



# CITY OF ATLANTA

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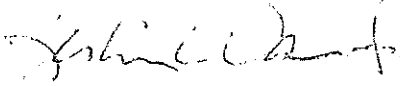
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## MEMORANDUM

DATE: February 21, 2003

TO: Honorable Mayor and Members of City Council

FROM: Leslie Ward 

SUBJECT: D. L. Stanton Park Land Remediation Project – Follow-up Report (corrected)

This memorandum provides a corrected copy of the results of follow-up work on the Stanton Park project. The total amount of overpayment to R&D is \$1,256,596. This figure has been corrected in Table 1 (page 3) and on page 7. I initiated this work to address questions raised at the October 9, 2002 work session of the Finance/Executive Committee on the project and my July 2002 audit report. These questions called for additional information from R&D invoices and City payments on this project. As a result of a more detailed review of these documents, as well as related subcontractor invoices, I have drawn additional conclusions and made additional recommendations that are presented here.

### Introduction

The Finance/Executive Committee held a work session on October 9, 2002 to discuss the D.L. Stanton Land Remediation Project and the audit report I issued on July 9, 2002. Attendees included representatives from R&D Testing and Drilling, R&D Environmental, subcontractors that worked on the project, and City departments involved in the project. During the work session, Committee members were concerned about several issues and raised questions that called for additional details from the audit work. Issues we address in this memorandum include the following:

- Confirm the amounts owed to specific subcontractors.
- Confirm that the City already paid R&D for all landfill disposal.
- Confirm the status of R&D's last invoice to the City for this project.
- Confirm the amounts R&D billed the City at various times throughout the project.
- Provide more detail on R&D's own costs on the project, and how the \$1.7 million the firm retained is accounted for.
- Provide more detail on R&D's markups on subcontractors' unit prices.

### **Work Performed**

In addition to review of the previous audit work, the follow-up work included additional detailed review of R&D invoices and supporting documentation. Audit staff also interviewed representatives of R&D and Omegasys, a first-tier subcontractor, and obtained written confirmation from them of information relevant to our conclusions.

We discussed our analysis with R&D and Omegasys representatives in meetings and by telephone. We met with Omegasys on November 7, 2002 and with R&D on December 10, 2002. Representatives of both companies confirmed the accuracy of our information either during the meetings or in subsequent telephone calls.

Following the meetings, we requested written confirmation of the documents and analysis we had discussed. We sent a letter of confirmation to Omegasys on November 5, 2002 and they returned it completed on November 12, 2002. We sent a confirmation letter to R&D on November 14, 2002 and they responded in writing on January 28, 2003. Between December 10, 2002 and January 28, 2003 R&D confirmed most of our information verbally.

### **Conclusions**

Based on the above, I conclude that two subcontractors, BFI and C&S Environmental have not been paid for a portion of work they performed on the Stanton Park project. I recommend that the Department of Parks, Recreation and Cultural Affairs identify a source of funds to pay them, based on the Law Department's review of the City's position. The amount due BFI, stated in my July 2002 report, is unchanged. The amount due C&S Environmental is higher than stated in my previous report because we obtained additional information that contradicts earlier statements given to us. A third subcontractor, Omegasys, has an outstanding balance on its last statement for the project, which is still the subject of discussion and dispute resolution between Omegasys and R&D. I do not believe that further audit work can resolve disagreements between the two parties.

I also conclude that the City has paid R&D for all landfill disposal, but R&D has not in turn paid all landfill charges. This constitutes an overpayment to R&D that the City should seek to recover. Further, R&D charged the City, and the City paid, for excess quantities of other excavation work, security services, and R&D staff time. The City should also seek to recover these overpayments.

Finally, I conclude that a portion of R&D's final invoice, submitted to but not paid by the City, includes amounts that the City should now pay directly to C&S Environmental, not to R&D. R&D's final invoice also includes an amount that the firm has already paid to C&S. However, I do not recommend that the City reimburse R&D for this or any other amount, because the amount the City should seek to recover from the firm far exceeds any portion of their final invoice that might be considered legitimate. In addition, as stated in my July 2002 audit report, R&D did not complete all work on Stanton Park for which the Parks Department had reserved a portion of project funds.

The following table summarizes these conclusions and their financial impact.

**Table 1. Summary of Findings and Recommendations**

Finding	Recommendation	Amount
The City should pay two subcontractors that R&D has not paid for all landfill charges and a portion of an outstanding backfill invoice.	The Parks and Recreation Department should identify funds to pay the outstanding amounts.	City should pay BFI: \$626,684 City should pay C&S: Up to \$373,529
The City has paid R&D for all landfill disposal, but R&D has not paid all landfill charges.	The City should seek to recover the overpayment for landfill disposal from R&D.	R&D owes City: \$982,782
The City overpaid R&D for excavation, security, and staff time.	The City should seek to recover these overpayments from R&D.	R&D owes City: \$273,814
		Total City overpayment to R&D: \$1,256,596

The findings and recommendations on each of the above are detailed below. Pages 9 and 10 include responses to the other questions and requests for additional information from the October 9 work session.

