

Management Review

of the

**City Hall Parking Garage Lease Agreement and
Monthly Reimbursement of Operating Expenses
to the Lessee, DBSI ST Tower LLC**

Report of Audit 06/07-XX-01

November 1, 2006



Office of Management and Budget

Internal Audit

MEMORANDUM NO. 07-08

DATE: November 1, 2006

TO: Director of Parking and Fleet Services/John Hoelzle

SUBJECT: *Review of the City Hall Parking Garage Lease Agreement and Monthly Reimbursement of Operating Expenses to the Lessee, DBSI ST Tower LLC*

Enclosed is the “subject” Final Report of Audit.

Allyson C. Love
Director, Office of Management and Budget

Attachment - Final Report of Audit 06/07-XX-01

c: City Commission
City Manager/George Gretsas
Assistant City Manager/David Hebert
Assistant City Manager/Kathleen Gunn
Assistant City Manager/Stephen Scott
Director of Finance/Betty Burrell

ACL/vf

REPORT OF AUDIT NO. 06/07-XX-01

DATE: October 12, 2006

TO: Director of Parking and Fleet Services/John Hoelzle

FROM: Assistant Internal Audit Director/Renee Foley

BY: Financial Management Analyst/James Hamill

SUBJECT: *Review of the City Hall Parking Garage Lease Agreement and Monthly Reimbursement of Operating Expenses to the Lessee, DBSI ST Tower LLC¹*

BACKGROUND

The City of Fort Lauderdale (City), Lessor, entered into an Assignment of Lease and Assumption Agreement with DBSI Housing, Inc. (DBSI), the Lessee, on December 21, 2004² through December 15, 2050, for the operation and maintenance of the City Hall parking garage, a shared use facility which opened in 1984. The City's Parking and Fleet Services Department (Parking Services) is functionally responsible for the administration and oversight of the lease agreement. The Lessor has metered parking spaces for the public and City employee parking spaces on the 1st/ground and 4th/rooftop levels. The Lessee has parking spaces on the 2nd and 3rd levels and has outsourced Property Management of the Parking Garage to Transwestern Commercial Services (Transwestern). Transwestern provides oversight of the Facility Manager, Midtown Lanier Parking, Inc. dba Lanier Parking Systems (Lanier), a DBSI subcontractor that operates the Parking Garage on a day-to-day basis. Lanier pays the operating expenses of the Parking Garage as they are incurred and provides a monthly invoice to request reimbursement thereof from the Lessor and Lessee according to a proportionate sharing of these costs as specified in the lease agreement.

SCOPE

The overall objective of this review was to evaluate the effectiveness of the internal controls over the review and approval of the monthly City Hall Parking Garage invoices, the appropriateness of the charges, and the adequacy of the management procedures used to govern contract compliance with the lease

¹ The Primary Lessee is DBSI Housing, Inc. even though the Assignment and Assumption Agreement states DBSI ST Tower LLC.

² DBSI assumed the lease agreement from RSP II Barnett Bank Plaza, Ltd. (RSP), the former Lessee.

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agreement. The review covered transactions and documents from November 2004 through October 2005. The review was completed during June through July 2006 and included testing of Lessee's compliance with the insurance and ad valorem tax requirements/obligations contained in the lease agreement. The review was completed in accordance with generally accepted government auditing standards.

OVERALL EVALUATION

Improvement in management oversight/monitoring is needed by the City to validate compliance of the terms and conditions of the lease agreement. The Lessee's ad valorem tax requirements may not have been in compliance, resulting in an estimated nonpayment of \$871,388³ in tax revenues from 1984 when the property was added to Broward County's tax roll, if it is determined that a separate tax parcel should have been created for the Lessee's taxable portion of the parking garage. Our analysis of 12 back-up invoices from a sample of 5 monthly invoices revealed the charges were reasonable, appropriate and adequately supported. However, management and administrative fees on monthly parking invoices were not billed in accordance with the lease agreement resulting in an underpayment. No effective tracking and monitoring system was in place to evidence the insurance certificate was received and approved since neither Parking Services nor Risk Management could provide evidence of Certificate of Insurance approval. The City did not identify areas of non-compliance concerning specified limits and ensure the company was licensed by the Insurance Department of the State of Florida. Furthermore, an annual comprehensive monitoring of the lease agreement to verify Lessee's compliance with pertinent/significant requirements should be performed with all areas of non-compliance actively pursued to resolution.

