New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

New York City Airport Lease

Port Authority of New York and New Jersey

Report 2014-S-28

April 2017

Executive Summary

Purpose

To determine whether the Port Authority of New York and New Jersey was in compliance with certain key terms of the lease and ancillary agreements with New York City for the municipal airports. The audit covers the period from January 1, 2002 to December 31, 2013.

Background

New York City (City) and the Port Authority of New York and New Jersey (Port Authority) negotiated a lease agreement (lease) for the land and structures at John F. Kennedy (JFK) and LaGuardia (LGA) airports. The lease was executed on November 24, 2004. The lease term extends 49 years, from January 1, 2002 through December 31, 2050. It amended an existing lease, scheduled to expire in 2015, and is the culmination of 13 successive leases or amendments beginning on April 17, 1947. The lease required the Port Authority to pay the City a lump sum of $500 million and an additional lump sum of $280.2 million at execution. The Port Authority's certified financial statements show these lump sum payments were made.

The lease also required the Port Authority to pay a base rent at the greater of either Minimum Annual Rent (MAR) or 8 percent of the annual gross revenue from various sources such as scheduled airline terminal rentals, flight fees, tenant parking, retail vendor percentage fees, and fixed rentals and fuel farm fees. For the years 2004-06, the lease set the MAR at $93.5 million. Subsequent to 2006, the MAR is reset every five years, to 10 percent of the average annual gross revenues of the prior five years. For the period 2007 through 2011, the MAR was $102.8 million, and for the next five-year period (2012 through 2016), the MAR is $129.8 million. Also, ancillary agreements to the lease required the Port Authority to fund capital projects in Queens, establish an Airport Board and provide $60 million in its capital plan for feasibility studies of direct rail links from Downtown Manhattan to JFK and Newark Liberty airports.

Key Findings

- Based on our testing, we believe the Port Authority has complied with the terms related to base rent payments to the City.
- The Port Authority had not fully complied with the terms of the ancillary agreements, which included an obligation to provide information and support to the Airport Board.
- Based on an agreement between the Port Authority and the City, the City assumed responsibility for one of the Port Authority's responsibilities under the ancillary agreements – to fund $100 million of capital projects in Queens. Although the lease agreement projected that Queens residents would have the full benefit of the $100 million in capital projects by December 31, 2009, by the end of fiscal year 2014-15 (or nearly a decade after the agreement was signed), the City had committed $24.9 million, but expended only $6.3 million of the $100 million earmarked for capital projects. Subsequently, for the 2015-16 through 2019-20 fiscal years, additional funding commitments totaling about $75 million were made.
- The Port Authority has not used the Aqueduct Parcel, a 26-acre parking lot adjacent to the Aqueduct race track, as required by the lease terms. The lease prohibits the Port Authority from using (or permitting the use of) the Aqueduct Parcel for any purpose other than employee and

long-term parking lot facilities supporting JFK Airport. However, the Port Authority had a permit agreement with the New York Racing Association (NYRA), for the period February 1, 2013 to January 1, 2016, which allowed NYRA to use a portion of the property for parking. Under the terms of the lease, if the entire Aqueduct Parcel was not used for the purpose required by the lease, the City could terminate the lease by paying the Port Authority the fair market value of the Port Authority's interest in the parcel.

Key Recommendations

- Actively coordinate with City officials to ensure that all identified capital projects, pursuant to the 2004 lease agreement, are funded and completed in a timely manner.
- In conjunction with the City, take the necessary steps to reconvene the Board and have the Board fulfill its responsibilities under the lease.
- Deliver a final report to the Steering Committee for its approval, and take appropriate action to determine whether to proceed with the project, and if approved, include funding provisions for the One-Seat Ride Access between Lower Manhattan and JFK Airport.
- Comply with the lease terms by using the Aqueduct lot for employee and long-term parking lot facilities supporting JFK Airport or obtain formal approval from the City for use of the parcel before signing off on any permit/contract for other use.

