

MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL



OIG ATTACHMENTS

- Attachment 1** Letter from Airport Parking Associates (APA) to the OIG, dated August 23, 2007, APA's Answers to OIG Questions
- Attachment 2** OIG Detailed Schedule by Month for CPS's 401K Plan Contributions and MDAD Amounts Paid in Excess of Incurred Expenses
- Attachment 3** Letter from Central Parking System to MDAD's Landside Operations Manager, dated February 27, 2006
- Attachment 4** Letter from Airport Parking Associates to MDAD's Landside Operations Manager, dated March 20, 2006
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FINAL REPORT

*Non-Exclusive Management Agreement Between
the Miami-Dade Aviation Department and Airport Parking Associates for the
Operation of the Public Parking Facilities at Miami International Airport*

IG07-04

AIRPORT PARKING ASSOCIATES

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August 23, 2007

Tanya R. Jackson, Special Agent
Anthony Ferris, Special Agent
Office of the Inspector General
19 West Flagler St., Suite 220
Miami, FL 33130

Dear Tanya & Tony:

It was a pleasure for Jason, JM, Bill, Miguel and me to meet with you at APA's Miami office on Tuesday, August 21. You told us that OIG needed further information and APA agreed to get responses to OIG questions back to you as soon as possible, given that OIG hopes to complete its report by Friday, August 24.

Here are the questions and APA's responses thereto:

A. Retirement

1. QUESTION. How did APA arrive at the 2.5% retirement expense?

ANSWER. APA employees are, and have been, eligible to participate in the Central Parking System, Inc. Retirement Program. During the first six years (approximate) of the current Management Agreement (which began in 1996), APA employees were beneficiaries under the Employer-funded retirement plan provided to all employees with one year of service or more by Central Parking System, Inc. The overall company contribution to that program equaled approximately to 2.5% of annual payroll; hence the 2.5% expense factor. Approximately five years ago, the company went to a 401K plan with Employer matching employee contributions as described in the plan. Overall, the Employer contribution continues to be approximately 2.5% of total payroll.

2. QUESTION. How does APA see the difference between the amount charged to the Airport and the matching amount paid into individual employee retirement accounts?

ANSWER. As evidenced by the negotiations resulting from the recent RFP in which APA was the highest ranked proposer, this is an issue of contract negotiation. As noted question in our response to question No. 1 above, the overall company contribution to the program equals approximately 2.5% of annual payroll. APA proposed, and the County accepted this methodology as one that is fully understood and auditable.

3. QUESTION. What happens to retirement monies collected in excess of matching contributions?

ANSWER. These monies are not tracked on a location by location basis and would be characterized as "expense reimbursements" and are applied against collection shortages, in other years or at other locations.

4. QUESTION. Is it APA's interpretation of the 1996 contract that excess collections, over expenditures, are profit?

ANSWER. Excess collections are not tracked on a location by location or line item by line item basis. In management account arrangements, like the Miami Airport, estimates must sometimes be made of necessity and excess collections are lumped in with collection shortages and categorized as "expense reimbursements".

B. Workers Compensation

1. QUESTION. Why doesn't APA charge to the Airport its "Workers Compensation rate"?

ANSWER. As was explained in correspondence addressed to Airport personnel in 2006, and as OIG representatives can see from their review of Central Parking System's Workers Compensation policies, Central Parking System's Workers Compensation program carries with it a \$250,000 per claim deductible. The Employer is responsible to remit to the carrier all expenses related to each Work Comp claim up to a \$250,000 per claim deductible. The rate shown on the policies provided to OIG reflects that deductible. APA does not charge to the Airport the rate it pays to the carrier because APA does not anticipate going back to MDAD and collecting from the Airport each month, on a claim by claim basis, the monies it remits for each claim.

As with the Retirement Expense charge, and as evidenced by the recent contract negotiations on the proposed new agreement, this is also an issue of contract negotiation. APA fully disclosed to the airport its intent to utilize the NCCI manual rate for parking attendants, and the airport approved such methodology on a yearly basis when the proposed budget was presented.

2. QUESTION. OIG requests a copy of the 2004 – 2005 Work Comp policy.

ANSWER. It will be sent under separate cover.

3. QUESTION. OIG requests a copy of the complete Work Comp loss run for the policy years beginning October 1, 2003; October 1, 2004; October 1, 2005.

ANSWER. These will be sent under a separate cover.

4. QUESTION. Did APA believe that the contract allowed APA to collect more from the Airport for Workers Compensation than it paid out in premiums and claims?

ANSWER. Given the need to arrive at a fixed advance reimbursement rate for Workers Compensation with the Airport, APA believes that the NCCI-promulgated rate for parking attendants for the state of Florida to be the best measure of a proper reimbursement. Such a predetermined reimbursement rate will never be exactly equal to the total sum of expenditures for premiums, broker commission, and claims, including claims handling fees actually expended. It may be more, it may be less. Additionally, as was discussed, Work Comp claims can often take several years to be concluded and APA does not anticipate reconciling such claims expenses for each policy year with the Airport on an ongoing monthly basis several years into the future. As was discussed, many claims involve ongoing payments and a monthly reconciliation of the amount charged, for example, of each 2003 claim for which ongoing remittances are being made would be unwieldy indeed.

Further, as far back as January 2006, APA provided further written clarification to MDAD on the methodology of its Work Comp program, including the high deductibles, and had many subsequent meetings with various department personnel to discuss all insurance related matters. Given the full understanding of APA's program methodology, it is noteworthy that even during the recent bid process, (in which we

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understand that the RFP and draft contract were reviewed by MDAD's Risk Management department) no restriction on a high-deductible program was mentioned. In fact, only in contract negotiations did MDAD-- for the first time request-- that APA obtain first dollar claim coverage for Work Comp.

5. QUESTION. Based upon the loss runs presented to OIG a few months ago, OIG concludes that there is approximately a \$200,000 over payment for the three contract years running from October 1, 2003 through September 30, 2006. How does APA construe that difference?

ANSWER. Respectfully, the premise of the question is incorrect because it does not account for the fact that claim payments for the three listed years are ongoing. Work Comp claims rarely get better and often get worse over time. APA will continue to meet its obligation to compensate workers for Work Comp claims, and does not believe a periodic reconciliation with the Airport to be called for in the Management Agreement. APA would not intend to ask MDAD for more funds if the expense remittance by the Airport for Work Comp coverage for a given year was inadequate. Such a deficit would be absorbed by the company in its "expense reimbursement" category.

6. QUESTION. How did APA arrive at the \$250,000 deductible level?

ANSWER. As one can imagine, there is not an unlimited "menu" of deductible plans available and the \$250,000 per claim figure gives APA an incentive to implement employee safety programs and gives it an incentive to foster a safe work environment.

7. QUESTION. How does it benefit MDAD when APA charges the full state rate?

ANSWER. APA's methodology insulates MDAD from the vagaries of APA's Workers Compensation loss experience at the airport or at all other Central Parking locations. The NCCI rate is an occupational (Parking Attendant") statewide rate for Florida. In effect, is a contractually negotiated and mutually agreed figure for the airport's exposure.

Additionally, as discussed in the negotiations of the recently solicited new agreement, from the policy perspective, this methodology creates a strong incentive for the contractor to expend additional time and resources in safety training and implementation of programs that will minimize the risk of injury to the employees. APA assumes that safety of our employees is

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as important to MDAD as it is to APA. Therefore, policies that promote employee safety also provide a significant benefit to MDAD.

It is important to note that policies that promote a strong worker safety philosophy result in significant economic savings to MDAD in the long run, even when utilizing the NCCI rate. Market conditions bear this out. For example, in the recent bid for the new contract to provide these services, APA's proposed worker compensation reimbursement was the second lowest as a percentage of payroll and in total dollars to its competitors. APA's rate of 5.93% of payroll was slightly higher than the lowest proposed at 5.17%. The other two proposers' worker compensation reimbursement as a percentage of payroll were 9.24% and 8.44%, respectively.

8. QUESTION. Could APA provide to OIG pages 18 – 21 of the AIG Work Comp Audit for the policy year beginning October 1, 2003?

ANSWER. This will be provided under separate cover.

C. General Liability

1. QUESTION. What is the basis for APA's annual liability insurance charge to the Airport?

ANSWER. The charge is based upon the facility's space count and annual revenue, which, combined, give an estimate of the operation's exposure to liability claims. It is also based upon then current market conditions.

2. QUESTION. Who prepares the monthly invoice and how is the amount calculated?

ANSWER. The monthly invoice is prepared by the Central Parking System Risk Management Department and is based upon the annual expense amount, as set in the approved budget.

3. QUESTION. Does Central Parking System use a per space calculation for other Florida locations?

ANSWER. The liability expense for other Florida locations is, similarly, based upon space count and annual revenue figures.

4. QUESTION. If some basis other than space count was used at other Florida locations, why are space counts not used?

ANSWER. Not applicable.

5. QUESTION. Is there a way for APA to determine its actual General Liability costs for Miami International Airport for the three years in question?

