate, he should be immediately terminated from his position as the District's Chief Property Management Officer and Director of the Office of Property Management for incompetence.

With the exception of the Office of the Corporation Counsel's review of the terms of the formal lease of 4800 Addison Road for legal sufficiency, there is no evidence that the Director of OPM, or any other District official in the executive branch, exercised appropriate management oversight with regard to Michael Lorusso's performance or conduct in handling the lease and attempted purchase of 4800 Addison Road on behalf of the District of Columbia government. There is an absence of evidence that accountable executive branch officials and managers performed reasonable and prudent due diligence with regard to examining the details of the process by which Mr. Lorusso found 4800 Addison Road, negotiated the price and terms of the lease, determined the reasonableness of the lease price, and ensured that a written record was created to support this entire transaction. We could not find evidence that one official in the executive branch, other than Michael Lorusso, was fully informed of the details of the lease transaction. There is ample evidence that the \$998,250 annual lease price for 8.33 acres at 4800 Addison Road was intentionally manipulated to circumvent review and approval by the Council of the District of Columbia. This ill-advised approach had the effect of concealing this transaction and others from public scrutiny and provided fertile ground for the former Deputy Director's continued unfettered freelancing and apparent self-dealing while under the immediate management control of the Director of OPM.

Deputy Director of OPM May Have Been Subject to Improper Influence and Conducted a Private Business With an Off-Shore Bank Using District Equipment and Facilities

The Auditor received allegations that the Deputy Director of OPM may have been the beneficiary of meals and other forms of entertainment provided by the developer who owned 4800 Addison Road, and others. D.C. Code, Section 1-618.1, Standards of Conduct, provides in part that:

- (a) Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

More specifically, Section 1803.2 of the District Personnel Manual provides that:

Except as noted in..1803.3, a District employee shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

- (a) Has, or is seeking to obtain, contractual or other business or financial relations with the D.C. government;
- (b) Conducts operations or activities that are subject to regulation by the D.C. government; or
- (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

In conducting interviews of principals of Jemal's and Douglas Development, the Auditor was informed that they were not aware of any attempts or efforts by the former Deputy Director of OPM to solicit favors, gifts or other gratuities from them. This assertion does not, however, negate the possibility that the former Deputy Director was offered favors, gifts, and other gratuities in an effort to curry favor and manipulate his official decisions. Due to the serious nature of the allegations against the former Deputy Director received by the Auditor, and the fact that it was the Deputy Director of OPM acting independently that brought the availability of 4800 Addison Road for lease and purchase to the attention of District officials, the Auditor will refer these allegations to the appropriate law enforcement authority for further investigation.

In reviewing documentation made available for this examination, the Auditor also found that the former Deputy Director conducted a private business using District government facilities and equipment with an off-shore bank during his tour of duty. The nature of the activity reviewed by the Auditor suggests that this matter should also be investigated further by appropriate law enforcement authorities.

Purchase and Sale Agreement May Have Authorized Broker's Fees to be Paid to the Same Firm That Performed the Appraisals

The purchase and sale agreement¹⁷ prepared by OCC and reviewed by the Auditor contained a provision addressing broker's fees. Section 9.1, Broker's Fees, of the purchase and sale agreement provided:

The parties hereto represent and warrant to each other that there has been no broker, sales representative, finder, agent or anyone else involved in this transaction who would be entitled to a Commission or other compensation on account of the sale of the District Property and the Jemal Property between the parties hereunder, **except Cushman & Wakefield, which shall be paid at Settlement in accordance with its agreement with the parties hereunder** (sic)...

As previously noted, the appraisals for 4800 Addison Road and 438 Massachusetts Avenue, NW were performed by Cushman and Wakefield. In the version of the purchase and sale agreement transmitted to the Council for approval, the phrases "except Cushman & Wakefield, which shall be paid at Settlement in accordance with its agreement with the parties hereunder" (sic) and "other than Cushman & Wakefield" have been lined out by hand. At the end of Section 9.1 there appears to be a handwritten "ML". The Auditor found no other versions of the purchase and sale agreement containing this attempted modification.

Cushman and Wakefield has represented to the Auditor that they were not involved in any aspects of the lease or proposed purchase of 4800 Addison Road, even though they were under contract as the District's tenant representative at the time the lease was executed. Nevertheless, reference to them as brokers in practically all versions of the purchase and sale agreement, including the version transmitted to Council, is troubling. At the very least, the apparent "11th hour" modification indicated that no District officials initially recognized the potential conflict of interest that would have been posed by having the same firm that performed the appraisals of 4800 Addison Road and 438 Massachusetts Avenue, NW to also act as broker of the purchase and sale transaction, and to receive a commission for such work, which may have been a percentage of the monetary value of the transaction.

¹⁷The purchase and sale agreement was submitted with PR 14-088 for Council approval.

RECOMMENDATIONS

1. The Director of OPM's claimed lack of knowledge as well as his inept management and oversight of the former Deputy Director's leasing and purchase activities, among other deficiencies noted throughout this report that were the direct responsibility of the OPM Director necessitate his immediate termination as the District's Chief Property Management Officer and Director of the Office of Property Management for misfeasance.
2. The responsibility for obtaining and overseeing the performance of appraisal services for the acquisition of real property by lease and purchase as well as the disposal of surplus District real property should be reassigned to a qualified entity within the District government other than the Office of Property Management and Office of the Deputy Mayor for Planning and Economic Development in order to remove the potential for conflict of interest and to ensure the integrity of appraisal results.
3. All real property acquisitions by the District government, and dispositions of District government owned property, should be publicly advertised for a sufficient length of time using the widest circulation feasible. Public notice should be given to as many potential sellers and purchasers as possible. Bids and offers should be thoroughly evaluated by a panel of District government managers and executives; written determinations and findings should be developed and signed by responsible District government officials; and all approvals obtained from the Council or any other entity prior to consummating any sale or purchase.
4. The Mayor and Chief Property Management Officer must develop and implement a multi-year facilities need, use and maintenance plan and strategy within 90 days of the date of this report. This plan should project the real property needs, both leases and purchases, of the District government, including the projected benefits and costs and appropriations necessary for acquiring the needed interests in real property. The Auditor will assess the compliance status of this recommendation at the end of the 90-day period.
5. All appraisals for real property needed by the District government should be procured in strict compliance with the Procurement Practices Act of 1985, as amended, and Title 27 of the District of Columbia Municipal Regulations.

6. All planned relocations of District government facilities and operations must be accompanied by a thorough cost-benefit analysis taking into consideration all material, operational, and other direct costs as well as indirect costs such as anticipated lost revenues likely to be incurred in relocating District government facilities and operations.
7. The Director of the Office of Property Management, with the assistance of the Office of Contracting and Procurement, must competitively procure all construction renovation, or rehabilitation services to be performed on District government owned or leased facilities after a formal solicitation. Alternative methods of procurement should only be utilized where fully and adequately justified in writing and where such method of procurement is demonstrably in the best interest of the District government. Further, all payments for such services must be processed through the District's System of Accounting and Reporting (SOAR).
8. Prior to attempting to purchase an interest in real property, the Mayor, Deputy Mayor for Operations, City Administrator, Chief Property Management Officer, and the Corporation Counsel should certify that they have reviewed all assessments, evaluations, opinions, fiscal impact statements, appraisals, and all agreements or other documents relating to or effecting such purchase, and specifically state in a writing signed by all parties and supported by written findings that the proposed purchase is in the best interests of the District government.
9. The Mayor, City Administrator, Deputy Mayor for Operations, Deputy Mayor for Planning and Economic Development, and Chief Property Management Officer should develop and adopt for the District government written procedures and guidelines mandating and prescribing detailed processes and benchmarks to ensure an adequate degree of planning and coordination whenever economic development initiatives will displace or substantially impact any aspect of District government facilities or operations.
10. The former Deputy Director of OPM repay the District government \$20,000 paid from the Commission Pool for appraisal services that were improperly authorized and appraisal results that were based on false and misleading information provided by him. If the former Deputy Director fails or refuses to voluntarily repay these funds, the

Office of the Corporation Counsel should initiate the appropriate legal measures to obtain these funds.

11. The executive branch establish a credible process under which a suitable site for the District's vehicle impoundment operation can be located.
12. The Director of the Department of Public Works perform an analysis of the costs incurred by DPW in operating a vehicle impoundment lot at 4800 Addison Road in comparison with conducting the same operation at the Brentwood site. The analysis should be detailed and take into consideration the lowest level of costs, including the costs of towing each impounded vehicle to Addison Road and to Brentwood, the length of time to tow impounded vehicles to Addison Road and Brentwood from different parts of the City. The analysis should also include labor, equipment, fuel, and maintenance costs, at a minimum, for a one-year period.
13. The Office of the Chief Financial Officer adhere to Council Rule 443 in preparing fiscal impact statements. Fiscal impact statements should be sufficiently detailed financial analyses of the impact of legislation on the revenues and budget of the District government rather than vague perfunctory missives that serve no legitimate use.

CONCLUSION

The Auditor's examination of the events leading to and including the lease and proposed purchase of 4800 Addison Road and proposed sale of 438 Massachusetts Avenue, N.W. revealed a series of management lapses, deficiencies, and in some respects ill-advised decisions that jeopardized District financial resources and assets. The haste with which the sale of the Brentwood site proceeded, coupled with: (a) a lack of stable leadership in the Department of Public Works in early 2000 and the Office of Property Management beginning in 2000; (b) the lack of adequate coordination and advanced planning among affected and accountable executive branch managers; (c) failure to perform any cost-benefit or other financial analyses which assessed the costs, risks, and benefits of selling the Brentwood site and finding a suitable replacement; and (d) the lack of regard for the vital importance of and need to ensure the uninterrupted continuation of District government operations then existing at the Brentwood site, resulted in a major upheaval within the District's traffic enforcement and impoundment operations. This disruption inevitably generated substantial and unnecessary costs and avoidable revenue losses to the District. The sale of the Brentwood site was based, at least in part, on the assumption that it would generate additional tax revenues and

provide jobs to District residents, however, the executive branch has not issued any assessments that demonstrate the degree to which these, and other assumptions were achieved.