Other Related Audit/Report of Interest

Port Authority of New York and New Jersey: Inspecting Highway Bridges and Repairing Defects (2012-S-34)

State of New York
Office of the State Comptroller

Division of State Government Accountability

April 19, 2017

Mr. John Degnan
Chairman
Port Authority of New York and New Jersey
4 World Trade Center
150 Greenwich Street
New York, NY 10007

Dear Mr. Degnan:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *New York City Airport Lease*. This audit was performed pursuant to the State Comptroller's authority as set forth in Section 7071 of McKinney's Unconsolidated Laws of New York.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

New York City (City) and the Port Authority of New York and New Jersey (Port Authority) negotiated a lease agreement (lease) for the land and structures at John F. Kennedy (JFK) and LaGuardia (LGA) airports. The lease was executed on November 24, 2004 and extends 49 years, from January 1, 2002 through December 31, 2050. The lease amended an existing lease scheduled to expire in 2015 and represents a continuum of 13 leases dating back to April 17, 1947. The lease required the Port Authority to pay the City a lump sum of $500 million and an additional lump sum of $280.2 million at execution. The Port Authority's certified financial statements show these payments were made.

The lease further required the Port Authority to pay base rent at the greater of either Minimum Annual Rent (MAR) or 8% of the annual gross revenue from various sources such as scheduled airline terminal rentals, flight fees, tenant parking, retail vendor percentage fees, and fixed rentals and fuel farm fees. For the years 2004-06, the lease set the MAR at $93.5 million. Subsequent to 2006, the MAR is reset every five years, to 10 percent of the average annual gross revenues of the prior five years. For the period 2007 through 2011, the MAR was $102.8 million. For the next five-year period (2012 through 2016), the MAR is $129.8 million.

Also, ancillary agreements to the lease required the Port Authority to fund capital projects in Queens, establish an Airport Board and provide $60 million in its capital plan for feasibility studies of direct rail links from Downtown Manhattan to JFK and Newark Liberty airports.

Audit Findings and Recommendations

Ancillary Agreements

Queens Capital Projects

The lease between the City and the Port Authority for the municipal airports required the Port Authority to pay the City $100 million for capital projects in Queens. Specifically, the Port Authority was required to pay the City up to $20 million each year from 2005 through 2009. The City, in turn, was required to identify the projects to be funded, and it identified 17 capital projects for Queens shortly after the agreement was made. Several additional capital projects were identified subsequently. Upon receipt of invoices from the City, certifying the payments of the costs of the capital projects, the Port Authority was required to reimburse the City for such costs. If the Port Authority did not pay the entire $100 million by January 1, 2010, payments of any outstanding amounts would be made in subsequent years.

However, as of 2009, the Port Authority had made no payments to the City for capital projects in Queens. According to Port Authority officials, some of the costs of the projects proposed by the City were not eligible for funding, as capital expenditures, under the terms of the Queens Capital Projects agreement. Officials added that in May 2009, the Port Authority and the City agreed to a lease amendment, wherein the City would assume funding of the Queens Capital Projects through relief from its separate and distinct $100 million liability to the Port Authority for the Queens West Property. Pragmatically speaking, the City agreed to forgo the $100 million in revenues (to fund the Queens Projects) from the Port Authority in exchange for the Queens West Property. The Queens West Property parcel is located along the East River in Queens, directly across from Midtown Manhattan.

Neither Port Authority nor City officials, however, could provide a formal appraisal or other independent assessment of the value of the transferred property. Port Authority officials stated that a formal appraisal of the property, which had a book value of about $75 million in 2009, was not required. Port Authority officials also stated that prior to the May 2009 agreement, the City agreed that in exchange for the transfer of the Queens parcel to the City, the Port Authority would receive $100 million at the closing, be relieved of approximately $45 million in additional capital investment obligations, and receive rights to certain future revenues to recover its initial capital investment outlays. However, because the Port Authority agreed to transfer the parcel without the receipt of $100 million from the City or relief from its $45 million capital investment obligation, Authority officials concluded that the City received reasonable value through the transfer.

Moreover, although the agreement projected that Queens residents would have the full benefit of the $100 million in capital projects by December 31, 2009, by the end of fiscal year 2014-15 (or nearly a decade after the agreement was signed), the City had committed $24.9 million, but expended only $6.3 million of the $100 million in question. For the 2015-16 through 2019-20 fiscal years, additional commitments totaling about $75 million were subsequently made. Thus, at the time we concluded our audit fieldwork, a total of about $100 million in commitments had been made through the 2019-20 fiscal year. A listing of the capital projects, including their descriptions and amounts of funding commitments through the end of the 2015-16 fiscal year, is presented in Exhibit A.