ANSWER. APA does not track its particular results for a location on a year to year basis, which would involve tracking each year's claims and associated expenses as those claims "ripen" over the several years it can take to determine an actual total claims expense for a given year. If such an inquiry were to be conducted, the calculation would best be done approximately eight to ten years after the end of each policy year in question, once all liability claims for that year are closed, either through settlement or the payment of judgment and attorney and all associated attorney's fees.

6. QUESTION. How did APA arrive at the \$350,000 deductible?

ANSWER. As with the Workers Compensation question, above, this figure was arrived at based upon the market place in which Central Parking System purchases its high deductible General Liability policy.

7. QUESTION. How does the high deductible benefit MDAD?

ANSWER. APA seeks to provide liability insurance to the Airport based upon market conditions, independent of the experience of Central Parking System at other locations, as is with Workers Compensation.

8. QUESTION. What happens to the difference between the amount charged and the amount paid out by Central Parking System?

ANSWER. The amount that is not paid out by Central in, for example, the year in which the expense is charged, are held to pay claims as they are presented in future years.

9. QUESTION. Does the contract allow MDAD to collect the excess of the amount charged over the amount paid out?

ANSWER. As mentioned above, the amount actually paid out for a given year will not be known for many years, and to give both parties a certainty of terms in connection with the liability insurance premium for a given year, once the agreed, budgeted annual expenses are paid by MDAD, then

no further reconciliations involving either remittance from MDAD to APA or from APA to MDAD are required. As referenced above in regard to the retirement charge and the worker's compensation rate, the rates charged for Liability Insurance are an issue of contract negotiation. APA fully disclosed its proposed rate and deductible amount to Miami-Dade County and MDAD agreed, through approval of the yearly budget, to the premium amount they would reimburse. The recent contract negotiations on the proposed new agreement further evidence the fact that this is a contractual issue.

10. QUESTION. Why are certain locations named on an endorsement found by OIG in one of the GL policies?

ANSWER. We will need to see the endorsement involved before we can fully answer this question. If OIG could fax or email a copy of that endorsement to me, we will proceed to getting an answer to this question.

11. QUESTION. How many other locations are covered via a certificate only, as compared to those named on the endorsement in question 10 above?

ANSWER. Several thousands of Central Parking System locations are covered via a certificate only. If either OIG or MDAD is aware of any GL or Work Comp claim that should have been covered pursuant to the Management Agreement and has not been covered and has been referred to MDAD for payment, please let me know.

D. Three Additional Questions

1. QUESTION. How does APA compute its management fee?

ANSWER. Respectfully, APA will not respond to this question. A bidder's methodology in arriving at an amount to be bid in any public procurement is protected by Florida law as a trade secret and is proprietary information. As you can imagine, once a bidder publicly discloses its methodology, its competitors can adjust their bidding strategy to ensure that they prevail in any future competitive procurement. Disclosure of this information would put APA at a competitive disadvantage in future competitive solicitations.

2. QUESTION. Why is APA's fee for MIA less than its fee for Jackson Memorial Hospital, Ft. Lauderdale Airport and West Palm Beach Airport?

ANSWER. See response to question No. 1 above.

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3. QUESTION. Is there any relationship between the fee and the client reimbursement for Work Comp, General Liability and Retirement?

ANSWER. No.

As OIG is aware, the expense amounts for the above described items are subject to annual review by MDAD in the budgeting process and once the budgeted figures are agreed, there is little latitude for APA to go back to MDAD to request increased funding in the event that APA underestimated anticipated expenses.

It is APA's hope that the answers above are responsive to OIG's requests, but APA continues to stand ready to provide further requested documentation or to answer further, additional questions from OIG.

Sincerely,



Henry J. Abbott
Secretary

HJA/ol

Cc: Jason Finch
Miguel DeGrandy
Bill Perry
JM Denis
Steve McCormick
Jim Bond

OIG Attachment 2

**Detailed Schedule by Month for CPS' 401K Plan Contributions
and MDAD Amounts Paid in Excess of Incurred Expenses**

Fiscal Year 2004

Month	Number of Employees Contributing To 401k Plan	Amount Contributed By CPS	Amount Paid By MDAD as a "Reimbursable Expense"	Amount Paid In Excess of CPS' Incurred Expense
Oct. 2003	13	\$1,426	\$6,850	\$5,424
Nov. 2003	13	\$ 954	\$4,968	\$4,014
Dec. 2003	13	\$ 993	\$5,142	\$4,149
Jan. 2004	13	\$1,055	\$5,627	\$4,572
Feb. 2004	13	\$ 994	\$5,114	\$4,120
Mar. 2004	13	\$ 956	\$4,726	\$3,770
Apr. 2004	18	\$1,721	\$7,148	\$5,427
May 2004	18	\$1,362	\$4,780	\$3,418
Jun. 2004	18	\$1,315	\$4,833	\$3,518
Jul. 2004	20	\$1,470	\$4,789	\$3,319
Aug. 2004	20	\$1,469	\$4,577	\$3,108
Sep. 2004	19	\$1,374	\$4,622	\$3,248
TOTAL		\$15,089	\$63,176	\$48,087

Fiscal Year 2005

Month	Number of Employees Contributing To 401k Plan	Amount Contributed By CPS	Amount Paid By MDAD as a "Reimbursable Expense"	Amount Paid In Excess of CPS' Incurred Expense
Oct. 2004	22	\$2,156	\$6,569	\$4,413
Nov. 2004	22	\$1,518	\$4,411	\$2,893
Dec. 2004	22	\$1,551	\$4,636	\$3,085
Jan. 2005	23	\$1,806	\$4,948	\$3,142
Feb. 2005	23	\$1,646	\$4,484	\$2,838
Mar. 2005	23	\$1,553	\$4,191	\$2,638
Apr. 2005	24	\$2,575	\$6,356	\$3,781
May 2005	24	\$1,743	\$4,500	\$2,757
Jun. 2005	24	\$1,753	\$4,486	\$2,733
Jul. 2005	37	\$2,465	\$4,512	\$2,047
Aug. 2005	37	\$2,362	\$4,235	\$1,873
Sep. 2005	37	\$3,491	\$6,323	\$2,832
TOTAL		\$24,619	\$59,651	\$35,032

OIG Attachment 2 (cont)

Fiscal Year 2006

Month	Number of Employees Contributing To 401k Plan	Amount Contributed By CPS	Amount Paid By MDAD as a "Reimbursable Expense"	Amount Paid In Excess of CPS' Incurred Expense
Oct. 2005	48	\$3,174	\$4,018	\$ 844
Nov. 2005	47	\$3,090	\$4,038	\$ 948
Dec. 2005	46	\$3,303	\$4,545	\$1,242
Jan. 2006	48	\$3,510	\$4,608	\$1,098
Feb. 2006	48	\$3,230	\$4,213	\$ 983
Mar. 2006	48	\$4,596	\$6,077	\$1,481
Apr. 2006	50	\$3,239	\$4,124	\$ 885
May 2006	52	\$3,131	\$3,974	\$ 843
Jun. 2006	51	\$3,629	\$4,578	\$ 949
Jul. 2006	52	\$3,885	\$4,860	\$ 975
Aug. 2006	51	\$3,569	\$4,487	\$ 918
Sep. 2006	52	\$5,318	\$6,851	\$1,533
TOTAL		\$43,674	\$56,373	\$12,699



Central Parking System
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Phone: 305 372 5151
Fax: 305 374 8271
Website: parking.com

February 27, 2006

Ms. Teresita Wagner
Manager – Landside Operations
Miami International Airport
PO Box 592075 =
Miami, FL 33159

Dear Terry:

I understand that you have inquired into the composition of, and in certain cases the calculation, for some of Central Parking System's benefits and other programs. The following paragraphs intend to provide clarity to your questions, albeit in an abbreviated form. If there exists any doubt or further questions arise please do not hesitate to let me know.

Workers Compensation

CPS purchases a worker's compensation policy with a per claim deductible of \$250,000 and a third party administrator is used to process and pay filed claims. CPS charges the State of Florida manual rate for the position of Parking Attendant (job category 8392), which by definition we believe covers our employee pool at the airport. The rate is based upon the market, approved by the state for each job classification and encompasses past experience for many companies in the industry, not just CPS. As claims are often not settled in the fiscal year of their occurrence, it is very difficult to calculate with any real accuracy what our claims experience expense has been until years in the future. Further, we also elect to not penalize our clients if we experience a significant number of costly claims in any given year that would increase the cost beyond the manual rate. Therefore, we believe assessing the manual rate, which is based upon current industry conditions and not a single company, is the fairest and most auditable method to our clients for calculating workers compensation.

Liability Insurance

CPS, like many large companies in and out of the parking industry, self-insures a major portion of its insurance program with deductible of \$350,000. The higher deductible, although more risky for CPS, forces us to remain proactive and focused on minimizing claims. Our risk management department, for example, issues weekly reports that highlight all claims within a city, and problem locations are reviewed by local, regional and corporate personnel. Solutions are generated to reduce claims, and given the size and geographical presence of CPS, we most likely have already encountered the problem (i.e.,

Ms. Teresita Wagner

February 27, 2006

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garage design, hiring practices, etc.) in another city. Constant monitoring and a focus on safety reward our clients also through lower claims, higher customer satisfaction and increased profits.