FINDING 1

The Lessee may not be in compliance with the ad valorem tax requirement in the lease agreement, if it is determined that a separate tax parcel should have been created for the Lessee's taxable portion of the parking garage.

Lease agreement, Section 6. Taxes, Assessments and Utility Charges states, A. "Subject to the provisions of 6.D below, Lessee shall pay or cause to be paid all real estate taxes, assessments and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term imposed upon, become due and payable, or become

³ Calculation of the estimated present value since 1984, when the facility opened to present.

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a lien upon the Premises, Lessee's share of the Common areas.... Lessee will, upon request, exhibit receipt for such payments to the Lessor annually.... E. At the request of Lessee, Lessor shall cooperate with Lessee to have the Premises treated as a separate parcel for the purpose of taxation."

Our review of the Lessee's requirement to pay ad valorem taxes on the City Hall Parking Garage revealed the entire building and land may have been erroneously exempted from taxes based on a Broward County Property Appraiser (BCPA) Code 14 Municipal tax exemption. The current (DBSI) and former (RSP) Lessees have never paid ad valorem taxes since 1984 when the City Hall Parking Garage was added to Broward County's tax roll. The Lessee's portion of the parking garage referred to as the "Premises"⁴ was never treated as a separate parcel for the purposes of taxation. If it is determined that the property should have been partially taxable, the City would have collected \$871,388 in ad valorem taxes had the Lessees paid tax on one-half⁵ of the property value (**Schedule**).

Management had not taken steps to determine whether the Lessee should have treated the "Premises" as a separate parcel for the purpose of taxation.

Monitoring tax requirements and other significant terms and conditions of the lease agreement will maximize tax revenues due to the City and assure Lessor/Lessee compliance.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Parking and Fleet Services* should require the *Parking Services Financial Administrator* to:

Recommendation 1. *Immediately consult with the City Attorney to research whether property should be exempt or partially taxable. If property is determined to be only partially taxable, research through the BCPA⁶ the amount of back taxes that should be billed to the former and current Lessees for the City Hall Parking Garage. The current and former lessees should be sent an invoice*

⁴ The 2nd and 3rd level of the City Hall Parking Garage and the pedestrian bridge.

⁵ Fifty percent (50%) was used to represent a reasonable estimate based on the Lessee occupying two of the four floors in the Parking Garage. The information to perform a more precise allocation based on square footage was requested; however, was not readily available.

⁶ The BCPA subsequent to the completion of our audit fieldwork initiated an audit of the City's leased properties. We received notice on 9/29/06 from the BCPA about a proposed assessment of back taxes totaling \$583,447.33 for the years 2003 to 2005 on the City Hall Parking Garage. The City has 30 days to appeal the assessment.

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to request reimbursement for the back taxes once final amounts have been determined. Furthermore, contact the Broward County Property Appraiser to have a separate tax parcel created for the taxable portion of the City Hall Parking Garage referred to as the Premises.

Management Comment. *Management concurred with the finding and recommendation and stated:* “Parking sent a memo, dated October 20, 2006, requesting the City Attorney’s Office to pursue a resolution to this issue based on the prior meeting held with Legal, the Finance Department, and OMB and the letter received from the Broward County Property Appraiser’s Office Senior Attorney on this subject.” **This item is closed.**

Recommendation 2. *Perform an annual comprehensive monitoring of the lease agreement to verify the Lessee’s compliance with significant terms and conditions in the lease agreement, and thoroughly document/maintain results.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “Parking’s Financial Administrator will continue to monitor compliance with this agreement and document results.” **This item is closed.**

FINDING 2

The Lessee incorrectly billed the 3% Management and Administrative Fees on their monthly invoices to the City resulting in a \$3,243 underpayment.

Lease agreement, Section 7.C (4) “Administrative and Management Fees shall be three (3%) percent of the total operating expenses, including attendant labor costs.”

Our review of 5 of (100%) 5 monthly invoices from November 2004 to October 2005 included incorrectly billed/paid Management and Administrative Fees totaling a \$3,243 underpayment due to the Lessee, as follows:

Month	Monthly Invoice Calculation per IA	Amount Paid to the Lessee	Due to Lessee
Nov 04	\$11,293.98	\$10,598.73	\$ 695.25
Jan 05	7,984.87	7,395.97	588.90
Feb 05	7,328.33	7,056.26	272.07
Jun 05	8,363.74	7,892.96	470.78
Oct 05	8,695.88	7,479.69	1,216.19
Total	\$43,666.80	\$40,423.61	\$3,243.19

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Parking Services was aware that the Lessee was incorrectly billing the Management and Administrative Fees on monthly invoices; however, they did not return invoices to the Lessee for correction.