Recommendations

1. Prior to signing an agreement for the disposition of real property, formally appraise the value of such property to ensure that adequate compensation is received.

2. Actively coordinate with City officials to ensure that all identified capital projects, pursuant to the 2004 lease agreement, are funded and completed in a timely manner.

Airport Board

Another ancillary agreement to the lease requires the Port Authority to create an Airport Board (Board) to review, on a quarterly basis, the operations and performance of the Municipal Air Terminals. The lease further requires the Port Authority to:

- Pay $100,000 annually directly to the New York City Economic Development Corporation (EDC), increasing by 3 percent each year, for the purpose of funding Municipal Air Terminal liaison functions;
- Pay up to $250,000 annually for the Board's consultants who are to review and report on the operations and performance of the Municipal Air Terminals; and
- Transmit quarterly reports to the Board. The quarterly reports were intended to monitor certain performance indicators and measures, including market share, passenger service, cargo service, operations, capital spending, quality of service, and community relations.

According to the Board's bylaws, the Board was to consist of eight appointed members including:

- Four members appointed by the New York City Mayor;
- The Port Authority Chief Operating Officer;
- The Port Authority Director of Aviation;
- The Director of JFK Airport; and
- The Director of LGA Airport.

The initial four members appointed by the New York City Mayor were:

- Daniel Doctoroff, Deputy Mayor for Economic Development and Rebuilding, New York City;
- Andrew Alper, President, EDC;
- Helen Marshall, Queens Borough President; and
- Iris Weinshall, Commissioner, New York City Department of Transportation.

Under section 2(a) of the Agreement, the Board was to continue to exist until the expiration of the lease agreement or its termination (if prior to expiration). However, according to Port Authority officials, the Board stopped meeting about 10 years ago, but was never formally dissolved. Port Authority officials also indicated that City members demonstrated little apparent interest in meeting as a Board. Further, Port Authority officials advised us that they initially sent quarterly reports to the Board; however, Board members evidently had little use for them.

In the absence of a functioning Board, EDC (as Lease administrator) assumed certain functions of the Board, including: whether to retain the services of consultants to review and report on the operations and performance of the New York airports; and approving and authorizing the selection of consultants among those currently on call or issuing a Request for Proposal. However, based on our review of the ancillary agreement, these responsibilities remained with the Board, since it was never formally dissolved.

Moreover, in the absence of a functioning Board, there has been no independent oversight body to monitor and report on municipal air terminal operations and finances for nearly a decade. The lack of adequate oversight may have contributed to the rather limited compliance with the provisions of the lease agreement pertaining to the $100 million in capital projects for Queens.

Recommendation

3. In conjunction with the City, take the necessary steps to reconvene the Board and have the Board fulfill its responsibilities under the lease.

Feasibility Study of Lower Manhattan to JFK Airport Access Ride

As part of the ancillary agreements, the Port Authority included in its 2004-08 capital plan a $60 million project to study the engineering, operational, and financial feasibility of providing One-Seat Ride Access between Lower Manhattan and JFK Airport. If the Port Authority determined the project was feasible, the Port Authority would include funding for this project in future capital plans in an amount equal to the $500 million cost estimate for the Newark Liberty International Airport Extension or the funding actually provided for that extension, whichever is greater. According to Port Authority officials, they initially funded the required study, but subsequently merged their work with the Metropolitan Transportation Authority (MTA), Lower Manhattan Development Corporation, and EDC, which were conducting similar studies. These agencies formed a Steering Committee to oversee work on the merged feasibility study.

The end product was a multi-agency study of the feasibility of various alternatives and was entitled the “Lower Manhattan Airport and Commuter Access Alternatives Study, 2004.” The study determined that the most feasible strategy to develop a link between Jamaica, Brooklyn, and Lower Manhattan and provide access improvements to JFK Airport was to provide a direct rail link from Jamaica to Lower Manhattan via the existing Long Island Rail Road Atlantic Branch and to build a new tunnel underneath the East River and Lower Manhattan. The project was funded by the MTA. Subsequently, a draft report (dated October 2011) addressing the various alternatives that were reviewed was presented to the Steering Committee. At the time we completed audit fieldwork, the draft report had not been finalized.