We price our policies for locations on a per space and per market basis, which we believe allows us to be more competitive regionally and is a more accurate indicator of actual claims history. However, all clients are always free to seek competitive bids from insurance companies or to purchase the insurance and include CPS on the policy. Our very high retention rate of those clients who survey the market confirms that our pricing strategy most often represents a discounted rate than what they would typically be charged on a stand-alone basis.

Retirement Program

In an effort to recruit and retain a higher quality employee in any given market, CPS offers in our opinion a highly competitive benefits package, including a 401k retirement plan. The Company matches 100% of the first 3% of employee contributions and 50% of the following 2%. Once an employee makes a contribution, those funds belong to the employee even if employment with CPS ceases.

The cost associated with administering this plan is projected at 2.5% of our total payroll expense. Given the ever changing number of employees in the Company (23,000 as of Sept. 2005), to arrive at an exact percentage of payroll cost based on plan participation would certainly increase the plan's cost. While we firmly believe in the benefits of the program, we must also control its cost that at the end of the day are reimbursed by the client. The amount of additional personnel and/or system upgrades to define on a per payroll period the exact percentage we believe would not benefit the average and in fact could increase cost.

As you know CPS has been affiliated with the Miami International Airport since 1992 and it is a relationship that we treasure. As businesspeople, we work hard every day to retain the trust of our clients, and I will make available any resource necessary to ensure to your total satisfaction that the above-referenced items have been fully-explained and assessed accurately to the airport.

If I can be of any assistance, please do not hesitate to contact me or Senior Vice President Robert Cizek at (405) 525-9014 ext. 5.

Sincerely,



Jason Finch
Regional Manager

cc: Monica Beltran
JM Denis
Steve McCormick

775-1130

AIRPORT PARKING ASSOCIATES
MANAGEMENT - LEASING - CONSULTANTS

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March 20, 2006

VIA FACSIMILE: (305) 876-7212
AND U.S. MAIL

Ms. Teresita Wagner
Manager - Landside Operations
Miami International Airport
Miami Dade Aviation Department
PO Box 592075
Miami, FL 33159

Re: Miami International Airport

Dear Ms. Wagner:

1. In response to your request for copies of the liability policies provided by Central Parking System of Florida, Inc. on behalf of Airport Parking Associates ["APA] in compliance with the requirements found in the Management Agreement between APA and the County concerning the operation of the County's Public Parking facilities at the Airport, we are shipping to APA's Miami Airport office a copy of such policies for the three policy years, beginning October 1, 2003, 2004 and 2005. This is a voluminous amount of material and, if we omitted anything, we'll be happy to work with the designated Airport representative to make sure the County has a complete set of the requested documents.
2. In response to the County's request for a Spread Sheet showing the coverages provided by APA and the annual policy premium for each, here is the price breakdown for the policy year that began on the dates indicated:

	05-06	04-05	10/1/03
A. Commercial General Liability Insurance	\$183,100	\$174,978	\$150,269
B. Garage Keeper's Legal Liability	34,188	32,730	30,984
C. Automobile Liability	2,300	2,200	1,800
D. Fidelity Bond	<u>\$ 34,729</u>	<u>\$ 32,300</u>	<u>\$ 27,550</u>
TOTAL	<u>\$254,317</u>	<u>\$242,208</u>	<u>\$210,603</u>

Providing insurance over and above coverages A, B, and C is an Umbrella / Excess Liability policy with a \$10 Million limit. All of the listed liability policies include the Airport as an Additional Insured. The policy numbers for each policy, for each year, are as shown on the Certificate of Liability Insurance issued by Willis, the insurance broker for Central Parking System of Florida, Inc. and APA (copies attached).

The CGL policy provides cover to APA and the Airport for property damage and bodily injury claims that might be asserted by any of the 2,670,000 [approximate] customers that patronize the facility annually.

The GKLL policy provides coverage in the event of damage to or theft of the vehicles parked in the 8,392 spaces at the facility, for which damage or theft APA or the Airport is legally liable.

The Automobile Liability policy provides insurance for the Airport and APA for bodily injury or property damage claims alleged to arise out of the operation, by APA, of automotive vehicles at the facility.

The Fidelity Bond covers APA and the Airport for loss of funds caused by theft, robbery or mysterious disappearance. This \$1 Million limit coverage would apply to the \$34.3 Million [approximate] collected and deposited by APA annually on the Airport's behalf.

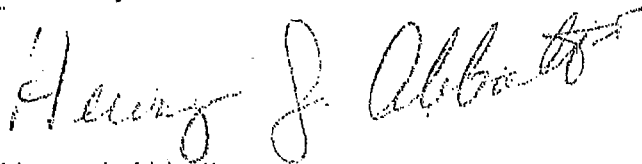
3. The policies purchased by APA to provide the coverages required of the Operator by the Management Agreement carry substantial deductibles, the responsibility for which falls to APA. For example, the first \$350,000 of each Commercial General Liability claim is paid by APA. In pricing the insurance expense charged to the Airport Parking operation, APA must take into account its exposure for deductible payments and, more importantly, it must bring in a price to the Airport that is competitive with [and in most cases below] the market price for the required coverages. To this end, APA enlists the assistance of its broker [Willis] and the Insurance Department at Central Parking System.

Ms. Teresita Wagner
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4. In relation to the Airport's request for the amount charged other locations, APA's only operation is the Miami Airport parking facility. Central Parking System of Florida, Inc. is not in a position to provide to the Airport the insurance expense charged at its other locations because of confidentiality restrictions.

As always, please feel free to contact me if the Airport has further questions or requires additional information.

Sincerely,



Henry J. Abbott
Secretary

HJA/mir

Enclosure(s)

cc: JM Denis (Miami) w/enc
Jason Finch (Miami) w/enc.
Steve McCormick (Houston Airport) w/enc.
Robert Cizek (Atlanta) w/enc.
Donna Williams (Corporate) w/enc.

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MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL



APPENDIX A

**Response Submitted by
Airport Parking Associates**

FINAL REPORT

*Non-Exclusive Management Agreement Between
the Miami-Dade Aviation Department and Airport Parking Associates for the
Operation of the Public Parking Facilities at Miami International Airport*

IG07-04

MIGUEL DE GRANDY P.A.

ATTORNEYS AT LAW

September 13, 2007

Christopher Mazzella
Miami Dade County Inspector General
19 West Flagler
Suite 220
Miami, Florida 33130

2007 SEP 3 PM 3:44
OFFICE OF THE
INSPECTOR GENERAL

Re: Response to OIG Draft Report of the Non-Inclusive Management Agreement Between the Miami Dade County Aviation Department and Airport Parking Associates, Inc. – IG07-04

Dear Mr. Mazzella:

Please be advised that our law firm represents Airport Parking Associates (APA) in the above-referenced matter.

This letter is written in response to the above-referenced Draft Report by the Office of the Inspector General (OIG). At the outset, we respectfully indicate our significant disagreement with the flawed methodology and analysis utilized therein, and the seemingly complete lack of guidance from any source knowledgeable in pension and insurance issues. Indeed, it appears that the OIG used fragmentary information to arrive at findings unsupported by the data. APA therefore respectfully disputes and vigorously disagrees with all of the conclusions drawn by the OIG in its August 30, 2007 Draft Report.

In any retrospective evaluation of contract compliance, a review of the parties' conduct in negotiations leading to an agreement, and the management of that agreement by the parties, is a compelling indication of whether the respective parties operated in conformance with the agreement. The practice of the parties seems to be totally disregarded in the OIG's Draft Report.

Moreover, it is highly troubling to see that the OIG has also failed to do a simple market analysis to determine industry standard practices and the competitive nature of the reimbursement expenses on the issues analyzed in comparison with those proposed by its competitors. **For example, had the OIG reviewed the proposals in the recent RFP for these services, it would have found that APA proposed the second lowest quote (despite having the highest payroll) for Worker's Compensation Insurance, and the second lowest Liability Insurance quote among the four (4) competitors.** While the OIG questions the methodology by which APA calculates these expenses, it made no attempt to determine whether such methodology is standard in the industry. **A review of the 10-K S.E.C. disclosures would have apprised the OIG of the fact that both Standard Parking and AMPCO, two (2) of the competitors in the recent RFP utilize the same methodology.** This simple market analysis conclusively demonstrates that

APA's methodology was wholly consistent with industry standards, and its quotes were extremely competitive.

The OIG also ignores the significant advantages to MDAD of the methodology used by APA (and other companies in the industry) to calculate these expenses. The evidence in this regard demonstrates that both MDAD and APA at all times acted in good faith and negotiated terms that furthered the County's strong public policy regarding worker and passenger safety and efficient management of claims. Indeed, the negotiated terms provided certainty with respect to the amount of these expenses borne by MDAD as the risk of large losses were transferred to APA, thus creating a strong incentive for APA to control these costs by operating in a safe manner for employees and the general public. These non-economic, yet significant policy issues, were simply ignored by the OIG. Indeed, the OIG seemed to overstep its role as a public watchdog agency by in effect implicitly setting its own public policy considerations by which it would negotiate an agreement and then evaluating the agreement's effectiveness in meeting its narrow and myopic parameters.