The adverse impact of the sale of the Brentwood impoundment lot upon the District's traffic enforcement and vehicle impoundment operations quickly became apparent when DPW was forced to tow vehicles for parking infractions to legal parking spaces on residential streets, thereby aggravating residents already adversely affected by limited legal residential parking. The manner in which the District had to alter its vehicle towing and impoundment operations with the loss of the Brentwood impoundment lot also resulted in adverse press reports which placed pressure on the executive branch to quickly find a solution to this preventable situation.

During the Auditor's review, a consistent theme emerged wherein the former Deputy Director of the Office of Property Management was allowed unfettered authority to pursue the lease of numerous properties on the District's behalf including the lease and proposed purchase of 4800 Addison Road and proposed sale of 438 Massachusetts Avenue NW. The Office of the Deputy Mayor for Planning and Economic Development provided the impetus for these actions through the callous uncoordinated implementation of various aspects of the District's economic development plan. The Director of OPM allowed the former Deputy Director to circumvent applicable laws, regulations, and ethical standards, and apparently to avoid all management oversight. Further, the Director of OPM indicated that the former Deputy Director was permitted to operate singularly and without any discernible oversight whatsoever by his superiors. The Director of OPM justified this disinterested management approach to his belief that the Deputy Director was an experienced real estate professional with the requisite skills to perform without his oversight or monitoring.

The Auditor found that the former Deputy Director and Director lacked the requisite governmental experience and appreciation for the need to adhere to longstanding ethics in government rules and standards to ensure honesty and integrity in the performance of their official duties and responsibilities including their decision-making. During an interview, the Director stated that at no time did he seek detailed information from or provide detailed instructions to the former Deputy Director in regard to the proposed purchase of 4800 Addison Road. Despite this assertion, communications from and to the Director indicate that he was not totally uninformed nor did he lack input into the proposed purchase of 4800 Addison Road. However, if the Director's assertions regarding his lack of knowledge and disinterested management approach are accurate, he should be immediately terminated from his position as the District's Chief Property Management Officer and Director of the Office of Property Management for misfeasance.

There were no records made available to the Auditor which set forth how the terms of the proposed lease of 4800 Addison Road were formulated or that described the former Deputy Director's role in negotiating the initial terms set forth in the proposed lease. There was also no written evidence made available to the Auditor which described and justified how the lease rate was reached. Further, neither the OPM Director nor Deputy Director obtained a market rent analysis to establish an objective per square foot fair market lease value for the land or building at 4800 Addison Road. Finally, neither OPM nor DPW managers prepared a financial analysis to determine the full range of operating costs that would likely be incurred by relocating DPW's impoundment operation to this distant site in Capitol Heights, Maryland. Instead, it appears that the terms of the lease were forged by a perception that the District had few, if any, alternatives. OPM management's failure to assess the reasonableness of the per square foot lease rate for 8.33 acres of vacant land at 4800 Addison Road exhibited a callous, unprofessional disregard for determining whether the lease agreement was in the overall best interest of the District government.

The Auditor found that, notwithstanding the existence of a tenant representation contract between the District and two property management firms at the time Addison Road was initially leased, the Deputy Director of OPM did not utilize the services of either of the two tenant representatives to handle the leasing of 4800 Addison Road. Instead, the entire transaction appeared to be handled, in most respects, exclusively by the former Deputy Director.

Evidence was unavailable to the Auditor indicating that accountable executive branch officials and managers performed reasonable and prudent due diligence with regard to examining the details of the process by which Mr. Lorusso found 4800 Addison Road, negotiated the price and terms of the lease, determined the reasonableness of the lease price, and ensured that a written record was created to support this entire transaction. We could not find evidence that one official in the executive branch, other than Michael Lorusso, was fully informed of the details of the lease transaction from identifying the site to execution of the formal lease. There is ample evidence that the \$998,250 annual lease price for 8.33 acres at 4800 Addison Road was intentionally manipulated to circumvent review and approval by the Council of the District of Columbia. This ill-advised approach had the effect of concealing this transaction from Council and public scrutiny and provided fertile ground for the former Deputy Director's continued unfettered freelancing.

Section 1.04(b) of the formal lease entitled, "Landlord's Obligations," required the landlord, in relevant part, to: "(ii) provide fencing and landscaping for the District's initial operation." The Auditor's review of invoices and payments made to DDC for improvements made to 4800 Addison Road indicated that the District paid the owner \$25,410 for fencing that should not have been

charged to the District under the terms of the lease. Further, according to the lease, any improvements performed by the landlord were to be billed by the owner at cost plus 15%. There were no provisions in the lease allowing the owner to bill specifically for overhead or profit. However, the Auditor found that the landlord billed the District \$21,563.58, or 10%, overhead plus \$23,719.95, or 10%, profit not authorized by the lease but paid upon the Deputy Director's approval of the invoice. The total \$45,283.53 paid in fees for overhead and profit exceeded the 15% allowance provided under the lease by \$12,938 and exceeded the \$35,000 cap on fees under the lease by \$10,283.53.

It is clear that the Deputy Director violated existing District law concerning the acquisition of appraisal services, and either illegally broadened the scope of services in the tenant representation contract or improperly procured appraisal services for the acquisition of real estate by purchase, not lease, from Cushman and Wakefield in violation of the District's procurement law and regulations. This was likely facilitated by what the Auditor views as considered and negligent indifference by the Director of OPM, who was ultimately responsible for exercising the requisite degree of management supervision and control of the Deputy Director's activities given his position of public trust and the critical importance of this transaction.

The former Deputy Director of OPM knowingly provided false and misleading information to the first appraisers by instructing them to include in the appraisal the assumption that a 9-year extension of an existing lease had been or would be executed. The Auditor believes that the sole intent of the former Deputy Director in providing the misleading information was to establish an appraised value that more closely reflected the owner's \$12.5 million offer to sell the property. The draft 9-year lease extension reviewed by the Auditor appears to have been provided as an attachment to an e-mail from a Douglas Development employee to the former OPM Deputy Director on December 13, 2001 the day before the appraisal report was issued in final. (See Attachment I) The draft 9-year lease accompanying this e-mail was altered in Section 1.04(a) by changing the expiration date of the lease from September 2004 to September 2013. (See Attachment II)

The appraisers informed the Auditor that at no time did they see an executed 9-year lease extension. By providing false and misleading information to the appraisers, the former Deputy Director, at a minimum, violated his fiduciary duty to the taxpayers of the District of Columbia and the District government. Further, by providing the appraisers with the draft 9-year lease extension, it appears that Mr. Lorusso purposely engaged in conduct designed to manipulate the outcome of the

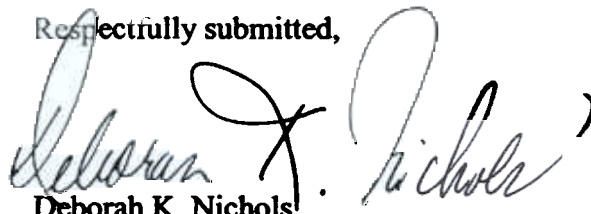
appraisal. It is unknown, at this time, why the former Deputy Director embarked on this improper course of action which was contrary to the best interest of the District of Columbia government.

The appraisal went to great lengths to highlight the fact that the valuation arrived at for 4800 Addison Road was almost entirely dependent on the existence of a 9-year extended lease for the 8.33 acres and 10,000 square feet of building space. In fact, the appraisers informed the Auditor that following the issuance of the final appraisal report they fully expected to be contacted by District officials regarding the extraordinary assumptions contained in the appraisal. However, no one from the District government called to inquire about the findings and assumptions stated in the appraisal for 4800 Addison Road until after Proposed Resolution 14-0911, "4800 Addison Road Purchase and 438 Massachusetts Avenue, NW Disposition Disapproval Resolution of 2002," was filed with the Council on September 18, 2002, and questions were raised in an October 2001 hearing conducted by the Council's Committee on Public Works and the Environment and the Subcommittee on Human Rights, Latino Affairs, and Property Management and reported in the media.

The \$12.5 million appraised value, which ultimately became the proposed purchase price stated in the agreement submitted for Council approval, was based on an extraordinary assumption that a fire damaged building would be repaired and renovated by Jemal's within a one year time frame at a cost of approximately \$1.87 million. In stating that "the District hereby accepts the Jemal property in its "AS IS" condition..." and not reducing the purchase price by the same amount, Jemal's was provided an unjustified additional \$1.87 million profit and relieved of the obligation to repair and renovate the fire damaged building.

The Auditor's examination revealed sufficient information to recommend this matter to appropriate law enforcement authorities for further investigation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Deborah K. Nichols", is written over the typed name.

Deborah K. Nichols
District of Columbia Auditor

ATTACHMENTS

From: besherick [besherick@DouglasDev.com]
Sent: Thursday, December 13, 2001 10:58 AM
To: 'michael.lorusso@dc.gov'
Subject: FW: Addison Road



jemfair.dc3.fin.doc

Mikey

Let me know if this works

Blake Esherick
Douglas Development Corp
702 H Street, NW
Suite 400
Washington, DC 20001

-----Original Message-----

From: lane [mailto:potkin@bellatlantic.net]
Sent: Thursday, December 13, 2001 10:53 AM
To: Blake Esherick (E-mail)
Subject: Addison Road

<<jemfair.dc3.fi doc Here is the revised ease See Paragraph 1.04 for the changes.