As a Steering Committee member, the Port Authority was required to approve the recommendations of the study. However, according to Port Authority officials, the study has not been officially finalized because all four parties have not agreed on its results. Further, because the study has not been ratified by the four parties, the Port Authority has made no plans to allocate funds for its resulting capital projects. At the time our fieldwork concluded, the Port Authority's capital plans for the period 2014-23 did not include a funding allocation for a project to provide access to Lower Manhattan from JFK Airport. (Note: In responding to our draft audit report, Port Authority officials stated that the Governor of the State of New York and his Airport Advisory Panel recently called for the examination of a one-seat ride from Manhattan to JFK, and the Port Authority intends to work with the MTA and other stakeholders on this matter.)

Recommendation

4. Deliver a final report to the Steering Committee for its approval, and take appropriate action to determine whether to proceed with the project, and if approved, include funding provisions for the One-Seat Ride Access between Lower Manhattan and JFK Airport.

Aqueduct Parcel

On December 11, 1992, the Port Authority and the New York Racing Association (NYRA) agreed to allow NYRA to use the Aqueduct Parcel, a 26-acre parking lot adjacent to the Aqueduct race track, in accordance with the terms and conditions of the NYRA License Agreement. On May 1, 2005, the Port Authority terminated the NYRA License Agreement, and the Aqueduct Parcel reverted back to the Port Authority, for use as stipulated in the lease. The lease states that "…the Port Authority shall not use or permit the use of the Aqueduct Parcel for any purpose other than long-term and employee parking lot facilities supporting the John F. Kennedy International Airport." If the entire Aqueduct Parcel was not used for the purpose required by the lease, the City could terminate the agreement by paying the Port Authority the fair market value of its interest in the parcel.

However, based on site visits made on October 19, 2014, November 12, 2014, November 23, 2014, and December 11, 2014, we determined that the Aqueduct Parcel was not used for employee and long-term parking and no construction work has begun or is in progress. (See Exhibit B.) Moreover, NYRA had a permit agreement with the Port Authority, for the period February 1, 2013 to January 1, 2016, granting NYRA the right to use a portion of the property for parking. However, the lease does not permit the Port Authority to allow NYRA to use this property for any other purpose without consent of the City, and there was no evidence that the City consented to the permit with NYRA. This permit requires NYRA to pay a fee of $33,750 per month for the use of this property. The permit also grants NYRA authorization to use the entire parcel on one day in April and two days in November of each year for an additional fee. We found that NYRA paid the Port Authority the permit fees for use of the parcel.

Port Authority officials disagreed with our findings, stating that they complied with the lease by intermittently using the Aqueduct Parcel for parking by a contractor's employees. However, Section 20.1.2 of the lease states "the Port Authority will be deemed to have commenced use of the Aqueduct Parcel for a use permitted under Section 20.2 only when construction work required in connection with a project (including the site preparation work) has actually begun and continues with reasonable diligence on the Aqueduct Parcel, and not because design or other planning work has begun for a project at the Aqueduct Parcel." When we requested documentation to support construction work, Port Authority officials did not provide any records.

Recommendations

5. Comply with the lease terms by using the Aqueduct Parcel for employee and long-term parking lot facilities supporting JFK Airport.

6. Obtain formal approval from the City for use of the parcel before signing off on any permit/contract for other use.

Revenues

The lease defines the Port Authority's revenue as all monies obtained from a prescribed list of sources, one of which is Terminal Rentals revenue. The municipal lease agreement, Section 4.1.ii, requires the Port Authority to pay ground and terminal rental fees for the usage and occupancy of specific sections of the airport and abatement fees for the demise or demolition of any portion. The Terminal Rentals revenue comprises a combination of revenues from fixed rentals, minimum annual rentals, and additional rentals and abatement revenues determined by the specific agreement with the tenant.

For the three years reviewed, we determined that the amount of additional revenue that would have been required for the annual lease payment to exceed the MAR would have been $114.7 million, $158.7 million, and $134.5 million in 2007, 2012, and 2013, respectively.

The lease requires the Port Authority to report all income received or revenue derived from any source including airport rentals. We reviewed seven revenue categories (flight fees, miscellaneous, special project bonds, public vehicular parking, scheduled airline terminal rentals, rental car percentage fees, and resale of electricity). We reviewed the revenues for six of these categories for three selected years (2007, 2012, and 2013). For flight fees, we reviewed 2007 and 2012 revenues. We identified some relatively immaterial exceptions for terminal rentals, resale of electricity, and flight fees. However, the differences we identified were not sufficient to change the amount paid based on the MAR. Also, we found that revenues from the other four areas (miscellaneous, special project bonds, public vehicular parking, and rental car percentage fees) were in compliance with the lease terms.