It is important to note **that at no time has the OIG made a claim that APA has failed to disclose its proposed expense or methodology for arriving at such expenses on the scrutinized categories.** Indeed, the OIG acknowledges that even as late as 2006, APA complied with every information request made by the Miami-Dade Aviation Department's (MDAD) Risk Management Division. **Certainly, it cannot even be inferred that APA would have tried to conceal the methodology by which it arrived at these expense numbers, since such methodology is publicly disclosed and available through a review of the Central Parking's previous SEC 10-K filings.**

As noted throughout this response, the fact that the OIG has not sought any expert advice or opinion in the area of pensions and insurance also severely undermines its analysis and conclusions on the scrutinized issues. In contrast, this response includes attachments from experts in the insurance and pension fields. These experts have independently reviewed APA's methodology and expense calculation, finding them to be reasonable and consistent with industry practice.

The OIG has had over nine (9) months to thoroughly review these issues. It is truly hard to understand, based on the time it has invested in its review, why the OIG did not engage in any credible market analysis or why it chose not to review the public record and filings which establish normal industry practices and methodologies for calculation of these expenses. In the ten (10) days that APA has been given to provide a response, APA has done its best to provide a comprehensive response divided by issue categories for ease of reference.

Section I will address the negotiations between APA and Miami-Dade County (County) through MDAD, as well as the course of conduct of the parties throughout the performance of the contract. This analysis clearly evidences multiple annual approvals by MDAD of the budgets presented by APA and the rate at which expenses were agreed upon.

Section II will address the three (3) categories of expenses reviewed by the OIG. Section II-A will discuss the issues related to the 401-k Retirement Plan contributions. As with the two (2) other issues analyzed below, APA will demonstrate that all proposed expenses were fully disclosed and approved by MDAD and the agreed reimbursement level of 2.5% (two point five percent) was reasonable and fully supportable.

In Section II-B, we will provide our comments regarding the OIG's flawed analysis of the Worker's Compensation Insurance issue. As the evidence demonstrates, the agreed upon expense was directly tied to the State of Florida's published average rate; an agreed upon index that, in effect, also served as the agreed metric for costs to MDAD that could be incurred through employee claims. Although we cannot speak for MDAD it seems evident that MDAD also recognized that this methodology created a strong incentive for APA to invest additional resources to promote worker and passenger safety in MIA's parking facility.

Section II-C will analyze the issues regarding the Garage Liability Insurance. As the evidence demonstrates, the speculative analysis of the OIG in this regard, with the benefit of hindsight as to what insured risks have actually materialized to date, is clearly unsupportable.

Also in Sections II-B and II-C, we review the results of the recent RFP process, as well as normal industry practices as disclosed by APA's competitors in their 10-K S.E.C. filings, and as verified by experts in the pension and insurance industry. This analysis conclusively demonstrates that APA's methodology is the same one utilized by its competitors. Additionally, we will review the proposed expenses quoted in the recent open and competitive RFP process for these services, which will demonstrate conclusively that APA's expense calculations were competitive. And finally, Section III provides our conclusions and recommendations in regard thereto.

I. Contractual Terms of the Non-Exclusive Management Agreement Executed on or about January 23, 1997 and Conduct of the Parties Throughout The Term of Agreement.

The agreement by which the parties have been governing themselves initially called for a term of five (5) years, with an additional five (5) separate terms of one (1) year each upon the sole discretion of the County. Under its terms, APA manages the multi-level parking structures at MIA, the toll plazas, revenue control devices, entrances and exits. As part of its obligations, it faithfully collects and deposits all gross revenue on behalf of MDAD and fully accounts for same. In that regard it must be strongly noted that throughout the entire decade that APA has managed these facilities, all gross revenue has been properly accounted for. Indeed, revenue collection has grown from \$26.4 MM in 1997 to a projected \$42MM in 2007.

Sections 3.07 and 3.08 of the Agreement relate to the audit rights of the County, and the requirement to furnish annual certified statements of all revenues and expenses.

APA has maintained all books of accounts and records of gross receipts and reimbursable expenses as required by Section 3.09 of the Agreement. These records and the yearly audits demonstrate that at all times APA fully disclosed all its gross revenues and expenses.

Section 3.10 related to the Annual Operating Budget sets forth the methodology for preparing a budget with proposed expenses, and the methodology for approval. It states in pertinent part as follows:

The Annual Operating Budget is to be prepared in accordance with instructions from the Department. **Said submitted Annual Operating Budget shall be subject to approval by the Department, during the annual budget hearing held,** and shall be used by the Department in preparing its annual budget for the year commencing October 1st.

The Annual Operating Budget shall reflect the projections of the Operator as to monthly and annual totals for the revenues and expenses for each major financial account and line item, each distinct group of revenue and expense centers and individual operating units including estimated requirements for overtime and operational contingencies, equipment acquisitions, and the proper distribution of overhead and operator compensation to individual centers and units. It shall be presented in a monthly format, in total and by operating unit with comparisons to the prior year and the current year budget and actual. The annual operating budget shall include a detailed listing of the recommended staffing for the facilities, wage rate and other "employee expenses" information.

The Operator shall submit a written narrative explaining the basis and assumptions used in preparing said budget, such as, but not limited to, the opening or closing of operating units, recommended new services, costs of products and labor, airport passenger traffic, and so forth.

The Operator, in making expenditures hereunder, shall not exceed the expenditures percentages and ratios that are approved annually in each line item for the approved Annual Operating Budget, without the prior approval of the Department. In the event that the Operator is required to make expenditures in excess of the amount included in a monthly increment of the approved

annual operating budget, because of emergencies or operational necessity, and provided such expenditures are reasonable and are otherwise reimbursable hereunder, the Operator shall request approval from the Department prior to making such expenditures. **The Budget may be modified during any contract year, at the direction of, and through written approval of the Director, or his/her Designee.** (Emphasis added)

The above-quoted provision, which was drafted by the County and was followed by APA in each contract year, insures that all proposed expenses are fully disclosed and subject to approval or rejection by MDAD. Exhibit (1) attached to this letter is a composite of documents evidencing approvals of the annual budget in different contract years. Exhibit (2) is a composite of the certified statements and audits related to this agreement. The terms of the contract itself, and the yearly approvals of the annual budget conclusively demonstrate that at all times APA fully disclosed the proposed expenses and that they were reviewed and approved by MDAD consistent with the terms of the agreement.

Section 3.11 addresses the obligation to provide monthly pro forma budgets implementing the approved yearly budget. This section states as follows:

On the date of each month, the Operator shall submit a monthly pro forma budget on a form(s) provided by the Department, listing the management fee and all projected reimbursable expenses, including types, quantities, and estimated costs, required through the end of the following month. **The Department shall approve or disapprove, all or portions of the categories of expenses or individual items contained in the monthly budget. Only the expenses approved by the Department may be reimbursed to the Operator.** Changes to the monthly budget may be made only through prior written approval of the Department. As part of the monthly budget, the Operator will include the projected number of 8-hour cashier shifts broken down by day, shift and location. (Emphasis added)

This provision, also drafted by the County, provided MDAD with a second opportunity to approve or disapprove "all or portions of the categories of expenses or individual items contained in the monthly budget". Again, the public records show that APA properly disclosed the monthly expenses and they were approved, each time, by MDAD.

In its Draft Report, the OIG has quoted only one section of the Agreement, Article 4.02 dealing with reimbursements. The section quoted with emphasis added by the OIG states as follows:

The reimbursable expenses are to be presented in a monthly revenue/expense report, as directed in the Parking Procedures Manual. ***Reimbursable expenses shall mean all operating budgeted expenses incurred by the Operator*** in the operation of the facilities, as well as all other expenses not provided for in the budget but which are specifically approved by the Project Manager, or his/her designated representatives, in writing. Inter-company communication shall not be included as a reimbursable expense. Reimbursable expenses are separate from, and in addition to, the monthly management fee. (Emphasis supplied by OIG)

Seemingly, the OIG relies on only this section to conclude that APA overstated its expenses related to the 401-k Plan, Worker's Compensation, and General Liability Insurance. However, a fair review of that Section, when read in conjunction with the previous sections quoted above regarding the annual and monthly budget, leads to the opposite conclusion. Article 4.02 defines reimbursable expenses as "all operating ***budgeted expenses incurred by the Operator*** in the operation of the facilities". The term "budgeted expenses" in that Section refers to the proposed expenses in the annual and monthly budget that are **specifically approved by MDAD**. The phrase "incurred by the Operator" refers to such amounts as the Operator was entitled to charge (incur) for goods or services actually provided by APA based on the approved budget. The course of conduct of the parties is consistent with this interpretation. Therefore, a fair and accurate analysis of that Section, and the multiple approvals of the annual and monthly budgets by MDAD, demonstrates that APA fully complied with this provision.