Lease and in accordance with the terms hereof. The District shall not create a nuisance or use the Property for any immoral or illegal purposes.

The term "Applicable Laws" shall mean all laws, rules, regulations and requirements of any governmental, quasi-governmental or public authority having jurisdiction over the Property or any restrictive covenants, now in force or which may hereafter be in force, including environmental laws as hereinafter defined.

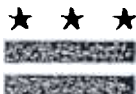
The District, its agents and its employees, shall not (i) cause or permit any Hazardous Substances (as hereinafter defined) to be brought upon, stored, used or disposed on, in or about the Property, or (ii) knowingly permit the release, discharge, spill or emission of any Hazardous Substances in or from the Property, except that the District shall be permitted to use and keep in the Property such customary supplies and equipment incident with vehicle towing and cleaning, copier and other supplies as are reasonable and customary for office use, provided that the District uses, stores and disposes of same in accordance with all Applicable Laws. The District shall be responsible for all costs, expenses, injuries and damages (and liabilities, once fixed in amount) which may occur from the use, storage, disposal, release, spill, discharge or emissions of Hazardous Substances by the District, its agents or employees, whether or not the same may be permitted by this Lease.

1.04 (a). Term. Subject to and upon the terms and conditions set forth herein, the term of this Lease (the "Term") shall commence (the "Rent Commencement Date") on August 1, 2001. Unless extended pursuant to Section 10 hereof, this Lease shall terminate at midnight on September 30, 2013, (the "Termination Date"). The "Term" shall include any additional period of occupancy by the District pursuant to Section 10 hereof. For the purpose of the Lease, the first "Lease Year" shall mean the period commencing on the Rent Commencement Date and ending on the last day of the twelfth full calendar month thereafter. Each subsequent Lease Year during the Term shall commence immediately following the last day of the preceding Lease Year and shall continue for 12 full calendar months thereafter; except that in the event that this Lease is terminated or expires on a date other than the last day of a Lease Year, then the last Lease Year shall terminate on the date this Lease is terminated or otherwise expires. Notwithstanding anything herein to the contrary, the District shall have a one time right to terminate this Lease at the end of the third Lease Year by giving Landlord not less than four (4) months prior written notice of such election (the "Termination Notice"). If a Termination Notice is given in a timely manner, then this Lease shall terminate on the last day of the third Lease Year as if such date was the initially scheduled "Termination Date". If Tenant fails to give the Termination Notice in a timely manner, the termination right set forth above shall be null and void.

1.04(b). Landlord's Obligations. Landlord shall deliver the Property on the Rent Commencement Date in "As Is" condition, provided Landlord shall be responsible for the following: (i) obtaining a Certificate of Occupancy for the District's intended use of the Property; (ii) provide fencing and landscaping for the District's initial operation; and (iii) ensure that the roof is water tight and free of leaks with respect to the interior spaces of the Building

1.04(c). Additional Construction by Landlord. Landlord shall, if requested by District, make such reasonable alterations and improvements to the Property necessary to

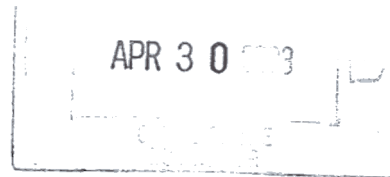
GOVERNMENT OF THE DISTRICT OF COLUMBIA ATTACHMENT III
OFFICE OF PLANNING



Office of the Director

April 30, 2003

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



Dear Ms. Nichols:

I am writing in response to your letter to me dated April 28, 2003, in which you request a copy of the Master Facilities Plan that was mentioned during a November 29, 2000 public roundtable.

Although I was present at that roundtable, the Office of Planning does not have jurisdiction over the matter in question and as such has neither undertaken nor completed such a facilities plan. Therefore, I am unable to comply with your request. I would suggest that you contact the Office of Property Management, which I believe has jurisdiction over facilities.

If you have any further questions on this matter please feel free to contact me.

Sincerely,

Andrew Altman
Director

AA/dk/cgb

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management



Via Fax, Original by Mail

April 29, 2003

Ms. Debrorah Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Nichols:

This letter shall acknowledge your request of April 28, 2003 for a copy of the Master Facilities Plan. In responding, I must admit to not being intimately familiar with the code citation in your letter as a requirement of such. However as referenced, in November 29, 2000 the Office of Property Management (OPM) and The Office of Planning (OP) were in the process of preparing a scope of work for the initial and preliminary stages for a Master Facilities Plan. The purpose of this scope of work was to determine a baseline from which a more thorough and detailed scope of work for a Master Plan could be developed. At the time the concept was raised, there was no specific budget associated in either agency for this project. Both agencies worked to identify the funds for this first phase with OPM tentatively identifying potential funds.

Based on those efforts the two offices made an attempt to procure the services. A request for determination of findings was prepared for a contractor that OP was familiar with. This was then submitted to the Office of Contracting and Procurement (OCP) for consideration. It was not, however, supported by OCP at the time. While other efforts were made to identify other possible contract vehicles, the potential funding as identified in the OPM budget was either reduced in budget reduction exercises on going at the time or needed for a more urgent priority. In subsequent years neither agency has had the opportunity due to fiscal constraints to dedicate specific funding to this project. I am pleased, however, to tell you that OPM is currently working with the executive and has earmarked specific capital funds for this effort in FY 2004 and 2005. A proposal is pending with the Council for its consideration and approval that would allow for this project to move forward. If approved OPM would have the necessary funding to commence this very valuable project.

I trust the aforementioned addresses your recent inquiry. If you are in need of any additional information or clarification as to these responses, please feel free to contact me.

Sincerely

A handwritten signature in blue ink, appearing to read "Timothy F. Dimond".

Timothy F. Dimond
Director

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer**

Natwar M. Gandhi
Chief Financial Officer



MEMORANDUM

TO: The Honorable Linda W. Cropp
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer

DATE: July 1, 2002

SUBJECT: Fiscal Impact Statement: "Negotiated Purchase of Property at Addison Road Approval Resolution of 2002"

REFERENCE: Resolution as Introduced - No Number Available

Conclusion

Funds are sufficient in the FY 2002 through FY 2005 budget and financial plan. Provisions of the proposed resolution will result in net costs of \$11.3 million through the purchase of property owned by Jemal's Fairfield Farms, LLC. This property has been determined to be required for District operations. Funds have been certified available for these purposes.

Background

The proposed legislation approves the negotiated purchase of property at 438 Massachusetts Avenue for multiple use by District agencies. The District is currently leasing this property at a cost of \$83,175.50 per month.

Financial Plan Impact

The District intends to fund this purchase with the proceeds received from the recent sale of District property at New York Avenue to the federal Bureau of Alcohol Tobacco and Firearms. Although funds have been received by the District from this sale, the money has not yet been allocated to the Office of Property Management (OPM). OPM has determined that the costs will be \$11,318,125. The Office of Finance and Resource Management is requesting \$11.5 million for OPM to fund this initiative.

AGENCY COMMENTS

AGENCY COMMENTS

On May 2, 2003, the Office of the District of Columbia Auditor submitted this report in draft for review and comment to the City Administrator, Deputy Mayor for Operations, Interim Corporation Counsel, Managing Director, Cushman and Wakefield, Valuation Advisory Services, and the President of Douglas Development Corporation.

Written comments were received from Cushman and Wakefield, as well as Leibner and Potkin, P.C. representing Douglas Development Corporation on May 9, 2003. In addition, written comments were received from the Deputy Mayor for Operations, the Director for Office of Property Management and the Interim Corporation Counsel on May 14, 2003. Where appropriate, changes were made to the final report to reflect the comments received. All written comments received by the Auditor are appended, in their entirety, to the final report.

MAY 14

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the City Administrator

Via Facsimile and Regular Mail

May 14, 2003

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia
Auditor
717 14th Street N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Nichols

Attached please find responses to the draft audit report entitled, "District Funds, Operations, and Properties Jeopardized by Mismanagement and Poor Supervisory Oversight," received by my office on May 3, 2003.

These responses, prepared by the Office of Property Management, are being submitted for consideration and inclusion in your final report. Responses from the Office of the Corporation Counsel have been sent under separate cover.

Should you have any questions or comments, please do not hesitate to contact the Office of the Deputy Mayor for Operations at 727-3636.

Best wishes.

Sincerely yours,

John A. Koskinen

Attachment

cc: Herbert R. Tillery, Deputy Mayor for Operations
Timothy Dimond, Director, Office of Property Management

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Property Management
MAY 14 2003

★ ★ ★



Via Fax, Original by Mail

May 13, 2003

Ms. Deborah Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Re "District Funds, Operations, and Properties Jeopardized by Mismanagement and Poor Supervisory Oversight"

Dear Ms. Nichols

Thank you for providing us the opportunity to respond and comment on the subject draft report. We have reviewed the draft and believe that the report misstates the law, mischaracterizes certain facts and draws incorrect conclusions. For these reasons, we are requesting that you revise the report. We also understand that the Office of the Corporation Counsel submitted comments to your report. Rather than repeat what has already been stated in their comments, we adopt and incorporate by reference their recommendations. What follows are our responses to the findings and recommendations contained in the draft report, requesting certain actions by the Office of Property Management ("OPM").

While the draft report generally recognizes the challenges the District faced in the relocation of the DPW impoundment lot functions, it neither recognizes the impact of senior management turn-over within OPM nor weighs the impact of decisions made outside the purview or control of OPM. Further, although the report appears to recognize the multiple disciplines involved in such a transaction, it places too much emphasis on the relocation efforts and not enough on the exigent circumstances surrounding the decision to purchase the site

We also take exception to the determination that Timothy Dimond lacked authority to delegate responsibility to negotiate the lease and sale of the subject properties. As the Chief Property Management Officer for the District of Columbia, I acted within the scope my legal authority to redelegate authority to then Deputy Director Michael Lorusso. This authority is found in D.C. Official Code § 10-1001(b) (2001) which provides as follows:

Letter to Deborah Nichols
May 14, 2003
Page 2 of 2

The Chief Property Management Officer shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Chief Property Management Officer is warranted in the interests of efficiency and sound administration.