Returning invoices for correction to the Lessee that include incorrectly billed charges will assure compliance with the lease agreement and that proper payment is made and recorded by the City.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Assistant Parking Services Manager* should require the *Parking Services Financial Administrator* to:

Recommendation 3. *Review and recalculate all City Hall Parking Garage monthly invoices according to the payment criteria in the lease agreement since DBSI Housing, Inc. became the Lessee in January 2005, and refund the total amount due to DBSI according to the results of this analysis.*

Management Comment. *Management concurred in principle with the finding and recommendation and stated:* “Management concurs with the recalculation of the Management and Administrative fees. However, Management does not wholly agree with the above calculation of the difference between the amounts due to the Lessee and the amounts paid. DBSI allocates only portions of some invoices for products and services, based on the actual amount attributable to the City Hall Garage and Parking feels it would be improper to pay a larger portion of the invoice than DBSI allocates to the facility. Parking’s Financial Administrator will recalculate the Management and Administrative fees as noted and contact DBSI by November 30, 2006 and request that the next invoice reflect the additional amounts due so that payment may be made.” **Estimated completion date November 30, 2006.**

Recommendation 4. *Establish written procedures to properly calculate the 3% Administrative and Management Fees according to the lease agreement. Send a copy of the procedures to the following:*

1. *Lessee, DBSI.*
2. *Property Manager, Transwestern Commercial Services.*
3. *Facility Manager, Lanier Parking Systems.*

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Management Comment. *Management concurred with the finding and recommendation and stated:* “Parking’s Financial Administrator will create these procedures and forward them as recommended after review by the Director of Parking and Fleet Services.” **Estimated completion date December 31, 2006.**

FINDING 3

The Lessee did not comply with the insurance requirements specified in the lease agreement and the City did not identify areas of noncompliance.

An analysis of the September 1, 2005 through 2006 Insurance Certificate to verify compliance with the contractual requirements revealed the following deficiencies.

Lease Agreement, Section 17 Insurance Requirements	Condition Found
(A) At all times during the term of this Lease, the Lessee, at its expense shall keep or cause to be kept in effect the following:	The City did not maintain the certificate on file to verify compliance of insurance requirements.
(1) Fire and extended coverage on the Parking Garage structure, improvements, fixtures and machinery contained therein constructed in the Parking Garage by Lessee or on Lessee's behalf in an amount equal to at least \$5,000,000 and co-insurance of at least 80% of full insurable value of such improvements.	Not shown on certificate.
(3) A comprehensive general liability insurance policy against any and all liability in the amount of not less than \$1,000,000 in respect to any one person, in the amount of not less than \$3,000,000 in respect to injuries or death attributable to any one occurrence, and in the amount of not less than \$500,000 in respect to destruction or damage to property of others.	General Aggregate coverage is only \$2,000,000 opposed to \$3,000,000.
(4) Elevator liability insurance at minimum coverage of \$1,000,000 for any one incident, \$1,000,000 property damage per incident.	Not shown on certificate.
(5) Garage keepers' legal liability, fire, explosion, theft of automobile, collision, riot, civil commotion, vandalism and malicious mischief, \$1,000 deductible.	Not shown on certificate.

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Lease Agreement, Section 17 Insurance Requirements	Condition Found
(D) All policies of insurance provided for in this Lease (ii) shall be issued only by companies licensed by the Insurance Department of the State of Florida.	Selective Insurance Company of South Carolina hasn't been licensed in the State of Florida since 1995. According to the Secretary of State, their Corporate Registration in Florida was revoked in 1995.

No effective system was in place to track and monitor that the Certificate of Insurance was evidenced and in effect. Neither Parking Services nor Risk Management had a copy of Lessee's Certificate of Insurance on file; thus, no verification to determine whether it met the minimum required limits specified in the lease agreement was performed.

Monitoring compliance of insurance requirements will limit the City's liability exposure and provide assurance that the City's assets are protected.