This same Section provides for the right of MDAD's Project Manager to verify amounts claimed on the Monthly Revenue/Expense Report, for the right of the Department to contest in writing any disputed amount, and to pursue clarification and resolution of any disputed items within thirty (30) days of receipt of the written notice of the Department. The public records amply demonstrate that the non-questioned expenses were both approved in compliance with Section 3.10 and not disputed pursuant to the provisions of 4.02 when presented to MDAD for payment, and confirmed in annual audits.

Article 14.01 relates to the insurance required in the performance of the Agreement. This includes 14.01(B) "Worker's Compensation Insurance for all employees of the Operator and required by Florida Statute 440" and 14.01(C) "Comprehensive General Liability in an amount not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage". The contract language is silent as to the rate that will be charged for Worker's Compensation

Insurance, and whether the Operator may secure Garage Liability Insurance with a high deductible. Significantly, this Section also states in pertinent as follows:

The County reserves the right in its sole discretion to waive the insurance coverage described in Article 14.01(B), (C), and (D) above, at its expense, but shall not be obligated to do so, and in the event that the County provides the said coverage, the annual operation budget shall be reduced by the sum budgeted by such insurance. Nothing herein will release the Operator of liability assumed by this agreement. (Emphasis added)

Section 14 is crucial to any analysis and understanding of the parties' negotiations with respect to Worker's Compensation and General Liability Insurance. Its language makes clear that **at all times during the term of the contract, the County had the right to secure this insurance independently and deduct the proposed expense from the Annual Operating Budget.** In light of these provisions, the public record conclusively demonstrates that APA had a right to propose insurance solutions in this regard and that MDAD had **the sole discretion** to approve APA's proposed expenses or delete those from the budget. In that regard, Section 14.07 also provided MDAD with a right to examine the original policies of insurance and "to determine the true extent of coverage". These records were at all times available to MDAD and the OIG.

Finally, Article 20 sets forth the dispute resolution mechanisms agreed to by the parties in the event that there is a disagreement or dispute regarding compliance with its terms by either party. The fact that MDAD has never triggered this provision is also compelling evidence of APA's compliance with the terms of the agreement.

We respectfully submit that it is highly troubling to see that the apparent strategy of the OIG is to use its regulatory power to "leverage" an unjust economic settlement of what is in fact a non-existent dispute between the actual contracting parties. In that regard, the OIG would be well-served by reviewing established precedents that stand for the proposition that a government entity may not use its regulatory or police power to leverage its position in a contractual relationship.

Moreover, the OIG's request that the County impose a retroactive Dispute Resolution Provision in the proposed new agreement **as a condition of proceeding with the award** is, in effect, a suggestion by the OIG that the County violate well-established Florida law. As confirmed by Assistant County Attorney Hugo Benitez in a public hearing, a governmental agency may not impose an additional post-submission requirement, applicable only to one proposer, as a condition to proceeding with a contract award. These actions by the OIG call into question the legal propriety of the OIG's recommendations in this regard.

II. The Questioned Reimbursed Expenses

A. 401-k Retirement Plan Contributions

As set forth in APA's August 23, 2007 letter to Ms. Tanya Jackson, of the OIG, the 2.5 percent monthly retirement expense that was repeatedly disclosed and approved in the annual budget process, was an estimate consistent with the overall retirement contributions made by APA's partner, Central Parking Corporation, on behalf of all employees over the past several years to the company's ERISA qualified 401-k Retirement Plan. The methodology utilized to arrive at that figure was fully consistent with provisions of Section 3.10 which states that "the annual operating budget shall reflect the **projections** of the Operator as to monthly and annual totals of revenue and expenses". (Emphasis added)

MDAD, as the drafter of the Management Agreement, is assumed to have been fully cognizant that certain budgeted projected expenses, would, of necessity, be estimates. Depending upon the level of employee participation, in any given year the particular expense may ultimately be below or above the agreed upon percentage. By approving the retirement expense at a constant figure throughout the contract year, the parties, in effect, negotiated a reimbursement for this expense that was easily ascertainable, auditable, and which reflected an agreed upon allocation of risk that no longer fluctuated based on how many employees participated in any given month. The goal of the management agreement was clearly to give MDAD certitude as to the costs involved annually in operating the airport's parking facility. As noted in the preceding Section, once the annual budget had been approved, the Operator had no vested right to obtain additional reimbursement for any expenditure that would exceed the budgeted amount.

The employer matching contribution data clearly indicates that as APA's retirement plan continues to gain acceptance among APA's employees, the amount of employer matching contributions continue to increase. Looking at the current trends, the employer-contributed amount could easily exceed the reimbursable expense sum in future years. Under the current contract, APA would be required to absorb such an overage out of its fees in the absence of a "totally discretionary" approval by MDAD to cover the increased reimbursement amount. Therefore, the evidence shows that both the parties understood that they were negotiating and approving a percentage reimbursement figure that could have resulted in additional cost for **either contracting party**.

Indeed, in this regard we have attached an evaluation by John E. Lucas, J.D., C.P.A., C.P.C., a principal of Bryan, Pendleton, Swats and McAllister, L.L.C. Mr. Lucas (an attorney, a Certified Public Accountant, and a Certified Pension Consultant) whose credentials include over twenty (20) years of experience working with employee benefit programs, reviewed Central Parking System's Pension Plan and confirms that the 2.5% figure is less than the average retirement cost of 3.1% for non-union employees based on the United States Bureau of Labor Statistics. He also points out that, depending upon the level of employee participation, the cost of the program could very well exceed the agreed upon 2.5% figure. He states in pertinent part as follows:

Currently, Central Parking System sponsors a 401(k) plan to provide retirement benefits for its employees. Through the 401(k) plan all eligible employees are offered **fully vested** company matching contribution if they make a 401(k) contribution. The match formula provides the employee with a match of 100% for the first 3% of compensation, plus an additional 50% on the next 2% deferred. Therefore, under the plan, if an employee makes a 401(k) contribution of 5% of pay, that employee will receive a company matching contribution equal to 4% of pay.

Ultimately, this means that Central Parking System's commitment to employee retirement programs may be as high as 4% of its payroll. (See Exhibit (3))

Finally, the OIG notes that CPS and Jackson Memorial Hospital (JMH) entered into the same agreement as the MDAD Agreement, with a reimbursement rate of 2.5 percent of its total payroll as reimbursement for retirement expenses. Thereafter, JMH negotiated a reduction, which reduced it to 1.5 percent of its total salaries. This observation fully supports APA's position that it was wholly appropriate in this industry to reach agreement on retirement contribution expenses as a set percentage of its payroll. Moreover, the fact that JMH negotiated a reduced percentage based on its particular history of employee participation proves APA's point that this item was at all times an issue of contract negotiation, not an analysis of overpayment. Additionally, even though it negotiated a reduction, JMH continued to accept the methodology for calculating expenses to be expressed as a set percentage of the total payroll.

B. Worker's Compensation Insurance

As noted in the Draft Report, "in each of the annual budgets submitted by CPS to MDAD **since the first year of the contract**, CPS has expensed its Worker's Compensation Insurance (WC) premium at the "State Rate" for parking garage employees (Class Code 8392). The "State Rate" is the National Council on Compensation Insurance (NCCI) computed rate for that class of workers in the State of Florida". Therefore, for the last ten (10) years, the public records demonstrate that APA proposed, and MDAD accepted, this easily ascertainable and auditable rate as reimbursement for this required insurance. The OIG Report also notes that "MDAD was aware that CPS was receiving a discount off the State Rate **based on a high deductible that CPS elected to include in its policy**. One MDAD official opined that CPS was entitled to that discount based on CPS' assumption of risk". (Emphasis added)

The Report goes on to describe how CPS received adjustments or discounts to the premium cost that it paid for this insurance. This was a result of its negotiating its policy on a global basis (including all its facilities), its Experience Premium (claims history) **as well as its Loss Reimbursement Plan (a deductible of \$250,000)**. Incredibly, it then

goes on to state that "MDAD did not receive the benefit of these premium reductions". This statement completely fails to account for the fact that only APA (not MDAD) assumed the risk resulting from a high deductible. It fails to explain why MDAD should have received a benefit for reduction for such insurance premium if it was not assuming any portion of that significant risk.

Based on data and methodology **never disclosed in the OIG Draft Report**, the OIG states that "based on the information, rates, adjustments and discounts listed in each annual policy, the OIG determined that portion of the policy premium allocable to CPS' employees working at MIA based on its expensed payroll amounts". **The Report is devoid of any explanation of this "OIG methodology" or of its support based on normal industry analysis of the cost based on allocation of risk.** Moreover, this uneducated analysis fails to account for the fact that actual cost of Worker Compensation claims in any given year cannot be fully determined for several years after the claim is accrued and presented. The OIG failed to take payments and claims handling expenses into account (especially given that this significant factor was emphasized in APA's February 26, 2006 letter to the County, as well as the August 21, 2007 meeting with OIG representatives and APA's August 23, 2007 letter in response to OIG queries). It also failed to recognize that current claims expenses and reserves can grossly underestimate ultimate claims exposures which are as recent as 2004-2006.