**Finding #1: City Should Pay Two Subcontractors**

In our July 2002 report we stated that two subcontractors are still owed for some of their work on the Stanton Park project: BFI for landfill disposal and C&S for backfilling. We have not changed our conclusion that these two firms have not been paid, and based on the Law Department's review, the City should pay them. The amount owed to BFI is unchanged at \$626,684. However, we have revised the amount owed to C&S based on new information that was not available to us previously. I now conclude that the City should pay C&S up to \$373,529 depending on availability of funds.

**Table 2. Amounts owed to subcontractors**

BFI	\$ 626,684
C&S Environmental	up to 373,529
Total owed	<b>up to \$1,000,213</b>

**Overpayment to C&S Environmental is less than we concluded in July 2002 report.** On July 13, 2001, R&D entered into a contractual agreement with C&S Environmental for hauling, placement, and compaction of clean backfill materials. C&S has billed R&D \$857,738 for these services, of which R&D has paid \$426,209, leaving a balance of \$431,529. The July 2002 audit report concluded that most of the balance was offset by overpayments to C&S during the first phase of the project.

The previous audit work on the C&S payments relied on statements from the head of the firm about his invoices and his relationship to first-tier subcontractor Omegasys during the first phase of the project. Omegasys has since provided us with documentation of their contractual

relationship with C&S. The two firms had a profit-sharing agreement, under which most of the \$309,801 that we previously concluded was an overpayment to C&S was authorized.

However, Omegasys also provided us with documentation that C&S received \$58,000 (paid by R&D on behalf of Omegasys) in excess of the profit-sharing arrangement. This payment apparently was based on excess quantities that R&D directed Omegasys to reduce (see Finding #3). Therefore we applied the \$58,000 to C&S Environmental's outstanding invoice for backfilling in the second phase of the project and deducted it from the balance due on that invoice.

The remaining balance on the C&S invoice for backfilling is \$373,529. This amount includes an unknown amount of profit, since C&S had a lump-sum contract with R&D for this work. Because of their previous profit-sharing arrangement, I estimate that C&S received a profit of about 36 percent on the first phase of the Stanton Park project. Further, this profit was on top of hourly wages for the proprietor of C&S included in the firm's invoices for direct costs. Both the profit margin and billing for the proprietor's time are unusual. Therefore I recommend that the City treat the \$373,529 balance on the C&S invoice for backfilling as a maximum and that the amount paid to C&S be based on the Parks Department's available funds for this project.

**Table 3. C&S Environmental charges and payments for backfill**

C&S invoice amount to R&D	\$ 857,738
R&D's partial payment on invoice	(426,209)
R&D's previous overpayment to C&S	(58,000)
Balance on C&S invoice	\$ 373,529

**Balance due to Omegasys remains in dispute.** The work session included discussion of the role of Omegasys and raised questions as to amounts that may be owed to them by R&D or the City. We make no recommendation for City payment to Omegasys at this time. As I stated at the October work session, our previous audit work had not identified a claim by Omegasys for a specific amount due from the City, and Omegasys and R&D had not resolved what that amount should be. The last Omegasys statement in our files indicated a balance due of \$95,076 (net of the amount due to BFI for landfill charges). Because the final balance is a result of numerous partial payments and adjusted invoices, it is difficult to determine precisely the work the balance due represents. The situation is further complicated by R&D's direct payments to second-tier subcontractors, whose work is included in the Omegasys statement.

During our follow-up work, Omegasys has discussed adjustments to this amount with us, and R&D has also told us that discussions of disputed amounts between the two firms continue. R&D informed me in a letter dated January 28 that they intend to commission an internal review of invoices from and payments to all subcontractors on this project. It appears that the disputed items arise from R&D's termination of its contract with Omegasys midway through the Stanton Park project and Omegasys' final charges for demobilizing at the site.



I do not think it prudent to recommend that the City make a payment to Omegasys in the midst of these events. Further, I do not believe that additional audit work will resolve disagreements between the two parties.

**Recommendation:** We recommend that the Parks Department immediately identify a source of funds from which to pay BFI and C&S Environmental.

**Finding #2: Some Landfill Charges Remain Unpaid Despite City Payment to R&D**

As stated at the work session and confirmed by R&D representatives, the City has already paid for all landfill disposal from Stanton Park.

**The City paid R&D for all landfill disposal.** The City paid R&D for 161,548 tons of landfill disposal, yet R&D paid for only 125,416 tons. The remaining 36,132 tons were disposed, but R&D did not pay for it. At R&D's rate of \$27.20 per ton, this represents an overpayment by the City of \$982,782. This amount includes R&D overhead.