Therefore, it cannot be said that my redelegation of authority to Mr. Lorusso was in any way improper. I believe that I acted within the scope of my respective authority. However, the District does not construe this delegation of authority as approval for any action that may at some juncture may later be determined not to be in the best interests of the District of Columbia or compliant with any District law.

OPM was faced with the unexpected challenge of finding an alternative site as a result of the unforeseen sale of the Brentwood Facility. Given the limited availability of sites within or near the District boundaries, OPM had few if any options to explore. It is OPM's business judgment that the 4800 Addison Road lease is favorable and in the best interest of the District. In support of that view, please note of the October 1, 2002 GSA lease from the Districts landlord at 4800 Addison Road that requires GSA to pay a rental rate of more than double the lease in question.

We thank you again for the opportunity to respond to the auditor's preliminary report. We believe that the suggested modifications to your report will adequately and fairly depict the Addison Road commercial transaction.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Timothy Dimond', with a stylized flourish at the end.

Timothy Dimond, Director
Office of Property Management

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

Immediate Office

MAY 14



May 13, 2003

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

Re: Draft Report, District Funds, Operations, and Properties Jeopardized
By Mismanagement and Poor Supervisory Oversight

Dear Ms. Nichols:

Thank you for the opportunity to comment on the subject draft report. It is our view that the draft report at times misstates the law and the facts; hence it should be revised to accurately reflect the law and facts. Our comments are in the following paragraphs.

(1) The first paragraph on page 7 of the draft report states:

In August 2002, the former Deputy Director of OPM, acting improperly as the District's Chief Property Management Officer, entered into a formal lease [for 4800 Addison Road].

We could not find anything in the draft report to support the conclusion that Mr. Lorusso acted without authority in executing and negotiating the 4800 Addison Road lease. In contrast, comments in the last paragraph of page 26 would support the theory that Mr. Lorusso did have authority to act for the Chief Property Management Officer in this case, as follows:

During the Auditor's review of this matter, a consistent theme was that the former Deputy Director was allowed unfettered authority to pursue the lease of numerous properties on the District's behalf and the proposed sale of 438 Massachusetts Avenue, NW. Interviews conducted of numerous District government officials, including the Director of OPM, indicated that the former Deputy Director was permitted to operate singularly and without any discernible oversight whatsoever by his superiors.

The language quoted above indicates to us that your investigation supports the conclusion that Mr. Dimond had redelegated to Mr. Lorusso the authority to act on Mr. Dimond's behalf in the lease and sale negotiations at issue. The power of the Chief Property Management Officer to redelegate his authority is found in D.C. Official Code § 10-1001(b) (2001) as follows:

The Chief Property Management Officer shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Chief Property Management Officer is warranted in the interests of efficiency and sound administration.

(2) The second paragraph on page 7 of the draft report states:

The Auditor found that notwithstanding the existence of a tenant representation contract between the District and two property management firms at the time Addison Road was initially leased, the Deputy Director of OPM did not utilize the services of either of the two tenant representatives to handle the lease of 4800 Addison Road. Instead, the entire transaction appeared to be handled, in most respects, exclusively by the former Deputy Director of OPM. At least one tenant representative interviewed by the Auditor stated that they [sic] were "surprised" to learn of the leasing of 4800 Addison Road without the involvement of a tenant representative .

The meaning of the language quoted above is not clear to us, and should be revised to make its meaning clear to the reader. That language could be interpreted to mean that you are saying OPM did not have authority to negotiate leases without the use of a tenant representative. It could also be interpreted to mean that you are saying the tenant representative contracts, when in effect, gave the tenant representatives the exclusive right to negotiate leases on behalf of the District agencies assigned to them. As for the former interpretation, there is no legal basis to conclude that OPM cannot negotiate leases save through a tenant broker. As to the latter interpretation, it is our view that the tenant representative contracts could reasonably be interpreted to mean that where a District agency's lease needs are assigned to a particular broker, that broker has the exclusive right to represent the District with respect to that agency's lease requirements. We base our conclusion that the tenant representative contracts create an exclusive right on a reading of the Request for Proposals ("RFP") as a whole. The overall language of the RFP, incorporated into the contracts, would lead a reasonable person to conclude that there would be no financial incentive or reason for a broker to submit a bid or enter into such contracts unless those contracts established an exclusive right to represent the District as a tenant representative.

(3) Page 9 of the draft report states in bold print:

**District Paid \$260,919 For the Cost of Renovation Performed
by the Owner of 4800 Addison Road Pursuant to a Sole Source
Arrangement with OPM's Former Deputy Director**

The statement quoted above is followed by the following statement in the first paragraph on page 11 of the draft report:

The Auditor found no evidence and was offered no explanation by OPM officials as to why competitive procedures were not utilized to acquire the necessary renovation work.

These two quotes from the draft report continue a theme that begins with the opening statement of the Findings and, in our view, misstates the law and facts with respect to the applicability of the Procurement Practices Act ("PPA") as it relates to the statutory authority of OPM to negotiate and enter into leases, including OPM's authority to negotiate for the construction of tenant improvements as part of such leases. That opening statement on page 4 of the draft report states:

**SOLE SOURCE, NONCOMPETITIVE \$998,250 ANNUAL
LEASE CIRCUMVENTED COUNCIL REVIEW, LACKED
COORDINATION, AND WAS PRINCIPALLY DRIVEN BY
NEGATIVE PRESS REPORTS**

The cumulative effect of these statements relating to "sole source" (a legal term of art defined by the PPA) and "competitive procedures" at the very least creates the impression that the PPA governs the acquisition and disposition of real property by OPM, including the negotiation of tenant improvement provisions in leases where the District is a tenant. However, the PPA applies to the procurement of goods and services, not the acquisition of real estate. *See* D.C. Official Code § 2-301.04(b) (2001). A lease represents an interest in real estate, not a good or service. *Jacobsen v. Sweeney*, 202 F.2d 461 (D.C. Cir. 1953); *Gulf Motors v. Fenner*, 114 A.2d 543 (D.C. 1955).

OPM has the statutory authority, pursuant to D.C. Code § 10-1003 and D.C. Code 10-801 to enter into leases through negotiation with private parties, as well as by competitive procedures, in its discretion. Pursuant to those statutes, OPM also has authority to contract for tenant improvements by incorporating and paying for such work within the structure of a real property lease. That is not to say that in this instance those lawful, authorized procedures were not abused, nor do we intend to imply that another authorized procedure might not have been a more appropriate business choice under the circumstances. However, given that the tenant improvements were part and parcel of the lease, one would first need to demonstrate that a viable alternative that was agreeable to the landlord existed. In the present case, since the tenant improvements could not have exceed \$233,333, the instant tenant build-out was lawful. D.C. Official Code § 1-301.91(c).

(4) The third paragraph of page 15 states:

Chapter 19 of Title 27 of the District of Columbia Municipal Regulations (DCMR) sets forth requirements for the acquisition of real property appraisal services.

The draft report thereafter states that OPM did not comply with those provisions. It is our view that those assertions imply to the reader that the quoted regulations establish the only means available to OPM for hiring appraisers. Such an impression would not be accurate. OPM could also have acquired those services pursuant to the parallel small purchase authority procedures under Chapter 18 of Title 27 of the District of Columbia Municipal Regulations and D.C. Official Code § 2-303.21 (2001). *Cf. In re protests of: Corvel Corp. & NYLCARE Health Plans of the Mid-Atlantic, Inc.*, 44 D.C. Reg. 6898, 1997 DCBCA 82, 3 (D.C. C.A.B. 1997) (observing

that the contracting officer “elected” to follow Chapter 19 procedures rather than alternative procurement methods. However, we are not aware of any facts to indicate that OPM followed the small purchase authority procedures in this instance.

- (5) It is our view that the references in paragraph number 2 on page 18 and in the second paragraph of page 21 with respect to OCC’s knowledge of fire damage and the owner’s responsibility to repair the fire damage is somewhat confusing, and thus in need of clarification. Paragraph number 2 on page 18 of the draft report notes that the appraiser made an assumption that:

fire damaged improved premises on the subject property would be repaired and renovated by Jemal’s within a one-year time frame at a cost of approximately \$1.87 million.

That same paragraph number 2 on page 18 accurately states that:

Of equal importance is the fact that this information was never provided to attorneys in the Office of Corporation Counsel who were charged with drafting the purchase and sale agreement. As a consequence, no provisions were included in the purchase agreement requiring rehabilitation of the fire-damaged portion of the premises.

The first two sentences of the second paragraph of page 21 are consistent with the statement quoted above in paragraph number 2 of page 18, that is, OCC was not aware of the details of the owner’s responsibility to renovate the fire damage, and only learned of the terms of those details long after the purchase and sale agreement had been executed, when OCC personnel were finally provided with copies of the appraisal of 4800 Addison Road.

However, the confusion arises when the draft report states in the last paragraph of page 21 that:

Despite OCC’s contention that they never had knowledge of the fire damage, the Auditor notes that the above provision of the proposed purchase and sale agreement, drafted by OCC, does indeed recognize the existence of fire damage on the property.