RECOMMENDATIONS AND MANAGEMENT COMMENTS

The *Director of Parking Services* should require the *Assistant Parking Services Manager* to:

Recommendation 5. *Send a letter to the Lessee to require them to rectify the insurance deficiencies noted above and provide an updated current certificate, then forward a copy to the Risk Manager for approval. Once approved, the Risk Manager should send the approval via e-mail. This e-mail approval should be printed and maintained with original insurance certificates in the contract file as proof of liability coverage.*

Management Comment. *Management concurred with the finding and recommendation and stated:* "The letter will be written and mailed to DBSI Housing as recommended by November 13, 2006. Documentation of the revised insurance certificates will be retained by Parking, and Parking will request the Risk Manager to approve as recommended. A copy of such approval will be requested and stored in the contract file." **Estimated completion date November 13, 2006.**

Recommendation 6. *Require the Financial Administrator on an annual basis to send a letter to the Lessee to request an updated current certificate prior to the*

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expiration date. If certificate is not received, a follow-up letter should be sent within 14 days after the letter is mailed or faxed to obtain updated current insurance certificate. If a current insurance certificate is not received within 20 days of the 2nd attempt, any and all work and/or payments should be discontinued until proof of liability is confirmed.

Management Comment. *Management concurred with the finding and recommendation and stated:* “It is Parking’s understanding that new insurance tracking software will be made available by the Procurement Services Department before the end of calendar year 2006 and will implement this program for all relevant contracts. If this software is not made available by then, Parking’s Financial Administrator will modify the internal tracking to comply with the recommendation.” **Estimated completion date December 31, 2006.**

Recommendation 7. *Require the Parking Services Financial Administrator to review Insurance Certificates submitted annually for compliance with the lease agreement and any deficiencies should be immediately followed-up in writing to the Lessee. After deficiencies have been resolved, the Insurance Certificate should be forwarded to the Risk Manager for final quality review/approval.*

Management Comment. *Management concurred with the finding and recommendation and stated:* “Same comment as in Recommendation 6.” **Estimated completion date December 31, 2006.**

FINDING 4

The Parking Facility Management Agreement between the former Lessee, RSP, and Lanier had not been updated to reflect the new Lessee, DBSI. Furthermore, the records retention requirement specified in the Management Agreement with the former Lessee, RSP, is still being honored by DBSI and is considerably less than the City’s usual records retention requirement.

All secondary agreements should properly reflect at all times all parties associated with the lease agreement.

Lease agreement, Section E Current Repairs: (3) states, “All books and records of Lessee pertaining to the Project described herein shall be available for inspection or audit for at least three (3) years after the Project is completed....”

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Parking Facility Management Agreement between the former Lessee, RSP, and Lanier Parking Systems, Section 10 states, "Manager shall establish and maintain, in accordance with generally accepted accounting principles consistently applied, accurate and complete books of accounts with proper entries of all receipts, income and disbursements pertaining to the Parking Facility. Such books of account shall be the property of the Owner and shall be available to Owner and their representatives in their entirety for inspection at any time during regular business hours. If this Agreement is terminated for any reason, all such records shall be promptly delivered to Owner (Manager may retain copies). Manager agrees that it will keep records for one (1) year of Gross Revenues and Operating Expenses pertaining to the operation of the Parking Facility."

During our review of the Parking Facility Management Agreement between RSP and Lanier Parking Systems, we found the agreement was not updated to reflect the new Lessee, DBSI. Furthermore, the records retention period was one year, which is not consistent with the City's usual three-year records retention period.

Parking Services had never requested from DBSI a copy of the subcontractor's agreement with Parking Services to determine if the specified terms and conditions were in agreement with the City's usual contractual policy terms and conditions and that the agreement had been updated to reflect the new Lessee, DBSI.

Establishment of contractual agreements with a minimum three year retention period will assure the City's usual retention requirements are met and avoid audit scope restrictions due to lack of records.

RECOMMENDATION 8

The Director of Parking Services should require the Parking Facility Management Agreement be updated to include the current Lessee, DBSI, and revise the minimum retention period specified in the agreement from one (1) to three (3) years.

MANAGEMENT COMMENT

*Management concurred with the finding and recommendation and stated: "Parking will consult with the City Attorney's office and request that the contract amendments be drafted as recommended. For executed amendments and Commission approval, **estimated completion date March 31, 2007.**"*

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EVALUATION OF MANAGEMENT COMMENTS

Management comments provided and actions taken and/or planned are considered responsive to the recommendations.