**R&D has not paid for all landfill disposal.** As stated in the July 2002 report, an outstanding invoice from BFI for 36,132 tons of landfill disposal remains unpaid, despite R&D's acknowledgement that the City has paid R&D for this work. Based on the City's legal position, the City now needs to pay BFI directly for this work (see Finding #1).

**Table 4. Tons of landfill disposal paid**

	Tons	City Payment @ \$27.20/ton
Quantity City paid for:	161,547.7	\$ 4,394,097
Quantity R&D paid for:	125,416.0	3,411,315
Difference:	36,131.7	\$ 982,782

**Recommendation:** The City should seek to recover \$982,782 from R&D. This amount includes the landfill charges for which the City paid R&D but R&D did not pay, plus related R&D overhead and markup.

**Finding #3: City Overpaid R&D for Several Other Items**

Among other things, the City paid R&D for excavation and related site work, site security, and staff time based on itemized invoices. Our review of the invoices, supporting documentation, and payments for these services indicates that the City overpaid R&D for these items as explained below.

**City paid R&D for larger quantities of some work than R&D paid subcontractors.** R&D paid its primary subcontractor, Omegasys, for smaller quantities of transportation, excavation, site maintenance, extended haul, backfill and compaction than it billed to the City. City payments were based on R&D invoices dated April 9, 2001 to July 31, 2001. On August 1,

R&D directed Omegasys to reduce the quantities on Omegasys invoice 01097 dated July 24. Omegasys submitted a revised invoice 01097 to R&D dated August 24, 2001, complying with the directive.

**R&D did not adjust its invoices to the City based on lower quantities.** After directing its subcontractor to reduce quantities on its invoice, R&D did not make a corresponding adjustment on its invoices to the City, which the City paid in full. R&D confirmed the quantities it billed to the City, and Omegasys confirmed the quantities it billed to R&D. By paying for the higher quantities, the City overpaid R&D \$222,629 as shown in the following table.

**Table 5. Excavation and related quantity differences and dollar amounts**

Type of Work	Quantity City Paid to R&D (cubic yards)	Quantity R&D Paid to Omegasys (cubic yards)	Excess City Payment to R&D		
			Quantity	Rate per cy	Excess \$
Transportation, Excavation, Site Maintenance	126,506	110,828	15,678	\$ 11.65	\$ 182,649
Extended Haul Route	10,200	7,344	2,856	1.69	4,827
Backfill, Compaction	12,000	7,344	4,656	7.55	36,153
Total City Payment to R&D for Excess Quantities Billed					<b>\$ 222,629</b>

**City overpaid R&D for security services.** R&D submitted some subcontractor invoices twice as backup for its invoices to the City. As a result, the City overpaid R&D \$37,440 for this service.

**Again, R&D did not adjust its invoices to the City.** Based on their payment records, R&D did not overpay the security firm. R&D confirmed that the City overpaid them for security in their letter of January 28 and acknowledged the City was due a credit for this error. The following table shows double billings on R&D invoices.

**Table 6. Security services for Stanton Park site**

R&D Double Billings:	
R&D Invoices 16514/2711	\$ 20,880
16562/2711	5,760
16562/2711	5,400
16562/2711	5,400
Total City overpayment	<b>\$ 37,440</b>

**City paid R&D twice for staff time.** The City paid R&D twice for staff time on R&D's invoice #2711 dated July 19, 2001. The City paid the invoice total of \$890,900 on November 30, 2001. It included R&D's staff charges for R&D Environmental of \$24,210 and \$22,390. The

overcharge of \$22,390, less invoice addition errors, reduced the overcharge to \$13,745. R&D confirmed that there was an overcharge for staff time on this invoice.

**Recommendation:** The City should seek to recover \$273,814 from R&D for the overpayments described above. The following table summarizes the amounts.

**Table 7. Summary of City overpayments to R&D**

Item	Amount
Excess quantities	\$ 222,629
Security services billed twice	37,440
Staff time billed twice	13,745
Total overpayment	\$ 273,814

Adding this amount to the overpayment for landfill disposal of \$982,782 increases the City's total overpayment to R&D to \$1,256,596.

**Finding #4: City Should Not Pay R&D's Final Stanton Park Invoice**

As stated in our July 2002 report, the City has not paid R&D's final invoice dated October 3, 2001 for \$1,014,385. This invoice includes charges for R&D staff time, backfill work by C&S Environmental, security services provided by a subcontractor, and another minor subcontractor payment. A portion of the invoice includes amounts that the City should now pay directly to C&S Environmental, not to R&D. The invoice also includes an amount that the firm has already paid to C&S and small amounts to other subcontractors.