The confusion comes from mixing knowledge of fire damage with knowledge of the extent of the fire damage and the terms of the details for renovating that fire damage. It is correct to state that OCC had knowledge that there had been some fire damage, as noted in the purchase and sale agreement. It is incorrect to state or imply that OCC had knowledge of the extent of the fire damage, or the details of any alleged terms to repair that fire damage. OCC did not learn of the extent of the fire damage and the alleged details of the terms for repair of that damage until OCC was finally provided with a copy of the Cushman appraisal of 4800 Addison Road, sometime after the proposed purchase of 4800 Addison Road had been submitted to Council for approval. (We also note at this point that the fire-damaged improvements are not the subject of the lease of 4800 Addison Road.)

- (6) It is our view that the draft report’s implication in the second paragraph of page 23 that District officials were remiss in their duty to determine whether the property was available for its intended use is unwarranted and not supported by the facts. It is our view that

District officials acted in a commercially reasonable manner, and that their actions were consistent with the care and diligence that any reasonable prospective tenant would take under the circumstances, as shown by the following facts: (i) The 4800 Addison Road lease provided in section 1.03 thereof that "Landlord warrants that Applicable Laws (as hereinafter defined) permit the Property to be used for such purposes;" (ii) section 1.04(b) of that lease provides that the Landlord is

responsible for "obtaining a Certificate of Occupancy for the District's intended use of the Property;" and (iii) the Landlord did provide the required certificate of occupancy, issued by Prince Georges County, Maryland and, in addition, also provided a certificate from the National Capital Planning Commission indicating that permission had been granted for use of the property. If circumstances changed thereafter, it was the Landlord's duty to so inform the District, and any failure of the Landlord to so inform the District may be a breach of contract and also may give rise to an action for damages for fraud against the Landlord. It is not reasonable, in our view, to expect any tenant to constantly monitor the status of use permits once they have been issued. It is reasonable, in our view, for a tenant to rely on the good faith of a landlord to advise of any change in the status of use permits.

(7) It is our view that the draft report's comments in the last paragraph of page 24 are inaccurate for its failure to mention that the most recent appraisal of 4800 Addison Road is not complete. That recent appraisal is not complete due to the fact that the appraiser has not issued a supplement to his appraisal that takes into consideration the effect, if any, that a lease between the owner of 4800 Addison Road, as landlord, and GSA, as tenant, may have on the value of the property that the District has agreed to purchase. Your office has previously been provided with a copy of that GSA lease, dated October 1, 2002. The GSA lease covers a portion of the property that is the subject of the appraisal, and provides for rent payments at a rate that is twice as much as the rent payments in the District's lease for 4800 Addison Road. Our office has been advised by the GSA official who signed the GSA lease, and by the lawyer for Jemal, that the GSA lease was voluntarily entered into by the parties. Further, that upon GSA's learning that the District had an option to purchase the property subject of the GSA lease, GSA wanted to avoid any potential conflict with the District's use of the property, and therefore GSA and Jemal had tentatively agreed to terminate the GSA lease. On May 5, 2003, the GSA official advised this office, via e-mail, that a termination agreement was finally at Jemal's office awaiting signature.

(8) It is our view that the opening statement at the top of page 25 of the draft report, coupled with the comments in the second paragraph on page 25 that "[t]he Auditor saw no evidence that the District sought bids," creates a misleading and inaccurate impression of the law with regard to District procedures for the disposition of real property. That opening statement, in bold print, is as follows:

**District Did Not Use Competitive Procedures to Determine the
Firehouse's Highest and Best Use**

The quoted phrase and statement would give the uninformed reader the false impression that the District, and OPM, are required by law to dispose of real property by competitive bids, as is required for the procurement of goods and services under the PPA. It would also give the uninformed reader the false impression that OPM had violated District law by failing to dispose of the property by competitive bids. We seriously doubt that the uninformed reader would take note that D.C. Official Code § 10-801 (2001), quoted in part on page 25 of the draft report,

authorizes several methods for the disposition of District property, only one of which is by competitive procedures. Furthermore, there is no requirement whatsoever in § 10-801 that there first be a determination of a property's "highest and best use" prior to its disposition. The phrase "highest and best use" in this context has no legal or factual significance.

We strongly believe that in order for the draft report to reflect clearly and accurately District law and the facts as they apply in this investigation, it is essential that the draft report be revised in accordance with our comments.

Thank you again for this opportunity to comment on the draft report.

Yours very truly,


ARABELLA W. TEAL
Interim Corporation Counsel

AWT/cfb

LEIBNER & POTKIN, P.C.
ATTORNEYS AT LAW
4725 WISCONSIN AVENUE, N.W., SUITE 250
WASHINGTON, D.C. 20016
(202) 244-0600
FAX # (202) 244-8930

ROBERT F. LEIBNER
LANE H. POTKIN
JOHN E. ARNESS, II

MARYLAND OFFICE
51 MONROE STREET, SUITE 603
ROCKVILLE, MD 20850

Via Hand Delivery
Via Facsimile (202-724-8814)

May 9, 2003

Ms. Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, D.C. 20005

Re: Draft Report: "District Funds, Operations, and
Properties Jeopardized By Mismanagement and Poor
Supervisory Oversight

Dear Ms. Nichols

This firm represents Douglas Development Corp. "DDC"

Thank you for providing a copy of the Draft Report: "District
Funds, Operations, and Properties Jeopardized By Mismanagement
and Poor Supervisory Oversight" (the "Draft Report") for review
and comment by our client.

The Draft Report is clearly the product of thorough investigation
and careful review of available materials. Your invitation to
review and provide comments to the Draft Report is greatly
appreciated. On behalf of DDC, we would like to offer the
following comments to the Draft Report, and further request that
you carefully consider their inclusion in the Final Report.

The comments are in chronological order and (hopefully) reference
to the Title and Page of the Draft Report. We have attempted to
narrow our focus to those areas which we believe most
significantly impact DDC.

1. Background (Page 3). The third sentence of the final
Background paragraph refers to a potential purchase by the
District of 7.3 acres (Steuart Petroleum site) for \$4 million.

We believe it would further clarify the cost of that transaction, and provide a meaningful and objective measure of comparison for the reader, if a sentence was added which stated the per acre price in the Steuart transaction was \$547,945.20 and the per acre price for the contemplated 4800 Addison Road transaction was \$367,647.05 per acre, and concluding with a statement that neither transaction was completed.

2. **Findings (Page 5).** The third full paragraph describes how OPM initially identified, through an informal conversation between OPM and an employee of Douglas Development Corporation ("DDC"), the potential availability of Addison Road for use as a substitute impoundment lot. Therefore, while use of the word "unsolicited" may be technically correct because it was OPM which approached DDC (and not the reverse), we object to the use of the word, the author's decision to use quotes around it, and the context in which it is included in both the last sentence of the third paragraph as well as the first sentence of the fourth paragraph (also on page 5).

We believe the decision to use the word and intentionally surround it with quotes is inaccurate, confusing to the reader, and somehow implies improper action on the part of DDC. Because as you have found, it was OPM that solicited DDC, we believe the word should be deleted from both the third and fourth paragraphs with the resulting language more accurately detailing the chronology of the transaction.

3. **Findings (Page 6).** We believe there are two issues in the second and third full paragraphs on Page 6 which need further review.

a. The second paragraph on Page 6 of the Draft Report references the Cushman and Wakefield appraisal ("Appraisal") as follows: "We concluded based on our opinion of market rent (as detailed below) that the District lease does not reflect market rent ..." That statement is in the Appraisal; however, our review of the Appraisal also indicates, in several different places, and as computed via several different but fundamental approaches that the "rental rate appears uniquely appropriate for the District because it has a unique need and because there are uniquely few potential sites that would meet the District's need." See Page One of December 14, 2001 Cover Letter to Appraisal concluding the market value of the leased fee estate of the property to be Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00). Therefore, we believe the Final Report would be more accurate and balanced if it included the preceding highlighted language.

The Report also neglects to mention the statement made to the Auditor by representatives of DDC that the square foot price for the Addison lease with the District was initially determined by DDC based on a then recent lease entered into by the District for similar space for the Metropolitan Police Department on New York Avenue, N.E. in 1998, where the lease rate reportedly was \$2.75 PSF.. This is significant since while the report states that the District may have been paying up to \$800,000 more than market rate if an arms length deal was negotiated, neither the Appraisal nor the Auditor's Report offers any comparable rents for similar space which would support any assumptions in the Auditor's Report of what an appropriate, arms length market rate rent would be.

b. Paragraph Three on Page 6 of the Draft Report ("According to the testimony ... typical ... is 8% to 12% of the value of the land") needs further clarification. We believe the otherwise-unreferenced citation to "testimony" is vague and taken out of context from the balance of the testimony. Specifically, the "8% to 12% of the value of the vacant land" statement, we recall, was offered within the context of "typical academic or textbook method of calculation" and was not proffered as an accurate measurement at this time or in this market.

Moreover, the relevance of the "8% to 12%" calculation is further blurred because the Draft Report attempts to apply that calculation to the proposed Addison Road transaction. Such an application is flawed; it is mixing apples and oranges. The "8% to 12%" calculation is based on the value of the land (i.e., fair market value at time of calculation). The Draft Report, however, attempts to apply the "8% to 12%" calculation to Jemal's acquisition cost for the land ("59% ... that Jemal's paid for the property"; See Draft Report, Page Six, Paragraph Three). The Final Report must correct this application. In order to do so, the Final Report must state the fair market value of Addison Road if the Report is to be mathematically consistent. The Final Report should indicate that the Appraisal ultimately concluded that the Indicated Value As-Is by the Sales Comparison Approach on January 1, 2002 was \$14,400,000.00 (See Page 62 of Appraisal) and that the Market Value of the leased fee estate "as-is" on January 1, 2002 was \$12,500,000.00 (See Page 76 of Appraisal). The Prospective Market Value "as-stabilized" on January 1, 2005 was determined to be \$16,500,000.00 (See Page 76 of Appraisal).