APA's proposal to charge these expenses at the "State Rate" and MDAD's acceptance thereof created a negotiated agreed amount for MDAD's exposure on this category of expense which reflects the significant risk shouldered by APA. This method of charging these expenses transfers all of the risk for Worker's Compensation claims costs to APA, and creates incentives for APA to minimize these expenses by conducting its operations in a safe manner, thereby minimizing health and safety risks to its employees. Obviously, the cost of APA's efficient handling of these claims, and its emphasis on worker safety are also not factored into this undisclosed analysis. Respectfully, this type of unknown, non-industry standard, post-mortem analysis would not be accepted by any expert in the field as having any reliability or basis in fact.

- 1) **OIG Failed To Conduct A Basic Market Analysis To Determine Whether APA's Methodology in Calculating the Worker's Compensation Reimbursement Expense Was Consistent With Standard Industry Practice And Whether Its Quotes Were Competitive.**

Finally, we respectfully submit that instead of utilizing obscure and undisclosed methodologies to attempt to support its predetermined conclusions, the OIG should have been enlightened by a market-based analysis. After all, the whole premise behind competitive solicitation for these services is that the market-based approach usually yields proposals that are fairly quoted. Conveniently, the OIG completely ignored the response APA provided to the OIG in its August 23, 2003 letter. In said correspondence, APA noted that in the recent RFP soliciting proposers to provide these services, APA's proposed Worker Compensation reimbursement **was the second lowest as a percentage**

of payroll and in total dollars to its competitors. APA's rate of 5.93% of payroll was slightly higher than the lowest proposed at 5.17%. **The other two proposers' worker compensation reimbursements as a percentage of payroll were 9.24% and 8.44% respectively.** (See Exhibit (4)) As with the current contract, APA's proposal on the Worker's Compensation component was calculated using the "State Rate".

Moreover, we are at a loss to understand why, in the nine (9) months that the OIG invested in reviewing these issues, it made no attempt to ascertain whether the methodology APA used in calculating this expense was consistent with industry practice. The OIG, in its Draft Report, is critical of the fact that APA carries a \$250,000 deductible on its Worker Compensation policy, seemingly seeking to imply that there is something wrong with this practice. Had the IG contacted other service providers in the industry, or simply reviewed the SEC 10-K disclosures of those public companies, it would have learned that the practice of carrying a significant deductible is standard within the industry. For example, Standard Parking Company's 10-K disclosure¹ states as follows:

[W]e purchase Worker's Compensation insurance for all eligible employees and umbrella/excess liability coverage. **Under our various liability and Worker's Compensation insurance policies, we are obligated to reimburse the insurance carrier for the first \$250,000 of any loss. As a result, we are, in effect, self-insured for all claims up to that deductible level ... We believe that our insurance coverage is adequate and consistent with industry practice...** Because of the size of the operations covered and our claims experience, we purchase insurance policies at prices that we believe represent a discount to the prices that would typically be charged to parking facility owners on a stand-alone basis ... **Pursuant to our management contracts, we charge to such clients an allocated portion of our insurance-related costs at rates that we believe are competitive.** (Emphasis added)

This is exactly the methodology utilized by APA in the scrutinized Agreement. In light of our competitors' statements regarding utilization of this methodology in the industry, we cannot understand how the OIG can even imply that APA's practices in this regard are in any way irregular.

AMPCO Systems was another participant in the recent RFP to provide these services. Its parent company, ABM, filed the following disclosures in its 10-K filing:²

[H]istorically, many of our clients have chosen to obtain insurance coverage for their risks associated with our

¹ See Exhibit (5).

² See Exhibit (6).

services, by being named as additional insured under our master liability insurance policies. In addition, **pursuant to our management and service contracts, we charge certain clients an allocated portion of our insurance-related costs, including Worker's Compensation insurance at rates that, because of the scale of our operations and claims experience, we believe are competitive...** The company uses an independent actuary to evaluate estimate claim cost and liability no less frequently than annually **to ensure that its self-insurance reserves are appropriate.** Trend analysis is complex and highly subjective. The interpretation of trends requires the knowledge of all factors affecting the trends that may or may not reflective of adverse developments. (Emphasis added)

Indeed, had the OIG reviewed these public filings and/or sought professional advice, it may have better understood that arriving at a competitive quote is "highly complex and subjective". We respectfully submit that the results of the recent open competitive procurement, and an analysis of standard industry practices, wholly discredit the OIG's finding that the expense calculation utilized by APA is in any way excessive or irregular.

C. Garage Liability Insurance

The methodology utilized by the OIG to speculate that MDAD purportedly overpaid APA for Garage Liability Insurance is equally unsupportable utilizing any industry standards. Thankfully, at least the OIG acknowledges in its Draft Report that it is difficult to arrive at what would be an appropriate amount by which to determine this expense. Indeed, the analysis conducted in any risk assessment model varies greatly. That is why when one obtains three (3) quotes for insuring the same structure, automobile, or other property, one is usually quoted different amounts by all three (3) insurers.

Without any support for its methodology or assumptions, the OIG first analyzes the premium charged to CPS by its insurer for its **nationwide** policy. It then analyzes the reimbursed expense for that year and concludes that because it is approximately ten (10%) percent of the nationwide policy premium it must be excessive. However, within its analysis, it makes no attempt to quantify the additional cost(s) that an insurance analysis would allocate for that \$350,000.00 per occurrence deductible. Indeed, most of the claims expense under the policy is paid by CPS because most claims are less than the deductible.

Apparently struggling to find a methodology that supports the outcome desired by the OIG, it then attempts to analyze the premiums paid in comparison with a recent rate obtained for a stand alone liability insurance policy for MIA (obtained in March of 2007

at MDAD's request). This policy was obtained after APA's request for a quote for the airport parking operation **was declined** by several other carriers and brokers. As the OIG is aware, often times an insurance quote for the first year of policy coverage can be a "low ball" in order to acquire the business; then, the premium is adjusted in subsequent years to reflect true market conditions.

Utilizing the OIG's methodology, assuming one had obtained an automobile liability policy from Allstate for the last three years at \$3,000.00, and in the fourth year obtained a quote from Geico for \$2,000.00, would the OIG conclude that Allstate had overcharged \$1,000.00 a year for its coverage? This example demonstrates the fallacy of the OIG's assessment.

The OIG speculates, by subtracting the current cost of the recent policy from the paid reimbursed expense, that MDAD overpaid in excess of \$100,000.00 per year for Garage Liability Insurance. However, assuming that in each of the last three (3) years, APA had experienced just one claim that had exceeded the \$350,000.00 deductible, would the OIG be asserting that MDAD saved \$750,000.00 in potential liability insurance? (\$1,050,000.00 in self insured payment versus \$300,000.00 assumed excess overpayment).

Respectfully, this unenlightened level of analysis is not what the public would expect of the OIG. Had the OIG sought expert advice on these issues, it would have understood that its analysis had no basis in fact and was clearly unsupportable. Attached as Exhibit (7), you will find the opinion of Roger C. Sullivan, Jr., A.I.C., A.R.M., a distinguished insurance consultant with over thirty seven 37 years of claims, operational management and technical experience as a senior executive in the property and casualty insurance industry. Mr. Sullivan, who serves on a multitude of insurance industry organizations and committees, has also authored several profiles, monographs, and claims reports on industry matters, and has provided expert testimony and appeared on televised panel discussions on diverse insurance issues. Mr. Sullivan was asked to review the 2004 through 2006 commercial general liability and garage keeper's legal liability issues analyzed in the OIG Draft Report. He states as follows:

I reviewed the prior three year (2004, 2005 and 2006) Commercial General Liability and Garage Keeper's Legal Liability claim loss experience, as well as taking into account the following risk characteristics;

- Pedestrian and auto traffic volume of five million customers a year.
- Gross Revenue of \$35,000,000+ per year.
- A parking space count of 8000.

- Location and litigious jurisdiction of Miami-Dade County with the resulting claim of frequency increase in average paid severity and increase cost of defending litigation.

In my professional opinion, the average annual premium of \$211,879 for the three year period was reasonable and reflective of generally observed industry premium cost. In my experience, a risk bearing the aforementioned characteristics would have difficulty in finding a broad market willing to accept this risk without a substantial increase in premium above the current rate.

In the fourth paragraph of the OIG's discussion of this item, it states that, in its opinion, CPS' "explanations" in its February 27th and August 23rd correspondence "do not coincide with the insurance documentation reviewed by the OIG". However, the Report does not list any specific example whatsoever of such inconsistency. The OIG professes to find the voluminous documentation provided by CPS, at the request of the OIG, to be "perplexing". However, there is no evidence that the OIG sought advice and counsel from any insurance expert, that could have easily explained these documents and the significant cost factor involved in the \$350,000.00 of allocated risk to APA.