City of Fort Lauderdale - OMB/Internal Audit
Analysis of City Hall Parking Garage Ad Valorem Taxes Due from the Lessee

Schedule

Tax Year	Property Assessment Values		Total Assessed Value	Lessee Portion - Total Assessed Value (50%) *	Millage Rate	Ad Valorem Taxes Due	5% Future Value factor	Future Value of Lessee Ad Valorem Taxes	Total
	Land	Building							
2006	\$ 5,375,790	\$ 7,797,320	\$ 13,173,110	\$ 6,586,555	5.4313	\$ 35,774	1.00	\$ 35,773.56	
2005	5,119,800	7,797,320	12,917,120	6,458,560	5.7698	37,264.60	1.05	39,127.83	\$ 74,901.39
2004	4,949,140	7,797,320	12,746,460	6,373,230	5.1970	33,121.68	1.1025	36,516.65	
2003	2,303,910	7,797,320	10,101,230	5,050,615	5.2685	26,609.17	1.1571	30,789.47	\$ 67,306.12
2002	2,133,250	7,508,080	9,641,330	4,820,665	5.3730	25,901.43	1.2159	31,493.55	
2001	1,706,600	7,508,080	9,214,680	4,607,340	5.5664	24,755.24	1.2768	31,607.49	
2000	1,279,950	7,508,080	8,788,030	4,394,015	5.5664	24,458.85	1.3398	32,769.97	
1999	1,279,950	7,089,600	8,369,550	4,184,775	5.6733	23,294.13	1.407	32,774.84	
1998	1,023,960	7,089,600	8,113,560	4,056,780	5.8209	23,015.33	1.47735	34,001.70	
1997	1,023,690	6,352,000	7,375,690	3,687,845	5.7373	21,466.58	1.55085	33,291.45	
1996	1,023,690	6,352,000	7,375,690	3,687,845	5.9069	21,158.27	1.62855	34,457.30	
1995	1,023,690	6,352,000	7,375,690	3,687,845	5.7860	21,783.73	1.71045	37,259.98	
1994	1,023,690	6,352,000	7,375,690	3,687,845	5.5651	21,337.87	1.7955	38,312.15	
1993	1,023,690	6,341,960	7,365,650	3,682,825	5.5651	20,495.29	1.8858	38,650.02	
1992	1,023,690	6,341,960	7,365,650	3,682,825	5.1493	20,495.29	1.9803	40,586.82	
1991	1,023,690	6,341,960	7,365,650	3,682,825	5.1055	18,963.97	2.079	39,426.09	
1990	1,023,690	6,341,960	7,365,650	3,682,825	5.2005	18,802.66	2.18295	41,045.27	
1989	1,023,690	6,341,960	7,365,650	3,682,825	5.0869	19,152.53	2.29215	43,900.47	
1988	1,023,690	6,341,960	7,365,650	3,682,825	4.9675	18,734.16	2.4066	45,085.63	
1987	1,023,690	6,341,960	7,365,650	3,682,825	4.3613	18,294.43	2.52735	46,236.43	
1986	1,023,690	6,341,960	7,365,650	3,682,825	4.1988	16,061.90	2.65335	42,617.84	
1985	1,023,690	6,341,960	7,365,650	3,682,825	4.0479	15,463.45	2.786	43,075.76	
1984	1,023,690	6,341,960	7,365,650	3,682,825	3.9541	14,562.26	2.925	42,588.01	
Total Estimated FY 2006 Future Value of Ad Valorem Taxes Due from Lessee								\$ 871,388.27	\$ 142,207.51
Legend:									
	Ad Valorem Taxes for 2006 and 2005 due from current Lessee, DBSI Housing, Inc.								
	Ad Valorem Taxes for 2004 and 2003 due from former Lessee, RSP II Barnett Bank Plaza Ltd.								
*	Fifty percent (50%) was used to apportion the assessed value to represent a reasonable estimate based on the Lessee (DBSI Housing, Inc.) occupying two of the four floors in the Parking Garage. The information to perform a more precise allocation based on square footage was requested; however, was not readily available.								
Note:									
1) The City Hall Parking Garage was added to the tax roll effective January 1, 1984.									
2) Pursuant to Chapter 193.092(1), Florida Statutes, reassessment of the taxable value of the property includes a period of three (3) years for back taxes in addition to the assessment for the current year.									