Those numbers, and those proven methods of establishing fair market value must be used if the Final Report seeks to rely upon or otherwise utilize the 8% to 12% calculation in an effort to examine whether or not the lease reflects market rent.

4. Findings (Page 6). The first sentence of the next-to-last

paragraph (beginning with "The lease of 4800 Addison Road ...") states the lease was "improperly executed" (emphasis added). We believe those words are intended to imply or suggest an illegal act. While we recognize the Report's Finding that "Sole Source, Noncompetitive ... Circumvented Council Review ..." (See Page 4 of Report) is critical of the District's actions and methods, it is unfair to conclude execution was "improper" given the undisputed fact that Corporation Counsel specifically approved execution of the subject lease. In the event the Report ultimately adopts the "improper execution" language objected to herein, the interests of fairness dictate that the Report further indicate that it was executed with the full approval of the District's own legal department. (Also See Comment #14 below).

5. Findings (Page 7). The first sentence of the lead paragraph ("In August 2001 ...") again uses the word "improper" and for the reasons stated above (See Comment #4), DDC objects to such a characterization in that paragraph.

6. Findings (Page 7). Again, the Draft Report's repeated reference in the indented and highlighted language following the first full paragraph on Page 7 is also objected to by DDC for the reasons previously stated above (See Comment No. 3 above). The Draft Report also fails to reference any comparable in support of its conclusion that the rental rate was "significantly above what typical ...". Because the Report fails to include any comparable, it is unclear if the "8-12%" statement is simply an esoteric academic guideline or is actually based upon readily available and relevant comparable considered by the Appraisal's authors but not otherwise referenced therein.

As noted in Comment #3, the Draft Report fails to include the Appraisal's repeated references that the "rental rate appears uniquely appropriate for the District because it has a unique need and because there are uniquely few potential sites that would meet the District's need." See Page One of December 14, 2001 Cover Letter to Appraisal.

7. Findings (Bottom Page 11 - Page 12). Section: "District Decides To Purchase 4800 Addison Road. DDC strongly believes the last sentence at the end of the carryover paragraph to be untrue: "The transaction also provided that the District would transfer to DDC, another Douglas Jemal entity, a District owned historic firehouse located at 438 Massachusetts avenue, NW, which was adjacent to property owned by DDC that was being developed as residential housing." The Draft Report has painted a broad stroke but has neglected to point out that the first time the two sales were made dependent on each other is contained in the draft purchase agreement prepared by the District and submitted,

unsigned, to the Council for approval

The Report neglects to state that the District's right to purchase 4800 Addison Road was initially set forth in an amendment to the Addison Road Lease dated December 14, 2001, and that purchase option was in no way tied to the purchase of the Firehouse. Several months later, in May of 2002, the District and a DDC entity entered into a lease for the Firehouse which also included a purchase option. This lease also did not require that both properties be purchased together although it did require DDC to remind the District of its right to purchase 4800 Addison Road at the time DDC exercised its option, and permitted the District to postpone closing if it elected to purchase 4800 Addison in order to coordinate the closings of both properties. The concept of making the transactions interdependent first appears in the draft purchase agreement prepared by the District and not signed by DDC.

On a related note, the Report should point out more clearly that the Purchase Agreement quoted from so extensively is not a signed contract, but merely a draft, and not legally binding on any party.

8. Findings (Page 12). The first full paragraph again refers to Jemal's original purchase price. However, it fails to fully advise that Jemal's purchase price was \$500,000.00 more than Jemal's Seller had paid the Resolution Trust Corporation for the property in late 1998, and that Jemal's Seller promptly resold the property to Jemal and realized a \$500,000 profit literally overnight. Moreover, the Draft Report, while seemingly mocking the proposed purchase price for 4800 Addison, does not point out that the subject property in 1983 was sold by Marriott Corporation and at the time of the sale was encumbered by two deeds of trust, one in the amount of \$6,000,000 securing John Hanson Savings Bank (ultimately taken over by the RTC) and one in the amount of \$3,000,000.

We would respectfully submit the Draft Report's repeated references to Jemal's \$1,500,000.00 purchase price in isolation - without reference to the value of the property immediately prior to Jemal's purchase, as well as the prior value of the property is somewhat misleading. Jemal's purchase price should be stated within the relevant historical context. It is unfair to isolate the purchase price without also stating the immediately preceding value attached to the property by other lenders and owners. I would also venture to say that this is not the first time in the late 1990's that a party purchasing a property from the RTC (which this essentially was) has seen its value increase dramatically as the values of real estate

throughout the areas increased dramatically from the real estate and savings and loan crash in the early 1990's.

9. Findings (Page 17). The initial sentence of the final paragraph ("As noted above, the Agreement of Purchase and Sale provided that the purchase price for 4800 Addison Road was to be based on its appraised market value for its highest and best use. In fact, while the purchase agreement submitted may include that statement based on the Appraisal, this is totally misleading as to DDC. The price that DDC was willing to sell 4800 Addison was determined by DDC at the outset of negotiations in 2001 and was communicated to the District at the outset of negotiations. This price was never subject to adjustment or determination based on an appraisal of the Property by the District. The District's appraisal was intended for its internal approval purposes.

As Mr. Jemal indicated to the Auditor, he typically is not a seller of real estate and his willingness to sell 4800 Addison to the District was in part to assist the District in fulfilling its needs. However, Mr. Jemal established the price at which he was willing to sell, and if the District was unable to meet this price Mr. Jemal was more than willing to continue to hold 4800 Addison, as he now continues to do.

Any insinuation that Mr. Jemal colluded with the District to inflate the value of his property so that he could obtain a higher price must be excised. Mr. Jemal was never under any obligation to sell 4800 Addison at a price determined by appraisal or in any other manner. His only obligation was to sell 4800 Addison at a price he agreed to, which price he determined at the outset and never wavered from. The Amendment to the 4800 Lease, the only document ever signed by Mr. Jemal regarding the proposed sale of 4800 Addison, confirms that in the event of District exercises its option to purchase the price is to "be determined by mutual agreement of the parties at any time after notifying ..." A copy of the Amendment of Lease is attached.

10. Findings (Pages 17-22). The Report goes to great lengths to show that the \$12,500,000 appraised value was based primarily on certain erroneous assumptions regarding the term of the District's Lease. However, in making its final determination, the Appraisal at Page 76 states that because the property was income producing the appraiser primarily relied on the "Income Capitalization Approach" to arrive at the value. What is never discussed nor addressed is the "Sales Comparison Approach" valuation set forth in the Appraisal which, quite significantly, arrives at a value of \$14,400,000. This valuation is based on several factors detailed in the Appraisal (see pages 53-62) which

are not linked to the District's lease

While we do not profess to be versed in the intricacies of appraisals, we cannot help but point out the statement on page 53 that inherent in the Sales Comparison Approach

"is the principle of substitution, which states that when a property is replaceable in the market, the value tends to be set at the cost of acquiring an equally desirable substitute property, assuming that no costly delay is encountered in making the substitution".

This is juxtaposed against the "Income Capitalization Approach" which Approach, as stated at Page 63 of the Appraisal states:

"is a method of converting the anticipated economic benefits of owning property into a value through the capitalization process".

Given the stated purpose of the District in acquiring a "substitute" property for the Brentwood facility, and considering that the District's proposed purchase clearly was not for typical investment (or economic) purposes, it certainly would seem to a lay person that the most important and appropriate valuation should be the Sales Comparison Approach. Using this approach, and the valuation of \$14,400,000 arrived at by the Appraisal using this method, Mr. Jemal's statement to the Auditor that the District was getting a very fair deal at \$12,500,000 does not seem at all unreasonable.

11. Findings (Page 22). The second line at the top of Page 22 uses the word "gratuitously" and in our opinion, not only implies but actually suggests to the reader that Jemal (i) undertook some sort of action which induced or mislead the District -- an implication wholly lacking in factual support, and (ii) once again makes it appear to the reader that the transaction actually took place; we respectfully suggest that the Draft Report consistently fails to advise the reader that the challenged transaction never took place, and Jemal remains the owner of 4800 Addison Road.

12. Findings (Page 24). The carryover paragraph (which begins on Page 25) fails to recognize the substantial economic gains also enjoyed as a result of the sale of the Brentwood impoundment lot, such as increased employment tax revenues, payroll tax revenues, sales tax revenues, real estate tax revenues, jobs and overall improvement to the vitality and economic health of the site. It is necessary to acknowledge the added economic boost realized by the District, its citizens and the Brentwood community, notwithstanding the Draft Report's criticism of the

transaction

13. Findings (Page 25). Throughout the findings on Pages 25-26 which conclude with a finding that the District failed to comply with its own procedures for determining the Firehouse's highest and best use, the Draft Report fails to objectively inform the reader that the District -- not Jemal -- selected the \$350,000 price as part of the underlying Lease Agreement process entered into between the parties. Specifically, Article 21.2 of the Lease Agreement included a provision establishing the \$350,000 sales price in the event the Tenant (Jemal) exercised its option to purchase the firehouse property as otherwise provided for in the Lease Agreement.

DDC firmly believes the carryover paragraph at the top of Page 26 concerning Jemal's alleged "linkage" of the two transactions is false, misleading and inaccurate. Inclusion of a portion of an email in order to bolster the assertion that Jemal demanded that the transactions be linked is unfair and inaccurate. In point of fact, it was the District which determined and ultimately demanded that the two deals be tied together. The Draft report should include the email from Senior Corporation Counsel Donald Thigpen to Lane H. Potkin (counsel for Jemal) which provides in relevant part that " ... the lease language must contain language tying the exercise of the firehouse lease option to the District's deal to purchase the Addison road property. The two deals are linked." (emphasis added). A copy of the Thigpen email is attached. Finally, although the third line at the top of Page 26 of the Draft Report states that DDC "had no issue in pursuing either transaction independent of the other", we respectfully suggest use of the "no issue" phrase fails to accurately explain the true status of the negotiations to the reader. The Draft Report fails to advise the reader that it was the District which imposed the linkage requirement, fails to clearly portray DDC's position on such linkage, and fails to ultimately advise the reader that neither transaction was consummated.