As with Worker's Compensation, the potential total cost of APA's Liability Insurance with the airport operation can not be currently known by anyone, given that it will likely be several more years before all claims for any of the three (3) policy years are presented, settled, or fully litigated.

1) **OIG Failed To Conduct A Basic Market Analysis To Determine Whether APA's Methodology in Calculating the Liability Insurance Expense Was Consistent With Standard Industry Practice And Whether Its Quotes Were Competitive.**

As with Worker's Compensation Insurance, the OIG chooses to ignore the market-based approach, and instead, embarks on the above-referenced analysis which has no factual or legal support. **Had the OIG reviewed the submissions of the four (4) proposers in the recent RFP to provide these services, it would have found that again, APA proposed the second lowest liability insurance quote using the same methodology employed in the current Agreement.** The two higher quotes exceeded APA's proposed amount by \$33,678 and \$58,323 respectively. (See Exhibit 4) As explained in the previous Section, a review of APA's competitors' practices in regard to liability insurance coverage would have informed the OIG that the methodology utilized by APA is wholly consistent with standard industry practice. In its Draft Report, the OIG states that:

We recognize that Central Parking Corporation, by electing very high deductibles, in essence was self-insured and in

turn acted as its own insurance company charging MDAD for insurance coverage.

Further, in its Conclusion and Recommendations Section, it states that:

Finally, the liability insurance expenditure was simply an unsubstantiated premium that CPS imposed on MDAD.

In essence, without any understanding of standard industry practices, the OIG reaches its own conclusion that the model utilized by APA which includes a significant deductible, is somehow inappropriate and/or that it has somehow overcharged MDAD through use of this methodology. However, because the OIG never conducted any analysis whatsoever to determine standard industry practices, its "conclusion" has no basis in fact. **Indeed, as noted in the Section above, Standard Parking (APA's competitor) has disclosed that it also carries a significant deductible (\$250,000) and, "as a result we (Standard) are, in effect, self-insured for all claims up to that deductible level". Moreover, it asserts that "we (Standard) believe that our insurance coverage is adequate and consistent with industry practice."**³

We respectfully submit that the overwhelming evidence, easily gleaned from public records and public filings, conclusively demonstrates that APA at all times followed standard industry practices in calculating this expense. The evidence shows that it is standard industry practice for companies in the parking business to allocate a premium corresponding to the allocation of self-insured risk. **As stated by Standard Parking in its 10-K disclosure, "[W]e standard charge to such clients an allocated portion of our insurance-related costs at rates that we believe are competitive."** This analysis wholly discredits the OIG's conclusion that APA overcharged for its liability insurance.

Finally, the OIG's attempt to draw a comparison between JMH and MIA operations is very much misplaced given the discrepancy in foot traffic and type of exposure associated with JMH, as compared to MIA. For example, MIA's facility revenue per space is triple the per space revenue of JMH. This reflects significantly increased foot traffic (per space) which translates to a greater exposure (in premium expense) per space.

III. Conclusion

The OIG has engaged in a review of reimbursed expenses, proposed and agreed by the parties through the years, with the benefit of total hindsight. However, when two (2) parties sit at a negotiation table and, in good faith, agree on a methodology for calculating expenses which are driven by variables beyond their control, they are not able to access the proverbial "crystal ball" that would accurately predict outcomes throughout the contract period. Therefore, parties negotiate based on factors known to them at the

³ See Exhibit 5.

time, and allocate risk in a manner acceptable to both parties. The costs of these reimbursable expenses are based on good faith allocations of risk.

The overriding conclusion drawn by APA after having read the Draft Report is that the approach taken by the OIG in this case, varies significantly from that which we've seen from other independent governmental agencies. In contrast to an evidence-based, empirical, neutral approach taken by auditors, the OIG seems to have reached a conclusion at the outset, and then engaged in an undisclosed and unsubstantiated methodology with which it seeks to support its predetermined conclusion. Examples of the OIG's tendentious methodology are found in the leading questions apparently asked of MDAD in connection with Worker's Compensation Insurance (see second paragraph of Worker's Compensation discussion) and the undisclosed and "secret" calculations made by the OIG in developing its "findings" with reference to Worker's Compensation and General Liability Insurance. Perhaps the OIG has consciously refused to disclose its methodology, because it knows that it would be easily discredited by any insurance expert.

Moreover, the fact that the OIG has presented no evidence whatsoever that it even attempted to ascertain normal industry practices, and whether the expense numbers subject to this review were supportable based on a simple competitive market analysis evidences that its conclusions are rank speculations with no basis in fact. In contrast, the evidence presented in this response includes:

1. Public filings by APA's competitors that conclusively prove that the methodology utilized by APA to arrive at these expense numbers is the same methodology used by its competitors and is wholly consistent with standard industry practices.
2. Results of an open and competitive RFP process which demonstrates that, using the methodology in question, APA's quotes for these expenses were highly competitive.
3. Independent expert analysis and opinion which proves that APA's expense calculations are in-line with standard industry practices, and totally supportable based on facts and market conditions.

Respectfully, it borders on reprehensible for the OIG to criticize MDAD or APA for entering into an Agreement that, based on the facts as verified above, was made on terms that were consistent with normal and accepted industry practices, and verified through a competitive market-based methodology.

MDAD and APA operated for the last ten (10) years under a carefully worded Management Agreement, which was drafted by attorneys representing the County. In drafting and managing this Agreement, it cannot be said that the County was in a position

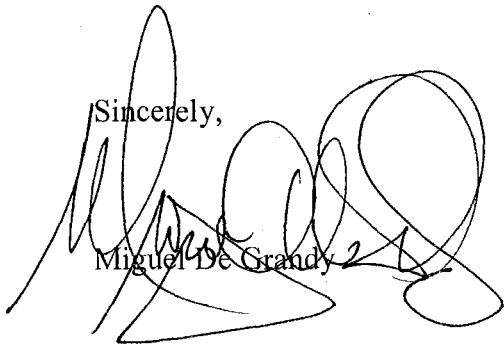
of competitive disadvantage, or somehow overwhelmed by the resources available to APA. Indeed, the County has one of the largest and finest public law offices in the country at its disposal. It can draw expertise from its own Risk Management Division, and has highly trained staff professionals who routinely negotiate and manage contracts of much greater magnitude than the one subjected to this review. For over ten (10) years, the parties have worked well under that Contract, providing top level service to parking patrons at the airport, while collecting and depositing on behalf of the County well in excess of a quarter billion dollars.

In addition to the multi-layered annual budget review process conducted yearly by MDAD, APA's operation was audited annually by an external auditor employed by the Department. Those audits took no issue with APA's methodology in meeting its duties under the management agreement, including the requirement to provide insurance and the reimbursement of retirement expense.

The OIG's investigation has taken several months and has involved the inspection of thousands of pages of documents. Notwithstanding this investment in time and energy, the OIG has not arrived at any supportable findings as to the alleged expense amount for any of the three (3) items listed above that is documented to be inconsistent with the provisions of the Management Agreement.

APA therefore respectfully and emphatically disagrees with each and every one of the OIG's unsubstantiated "findings" and speculative "conclusions" as set forth in the August 30th Draft Report.

Sincerely,


Miguel De Grandy

Attachments

cc: Jim Bond, Airport Parking Associates
Ben Parrish, Airport Parking Associates
George Burgess, County Manager
Jose Abreu, Aviation Director

MIGUEL DE GRANDY P.A.

ATTORNEYS AT LAW

MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL



APPENDIX B

**Response Submitted by the
Miami-Dade Aviation Department**

FINAL REPORT

*Non-Exclusive Management Agreement Between
the Miami-Dade Aviation Department and Airport Parking Associates for the
Operation of the Public Parking Facilities at Miami International Airport*

IG07-04

Memorandum



Date: September 13, 2007

To: Christopher Mazzella, Inspector General

From: José Abreu, Aviation Director *JA*

Subject: ***Response to Draft Report of the Non-Exclusive Management Agreement Between the Miami-Dade Aviation Department and Airport Parking Associates for the Operation of the Public Parking Facilities at Miami International Airport***

The Miami-Dade Aviation Department ("MDAD" or the "Department"), appreciates the time and effort expended by the Office of the Inspector General ("OIG") in conducting the above investigation, as well as the professionalism of its staff.

The conclusion of your investigation is the culmination of the concerns about the insurance expenditures that were first reported to the OIG by the Department's Risk Management Division in August 2006, and discussed in detail with OIG's staff in October 2006. You will also recall that shortly thereafter, I asked that the OIG formally investigate the anonymous allegations that began in December 2006, and urged the OIG to thoroughly examine subsequent accusations. The Department further requested the OIG's suggested modifications to the new contract before the investigation was complete, and re-opened negotiations to implement those modifications, in addition to additional terms and conditions to safeguard the Department and Miami-Dade County (the "County").