The following table shows the amounts included in R&D's final invoice to the City that the firm has already paid out, about \$445,000. The remainder of the invoice, over \$569,000, includes the amount the City must now pay directly to C&S, plus R&D markup and staff time.

**Table 8. R&D final invoice**

Item	Amount Owed
Payment to C&S for backfill	\$ 426,209
Payment for security	11,664
Other subcontractor payment	7,095
Total R&D has already paid	\$ 444,968
C&S balance for backfill	431,529
R&D markup and staff time	137,888
Invoice total	\$ 1,014,385

I do not recommend that the City reimburse R&D for any portion of this invoice. The amount the City should seek to recover from the firm far exceeds any part of their final invoice that might be considered legitimate. In addition, as stated in my July 2002 audit report, R&D did not

complete all work on Stanton Park for which the Parks Department had reserved a portion of project funds. As stated in the July 2002 audit report, this work included drainage structures, some remaining backfill, and hydroseeding to prevent soil erosion. In the fall of 2001, this work was estimated at about \$300,000.

### Responses to Questions and Additional Information Requests

At the work session, Committee members asked me to address other issues regarding this project. Following are the issues and my responses, compiled from previous audit work.

#### **Issue #1: Confirm the amounts R&D billed the City at various times throughout the project.**

From August 2000 through July 2001, R&D billed the city \$7.6 million for the remediation and related work, as stated at the work session. The following table shows the cumulative total of R&D invoices for Stanton Park from March 1999 through October 2001. From March 1999 through March 2000, R&D charged the City about \$170,000 for initial testing and sampling. Except for a \$222,000 adjustment on a June 2001 invoice, all other invoices were paid. The adjustment, according to the Parks Department, was intended to withhold a portion of the total project expenditures until the work was finished.

**Table 9. R&D invoice totals for Stanton Park through July 31, 2001**

Project Phase	Time Period	Amount Invoiced	
		Period	Cumulative
Testing	January 1999 - June 2000	\$ 169,497	\$ 169,497
Remediation	July-December 2000	246,445	246,445
	January-March 2001	985,085	1,231,530
	April-June 2001	5,360,046	6,591,576
	July 2001	\$ 1,016,845	\$ 7,608,421

As noted in the audit report, R&D submitted in October 2001 a final invoice for about \$1 million, which the City did not pay. (See page 7.)

#### **Issue #2: Provide more detail on R&D's own costs on the project, and how the \$1.7 million the firm retained is accounted for.**

The City has paid R&D about \$370,000 for staff time, equipment and materials. The following table shows their charges to the City for direct costs during both the early testing work and the remediation project, excluding R&D's overcharge for staff time of \$13,745 identified on page 7.

**Table 10. R&D charges for direct costs**

Project Phase	Salaries	Materials & Equipment	Phase Total
Testing	\$ 32,475	\$ 34,030	\$ 66,505
Remediation	191,318	98,381	289,698
Project Total	\$ 223,793	\$ 132,411	\$ 356,203

R&D confirmed their direct costs in our meeting on December 10, 2002. We have no way of knowing what markup is included in R&D charges for its own staff time and materials, and there was no information in their proposals concerning an overhead or indirect cost rate. However, R&D Environmental Consultants followed the unusual practice of including staff time for the head of the firm in their invoices for direct project costs.

The following table shows a breakdown of the additional amount retained by R&D, beyond their direct costs, from City payments to date. The amount retained plus direct expenses equal the figure in my July 2002 report of \$1,719,041, the difference between the City's payments to R&D and R&D's payments to subcontractors.

**Table 11. Amounts billed, paid, and retained by R&D**

	Testing	Remediation	Total
Total R&D Invoices (thru July 31)	\$ 169,497	\$ 7,608,421	\$ 7,777,918
Invoice adjustment by City	0	(222,763)	(222,763)
Payments to subcontractors	(80,157)	(5,755,956)	(5,836,113)
Invoices for direct expenses	(66,505)	(289,698)	(356,203)
Additional retained by R&D	\$ 22,835	\$ 1,340,004	\$ 1,362,839

**Issue #3: Provide more detail on R&D's markups on subcontractors' unit prices.**

R&D markups on subcontractor work varied widely. The following table shows unit prices for various elements of the excavation work at Stanton Park for R&D's charges to the City, and for Omegasys' charges to R&D. R&D's unit prices ranged from 3 percent to 44 percent higher than those it was paying to its primary subcontractor.

**Table 12. R&D and Omegasys unit prices per cubic yard**

Item	R&D Unit Price	Omegasys Unit Price	R&D Markup
Transportation	\$7.50	\$7.25	3.4%
Excavation	4.00	3.85	3.9%
Odor Control	0.33	0.28	17.9%
Site Maintenance	0.15	0.12	25.0%
Disposal	27.20	21.26	27.9%
Extended Haul	1.69	1.22	38.5%
Backfill/Compaction	7.55	5.25	43.8%

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