The fact is that over the last several years the District has attempted to promote a living downtown by incentivizing the development of residential housing south of Massachusetts Ave. N.W., where DDC's Square 517 project adjacent to the Firehouse is located. During negotiations with the District involving development of its Woodward and Lothrop site, DDC committed to devote both its property at 910-916 F Street, N.W., and Square 517 to residential purposes, resulting in approximately 400,000 square feet of new residential development south of Massachusetts Ave. To ensure that development of Square 517 would be viable, DDC requested the right to purchase the Firehouse in order to control the potential uses of that site, and limit any uses

which might be inimical to the proposed development and which would ultimately curtail financing alternatives.

Thus, , it was, and remains the position of DDC that the "linkage" of the Firehouse has been misrepresented throughout Draft Report

14.Findings (Page 27). The Draft Report describes in detail the Corporation Counsel's position regarding the fee cap on the Addison Road lease (See Pages 7-8). However, the first full paragraph (and particularly the final sentence therein) on Page 27 of the Findings clearly suggests to the reader that DDC was somehow involved in and supported efforts to "conceal the transaction from public scrutiny". DDC respectfully submits that the insinuations throughout this portion of the Draft Report are false, inaccurate and misleading. The Draft Report itself details (at Pages 7-8) Corporation Counsel's efforts -- not DDC's efforts -- to impose the fee cap. It is unfair to imply in any way that DDC condoned, colluded with, or otherwise influenced the Corporation Counsel's legal strategy. As such, the Final Report should remove any such insinuation intended to suggest that DDC sought in any manner to conceal the transaction from public scrutiny. Moreover, the "cap" is well known to all landlords and leasing agents doing business in the District, and structuring a lease to avoid the more cumbersome procedures required in order to obtain council approval is neither uncommon, improper or illegal, notwithstanding the insinuations of the Report.

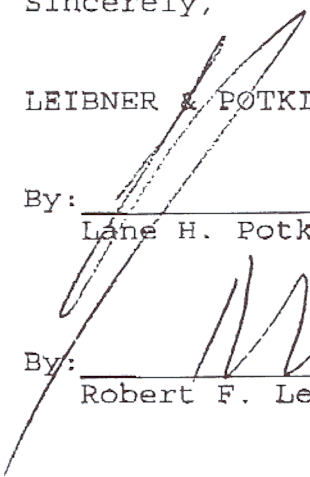
15.Findings (Page 28). DDC is particularly disturbed by the Draft Report's recitation of interviews conducted with DDC staff regarding solicitation of favors, gifts, etc. as detailed in the first full paragraph on Page 28 ("In conducting interviews of principals of Jemal's ..."). The Draft Report's thorough investigation failed to reveal any act of wrongdoing by DDC in regard to its dealings with the former Deputy Director. While the Draft Report acknowledges that DDC was "unaware" of any efforts by the former Deputy Director to solicit favors, the Draft Report nevertheless then states that "[T]his assertion does not, however, negate the possibility that the former Deputy director was offered favors, gifts, and other gratuities in an effort to curry favor and manipulate his official decisions." (See Draft Report, Page 28). DDC objects in the strongest terms possible to inclusion of that sentence. Inclusion of that sentence is inflammatory, false, and essentially imposes upon DDC a duty to "prove a negative", a duty we can only assume the Auditor has imposed upon DDC because its own investigation failed to reveal any single act of wrongdoing by DDC in its dealings with the former Deputy Director.

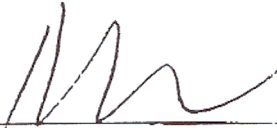
Conclusions. DDC greatly appreciates the opportunity to submit the above Comments. We have attempted to provide Comments to those portions of the Draft Report which most directly impact DDC, and we have done so in a legitimate effort to provide a more balanced and factually accurate Final Report. For these reasons, we urge the Auditor to review these Comments, consider their validity and accuracy, and to include them in the Final Report.

Please feel free to contact me with any questions you may have regarding these Comments.

Sincerely,

LEIBNER & POTKIN, P.C.

By: 
Lane H. Potkin

By: 
Robert F. Leibner

LHP:js
Encls.

lane

From: Thigpen, Donald (OCC) [donald.thigpen@dc.gov]
Sent: Monday, April 22, 2002 1:21 PM
To: Lane H. Potkin (E-mail)
Cc: Lorusso, Michael (OPM); Barbera, Charles (OCC); Stanford, James (CCC)
Subject: Firehouse Lease - District Revisions (PL-02-154)

Dear Lane,

This will confirm my telephone conversation with you today wherein you acknowledged receipt of the District's markup of the draft firehouse lease. As I explained, the District desires that the lease be for one year only, not twenty. Also, the lease language must contain language tying the exercise of the firehouse lease option to the District's deal to purchase the Addison Rd. property. The two deals are tied together. As part of the District's purchase of Addison road deal, Jemal will purchase the firehouse. I understand that you will be conferring with his client later today. We can speak again after you have had a chance to read all of the District's comments and after you have spoken with Douglas Jemal.

Donald

Donald A. Thigpen
Senior Counsel
Commercial Division
202-442-9830/Rm. 6N13A

Donald A. Thigpen
Senior Counsel
Commercial Division
202-442-9830/Rm. 6N13A

AMENDMENT OF LEASE

THIS LEASE AMENDMENT ("Amendment") is made and entered into as of the day of 12/14, 2001, between Jemal's Fairfield Farm L.L.C. ("Landlord"), and the District of Columbia, a municipal corporation ("District"). Landlord is a limited liability corporation organized under the laws of the state of Maryland with a principal office in the District of Columbia at 702 H Street, N.W., Suite 400, Washington, D.C. 20001. The registered agent of Landlord in the state of Maryland is Lane H. Potkin.

WHEREAS, the Landlord and the District are parties to the Lease between them entered into as of the 1st day of May, 2001 for the Property described on Exhibit A, attached hereto and made a part hereof, and

WHEREAS, the parties desire to amend the Lease by granting to the District an option to purchase the Property,

NOW THEREFORE, the Landlord and the District hereby amend the Lease by adding a Section 13, to read as follows:

13.01. Exercise of Purchase Option. Provided that (i) this Lease is in full force and effect, and (ii) the District is not in Default hereunder at the time of exercise or at the time set for closing, the District shall have, and is hereby granted, an option (a "Purchase Option") to purchase the Premises for a purchase price to be determined by mutual agreement of the parties at any time after notifying Landlord of its desire to exercise a Purchase Option but prior to settlement. The District shall notify the Landlord of its desire to exercise a Purchase Option (the "Purchase Notice") if at all, upon ninety (90) days prior written notice at any time from date of execution of this Lease Amendment by Landlord and through the end of June, 2004.

13.02. Transfer of Title to the Premises. Should the District exercise the Premises Purchase Option in a timely manner, and except as may be otherwise provided for herein, Landlord and the District agree to enter into a commercially reasonable form of purchase and sale agreement within sixty (60) days after receipt by Landlord of the Purchase Notice, which shall provide, *inter alia*: (a) for payment of the purchase price as set forth in subsection 13.01 hereof; (b) that the Premises shall be conveyed by Landlord to the District in its "as-is", "where-is" condition, and such agreement shall not require Landlord to make any representations or warranties with respect to the Property; (c) that Landlord shall not be required to pay any brokerage commissions to any party; (d) that Landlord shall be responsible for payment of the transfer tax, but not the recordation tax (the District is exempt from the payment of the recordation tax) and each party shall be responsible for payment of any fees incurred by the party; and (e) that settlement shall occur within thirty (30) days following the date the purchase agreement is executed. At settlement, Landlord agrees, at its sole cost, to deliver to the District a deed conveying good and merchantable title to the Property in fee simple which specially warrants the Property and contains a requirement to execute such further assurances of title as may be reasonably required. The deed shall convey the Property free and clear of all liens, leases, encumbrances, easements, conditions, and restrictions of record reasonably acceptable to or otherwise waived by the District. Further, at settlement, Landlord shall provide the District proof of (i) satisfaction and release of all mortgage or other liens, uniform commercial code filings, encumbrances and claims of any kind, (ii) the removal of any outstanding notices of violation against the Property caused by the Landlord, and (iii) the direct payment to the appropriate taxing authority of all

taxes, including interest and penalty, which are due and payable on the Property and which are not the responsibility of the District under this Lease. Payment of the purchase price shall be made at settlement by wire transfer. Should the District and Landlord fail, after acting in good faith, to enter into a purchase and sale agreement on the terms outlined above within said sixty (60) day period, then the Purchase Option shall be deemed to have expired unexercised, and the District shall have no further right to purchase the Premises under this Lease. Should the failure to enter into a purchase and sale agreement be the result of bad faith on the part of either party, the other party may pursue whatever remedy may be available at law or in equity.

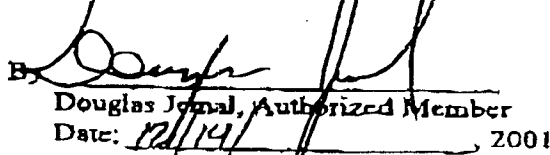
13.03. RENT APPLIED TO PURCHASE PRICE. Landlord and District agree that, provided the District has satisfied the provisions described in Sections 13.01(i) and 13.01(ii) hereof, the District shall be entitled to a credit towards the purchase price at settlement of all rent paid by the District in fiscal year 2002.