In summary, given the Department was the entity which first contacted the OIG and identified potential issues with the contract, we are at a loss to understand the hostile, accusatory tone of the OIG's report. The goal should be to unearth ANY improprieties associated with this, or any contract involving the Department, rectify said improprieties, and implement measures to ensure such improprieties cannot be repeated. The Department has furthered this objective by fully funding the staff and expenses of a satellite OIG office at MDAD and actively supporting its work. Therefore, in spite of the aforementioned tone, we continue to look forward to a partnership with the OIG, whose work we consider to be an integral part of the Department's internal control system.

Contract Management Issues

The Department agrees that the amounts paid for retirement plan matching, workers' compensation insurance, and garage liability insurance exceeded the actual cost incurred by the parking management company. The department does not agree that payment of these charges was due to "mere accounting mistakes on behalf of MDAD" nor "unwitting reliance on CPS' monthly Reimbursable Expense Report." The Department also takes exception to the OIG's repeated assertion that these expenditures should have been verified and recomputed monthly.

Response to OIG Report
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In the past, the Department vested a great deal of authority in its contract managers, particularly those overseeing management agreements. Although this is no longer the practice, the insurance and retirement plan-related decisions made by the Landside Division during the term of the current parking management agreement were consistent with contract administration practices and the agreement as negotiated over ten (10) years ago. The fact that these decisions may be deemed less than prudent today does not necessarily mean they arose from a lack of oversight (as the OIG's report states). This is particularly true regarding insurance (especially workers' compensation), which is widely misunderstood.

Role of the Risk Management Division

The Risk Management Division's function is to advise the Department, as to (i) appropriate insurance terms in contracts, and (ii) ensure that complying insurance certification is maintained for all entities requiring insurance. Risk Management neither conducts detailed audits of compliance with the insurance provisions of contracts, nor routinely reassesses insurance requirements for existing contracts (absent extenuating circumstances). Instead, its focus is to protect the County by determining that all entities doing business on aviation property are properly insured. MDAD's internal control structure is currently organized so that Risk Management's involvement is at the inception of a contract. At that point it is responsible for ensuring that the most advantageous insurance requirements are included in the contract document(s), and monitoring compliance with those terms over the life of the agreement. This requirement is memorialized in Departmental Standard Operating Procedure ("DSOP") Number 07-01, attached hereto.

Risk Management staff became aware of the issues associated with the insurance arrangement in the parking contract in 2006 when Landside asked for help in drafting the insurance clauses in the proposed contract. Shortly thereafter they contacted the OIG. The Department believes that the staff of Risk Management reacted appropriately and timely by immediately contacting the OIG. To imply that another course of action would have been preferable or should have been taken is evident only when viewed from the vantage of hindsight.

Conclusion and Recommendation

The Department has made a number of organizational changes in the ten (10) plus years since the current parking contract was awarded. The Landside Division no longer manages the parking management agreement. Commercial contracts (such as the parking management agreement) are now managed by the Commercial Operations Division. This arrangement gives primary responsibility for aviation-related functions to operating divisions and concentrates business oversight in the Business Retention & Development and Finance and Strategy Divisions. Further, contract managers are no longer permitted to make decisions of this sort without consulting the relevant intradepartmental experts and the County Attorney's Office.

Response to OIG Report
Page 3 of 3

The Risk Management Division, as stated above, now reviews the insurance requirements of all contracts prior to award and advises as to the suitability of both coverage and the form of the policy. The Finance Division now independently reviews reimbursement packages for propriety.

Going forward, the Department intends to exercise the audit provision in the existing contract, which allows an audit to be performed up to three (3) years after the termination of the contract, to obtain a more comprehensive picture of its fiscal history.

The Department also, of its own volition, addressed the OIG's concerns by re-opening negotiations on the proposed contract and strengthening insurance and other provisions, including prohibiting reimbursement of estimated expenses of any kind. The Department will also require that all services and procurement completed by the management company must be conducted through a competitive process that entails a minimum of three (3) bids unless circumstances justify a lesser number or sole source.

In summary, although the OIG repeatedly asserts that there was no oversight on the parking management agreement, this is simply not proven and not factual. To equate oversight of all the operational aspects of the management agreement (which were not investigated) with this single issue is overreaching. Nevertheless, the Department believes that the control improvements enumerated above will significantly decrease the likelihood of similar problems in the future.

I look forward to reviewing your final report with recommendations as well as APA's response before making a recommendation to the County Manager.

Departmental Standard Operating Procedure
Miami-Dade County Aviation Department
DSOP No. 07-01
Effective: June 20, 2007

SUBJECT: MDAD RISK MANAGEMENT REVIEW AND APPROVAL OF ALL MANAGEMENT AGREEMENTS, LEASES, PERMITS, CONCESSION AGREEMENTS, PROFESSIONAL SERVICE AGREEMENTS, CONSTRUCTION CONTRACTS AND PROCUREMENT AGREEMENTS

PURPOSE AND SCOPE: To establish uniform policy and procedures for all written Miami-Dade Aviation Department (MDAD) agreements to be reviewed by MDAD Risk Management for appropriate insurance language while in the draft stage and again prior to being made available to potential contractors.

I. AUTHORITY:

DSOP No. 00-01, Departmental Standard Operating Procedures

II. DEFINITIONS:

A. Contracts - for the purposes of this DSOP, include but are not limited to:

1. Purchase Orders and Blanket Agreements (POs)
2. Professional Engagement Agreements (PEAs) – previously PSAs
3. Project Specific Services Agreements (PSSAs) – Professional Agreements
4. Concession Agreements
5. Permits
6. Leases
7. Bond Agreements
8. Construction Contracts
9. Management Agreements.

B. Contract Managers - for the purposes of this DSOP, include but are not limited to:

1. Project Managers
2. Property Managers
3. Program Managers
4. Individuals authorized by the Aviation Department to order, coordinate, or direct the provision of goods or services from an entity outside the Aviation Department as part of their assigned duties.

III. POLICY:

- A. It is the policy of the Department that its Contracts contain insurance requirements to protect the Aviation Department and Miami-Dade County against losses, claims and lawsuits as result of Contractor negligence.

DSOP 07-01
Page 2 of 3

- B. It is the policy of the Department that the insurance language in all new and renewal Contracts be reviewed for accuracy by MDAD Risk Management while in the draft stage and again after any amendments are made to the contract language prior to being made available to potential contractors.
- C. MDAD Risk Management shall review and approve evidence of insurance prior to execution of the Contract and commencement of Contractor operations.
- D. MDAD Risk Management shall have the responsibility of establishing an insurance file on Contracts and maintaining and monitoring the insurance throughout the term of the Contract.
- E. MDAD Risk Management will notify the appropriate Division in the event of non-compliance with the insurance requirements.

IV. PROCEDURES FOR INSURANCE CONTRACT LANGUAGE REVIEW AND FINAL CONTRACT APPROVAL

- A. All drafts of new or renewal Contracts must be submitted to MDAD Risk Management for review of the insurance language.
- B. The final draft of the Contract document must be submitted again to MDAD Risk Management prior to being made available to contractors for a final review of insurance language to insure that any recommended changes are incorporated in the final document.
- C. The Contract Manager shall collect the initial required insurance documents before the execution of the Contract and/or commencement of operations and submit to MDAD Risk Management for approval.
- D. All Contracts must have the MDAD Risk Management stamp and signed approval of insurance before execution/commencement of the contract and/or before occupancy occurs.

V. MONITORING AND MAINTAINING OF INSURANCE AND NON-COMPLIANCE PROCEDURES

- A. MDAD Risk Management shall establish a file to maintain and monitor the insurance for all Contracts until termination of the agreement.
- B. MDAD Risk Management will send reminders to each Contractor in the month preceding the insurance expiration with the Department and will copy the MDAD Contract Division Manager on the letter.
- C. If the renewal certificate is not received prior to expiration, a non-compliance list will be sent to the responsible Division Director and Assistant Aviation Director with a request that MDAD Risk Management

DSOP 07-01
Page 3 of 3

be notified within 30 days of the action taken in response to the non-compliance to protect the Aviation Department and Miami-Dade County.

D. Contract Managers will promptly notify MDAD Risk Management in writing when the name on a Contract changes or a new entity assumes a Contract. The Contract Manager must obtain new insurance under the new name for MDAD Risk Management approval.

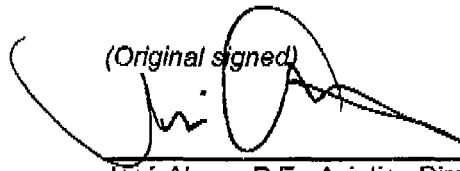
E. Contract Managers will notify MDAD Risk Management in writing when a contract is terminated/expired/completed so that MDAD Risk Management can close its file on the respective contract.

VI. RISK MANAGEMENT REVIEW OF INSURANCE REIMBURSABLE ITEMS IN MANAGEMENT AGREEMENTS

Contract Managers handling Management Agreements which include insurance as a reimbursable item will submit all invoices pertaining to insurance to Risk Management for approval prior to payment. All requests for approval must have complete documentation of expenses attached.

REVOCATION: None

CROSS REFERENCES:

(Original signed)


José Abreu, P.E., Aviation Director
Date: 6/20/07