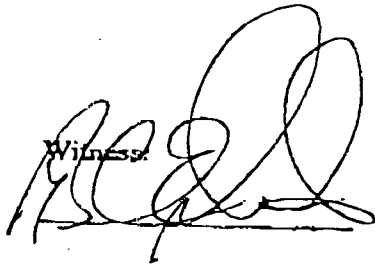
Landlord and the District agree that all other terms and conditions of the Lease shall remain in full force and effect, except as modified herein.

IN WITNESS WHEREOF:

Landlord has caused this Lease Amendment to be executed by Douglas Jemal, its Authorized Member, witnessed by BLAKE C. ESTERICK, and does hereby constitute and appoint Douglas Jemal to acknowledge and deliver this Lease Amendment as the act and deed of Landlord.

LANDLORD:
JEMAL'S FAIRFIELD FARM L.L.C.,


By: Douglas Jemal
Douglas Jemal, Authorized Member
Date: 12/14/ 2001


Witness: Blake C. Esterick

The District of Columbia has caused this Lease Amendment to be signed by Timothy F. Dimond, its Chief Property Management Officer, and does hereby appoint such Officer its true and lawful attorney-in-fact to acknowledge and deliver this Lease Amendment as the act and deed of the District of Columbia.

DISTRICT:
THE DISTRICT OF COLUMBIA,
A municipal corporation

By:

~~Timothy F. Diamond~~

Chief Property Management Officer

Date: 17/11/2001, 2001

Approved as to Legal Sufficiency:

Deputy Corporation Counsel, D.C.
70-31-202, 2001

District of Columbia

This instrument was acknowledged before me on this ____ day of _____, 200__, by Douglas Jemal, in his capacity as Managing Member of Jemal's Fairfield Farm, L.L.C.

Notary Public

SEAL

My Commission Expires: _____

District of Columbia

This instrument was acknowledged before me on this ____ day of _____, 200__, by Timothy F. Dimond in his capacity as Chief Property Management Officer and Attorney in Fact for the District of Columbia.

May 8, 2003

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia
717 14th Street N.W., Suite 900
Washington, D.C. 20005

Re Comments to Draft Audit Report

Dear Ms. Nichols

Thank you for providing Cushman & Wakefield with the draft of the report entitled "District Funds, Operations and Properties Jeopardized by Mismanagement and Poor Supervisory Oversight." In accordance with your May 3, 2003 letter enclosing the draft report, we have several comments on the following sections of your report as set forth below:

**1. Purchase And Sale Agreement May Have Authorized
Broker's Fees To Be Paid To The Same Firm That
Performed The Appraisals (Page 28-29 of Draft Report).**

The first paragraph in this section of the draft report refers to Section 9.1 of the proposed purchase and sale agreement for the 4800 Addison Road property. As cited in the draft report, Section 9.1 of the agreement, entitled Broker's Fees, provides in pertinent part that Cushman & Wakefield may be entitled to compensation in connection with the sale of the property. Although the very next page of the draft report points out that in the version of the agreement that was submitted to Council for approval, the references to Cushman & Wakefield "have been lined-out," the report nonetheless states that "the reference to them [Cushman & Wakefield] as brokers in practically all versions of the purchase and sale agreement, except the version transmitted to Council, is troubling." (See Page 29 of draft report.)

We request that the characterization of the reference to Cushman & Wakefield in certain versions of the proposed agreement as "troubling" be eliminated from the final report, or, in the alternative, be clarified in order to make clear that no conduct on the part of Cushman & Wakefield with respect to the proposed agreement was found to be "troubling" by your auditors. This request is based on the following undisputed facts. First, as we have represented to your office, Cushman & Wakefield was not in any way involved in the leasing or proposed purchase of this property. Cushman & Wakefield did not act as the broker on this transaction and there is no listing or brokerage agreement between Cushman & Wakefield and the District of Columbia or any agency thereof with respect to this property. Second, before reading your report, Cushman & Wakefield had never even seen any proposed agreement, had no input or involvement in the preparation of any such agreement, and (other than in connection with Councilmember Graham's recent hearing) had no knowledge whatsoever that the name Cushman & Wakefield appeared or was referenced in an agreement of sale for this property. Third, whoever inserted the reference to Cushman & Wakefield in Section 9.1 of the proposed agreement (and then lined out the reference by hand in the version submitted to Council) did so without the knowledge or approval of Cushman & Wakefield. In short, Cushman & Wakefield was not the "broker" on this proposed transaction, had no involvement whatsoever with the proposed purchase (other than the appraisal), had no knowledge that the name Cushman & Wakefield appeared in the proposed agreement of sale and had never even seen this

language until reading the draft report.¹ Accordingly, we request that the reference to Cushman & Wakefield as the broker on the proposed agreement of sale as "troubling" be eliminated from the final report, or at least be clarified so as not to unfairly suggest that it was the conduct of Cushman & Wakefield in this regard that the auditor found to be troubling.

2 OPM Officials Failed To Exercise Due Diligence To Enter An Agreement To Purchase 4800 Addison Road.

This section of the draft report provides in pertinent part that the tenant representation contract as between the District and Cushman & Wakefield did not "appear to include" appraisal services in connection with the District's acquisition of real property by purchase, and that there was no provision in the tenant representation contract which would authorize the District to request, or Cushman & Wakefield to perform, appraisal services for the proposed purchase of real property by the District. The report also concludes in this section that the payment to Cushman & Wakefield of \$20,000.00 for appraisal services out of the pooled funds account established under the tenant representation contract was "an improper use of these funds that essentially rendered the Commission Pool a slush fund."

I request that a number of revisions be made to this section of the report. First, footnote 10 on page 16 should reflect that the commission pool account was created by and operated pursuant to the tenant representation contract, a contract that was approved by a number of District of Columbia governmental agencies.² In addition, every expenditure from this account was approved by the then Acting Director or Deputy Director of the Office of Property Management over the 5 – year period. Moreover, all of the funds in this account are commissions earned by Cushman & Wakefield on District lease transactions and in turn dedicated, pursuant to the terms of the contract, to the benefit of the District. Therefore, the characterization of the commission pooled fund as a "slush fund" is incorrect and should be revised.

I am not in the position to respond to your finding that OPM did not comply with certain regulations in ordering appraisal services from Cushman & Wakefield for the two properties in question. However, please be advised that for all intents and purposes we were directed by Mr. Lorusso to perform these two appraisals and to do so under the tenant representation contract. Moreover, we have performed approximately one dozen appraisals for the District over the past five years under the tenant representation contract and each was handled in exactly the same manner as the two appraisals examined in your report.

3. References In The Report To the 9-Year Lease Extension For The Subject Property.

The first sentence in the fourth paragraph on page 19 of the draft report states as follows:

"According to the appraisers, the former Deputy Director provided the appraisers a copy of a draft 9-year lease extension in an effort to increase the appraised value of the property to more closely reflect the owner's \$12.5 million offer to sell the property." (Emphasis added.)

¹ In this regard, you will also recall that Scott Frankel and I both testified under oath at the hearing held by Councilmember Graham on February 27, 2003 that Cushman & Wakefield was not the broker on the 4800 Addison Road transaction and had no knowledge that the name Cushman & Wakefield had been inserted in the proposed agreement of sale for this property.

² I am sure you are aware that Staubach and Company, another commercial real estate firm, operates under an identical commission pool contract.

While certainly not intentional, this sentence as presently structured appears to insinuate, or imply, that at the time the appraisers received the 9-year lease extension from the former Deputy Director that the appraisers were aware or had knowledge of the Deputy Director's objectives or motivation in providing to them what ultimately turned out to be a fictitious lease extension. The facts and circumstances surrounding the appraisal conclusively demonstrate that Cushman & Wakefield had no such awareness or knowledge. As far as the appraisers knew, the District had in fact agreed to the extension of the lease and had or was about to execute an amended lease in the form provided to us by Lorusso. Indeed, other sections of the report expressly (and correctly) point out that Lorusso knowingly and intentionally provided false and misleading information to the appraisers and engaged in a course of conduct designed to manipulate the outcome of the appraisal. Accordingly, we request that this sentence be clarified so as to not incorrectly imply or suggest that the appraisers were aware of the fact that Lorusso was providing them with the draft 9-year lease extension "in an effort" to increase the appraised value of the property. In the interest of accuracy, perhaps the sentence could start with the phrase "unbeknownst to the appraisers," instead of "according to the appraisers." For the same reasons, we request that the word "enable" in the first line on page 21 of the report be changed to the word "cause."

**4. New Appraisals for 4800 Addison Road And The Firehouse
Find Substantially Lower Value For 4800 Addison
And Substantially Raised The Value For The Firehouse.**

This section of your report, on page 24, endeavors to compare the appraisals performed by Cushman & Wakefield on the 4800 Addison Road and 438 Massachusetts Avenue properties, with two other appraisals which I have not seen. Because I have not reviewed the other two appraisals, I am not in a position to comment on the values expressed in those appraisals. I suggest, however, that you not compare our appraisals with the other appraisals since those appraisals were not based upon the same assumptions we were provided and may have used valuation dates different from those expressed in our appraisal. This is particularly true with respect to 4800 Addison Road, where the new appraisal was obviously not affected by the 9-year lease extension provided to us by Mr. Lorusso. If you conclude that the final report should include a comparison of the appraisals, I would ask that the report make clear that the new appraisals were not tainted or affected by the faulty assumptions provided to Cushman & Wakefield by Mr. Lorusso.

Except for the foregoing observations, we find your report to be exhaustive, informative and accurate. If we can help in any other way, please call me.

Sincerely,
Cushman & Wakefield of Washington, D.C., Inc.



Donald R. Morris, MAI
Managing Director