Audit Scope, Objective, and Methodology

Our audit objective was to determine if the Port Authority was in compliance with certain key terms of the lease and ancillary agreements with New York City for the municipal airports. The audit covers the period from January 1, 2002 to December 31, 2013.

To accomplish our objective, we interviewed Port Authority officials to obtain an understanding of internal controls related to the lease with New York City. We also obtained an understanding of the lease accounting and revenue accounting procedures. We reviewed the Port Authority lease for the municipal airports and the ancillary agreements. We interviewed officials from the EDC and the City Department of Small Business Services to obtain an understanding of their monitoring and oversight responsibilities.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Section 7071 of McKinney's Unconsolidated Laws of New York.

Reporting Requirements

We provided a draft copy of this report to Port Authority officials for their review and formal comment. The Port Authority's comments were considered in preparing this final report and are attached in their entirety to it. In their response, Port Authority officials disagreed with most of our recommendations. Regarding certain matters, officials asserted that they could not properly assess the actions that may be required of the Port Authority without prior knowledge of the positions of New York City officials on those same matters. Nonetheless, officials indicated that corrective actions were taken to reinstate the use of performance standards and the related quarterly reporting of performance statistics, as well as the use of the Aqueduct Parcel. Also, our rejoinders to certain Port Authority comments are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, we request that the Chairman of the Port Authority of New York and New Jersey report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

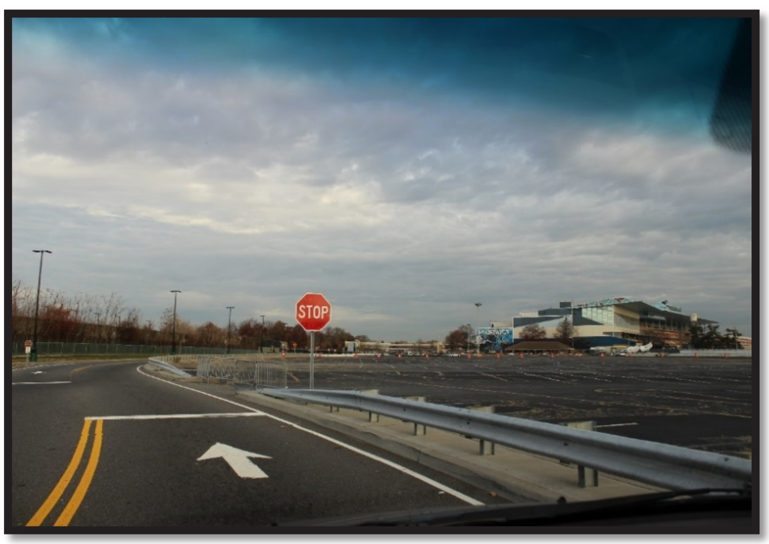
Summary of Funding Commitments for Queens Capital Projects Through Fiscal Year 2014-15

Project Description	Project Amount (in $1,000s)
FA - GJDC Station Plaza Acquisition	-
GJDC - Station Plaza Design	-
Station Plaza Design & Construction	-
GJDC Station Plaza Acquisition	2
FA - GJDC Station Plaza	156
28th Avenue and Linden Place Area	-
FA - Rockaway Blvd	-
Columbus Plaza	-
FA - College of Aeronautics	-
Idlewild Park Site B	-
Idlewild Park Marsh Nature Center	73
Beach 20th St. Plaza Improvements	394
GJDC AAE and Station Plaza CM	158
GJDC - Atlantic Avenue Extension - Construction	2,141
Jamaica Center - Atlantic Avenue Acquisition	3,356
Willets Point Redevelopment Infrastructure	1,928
Willets Point Environmental	5,902
FA - Willets Point Above Ground Demolition	-
FA - Willets Point URA Subgrade Improvements	-
Willets Point Ramps	-
Willets Point Relocation	650
Willets Point Relocation	13
Willets Point Relocation	500
Arverne Urban Renewal Area	5,000
Queens West Library	2,000
Rockaway Bulkhead Between Riis Park and Beach 116th	2,630
Total	**$24,903**

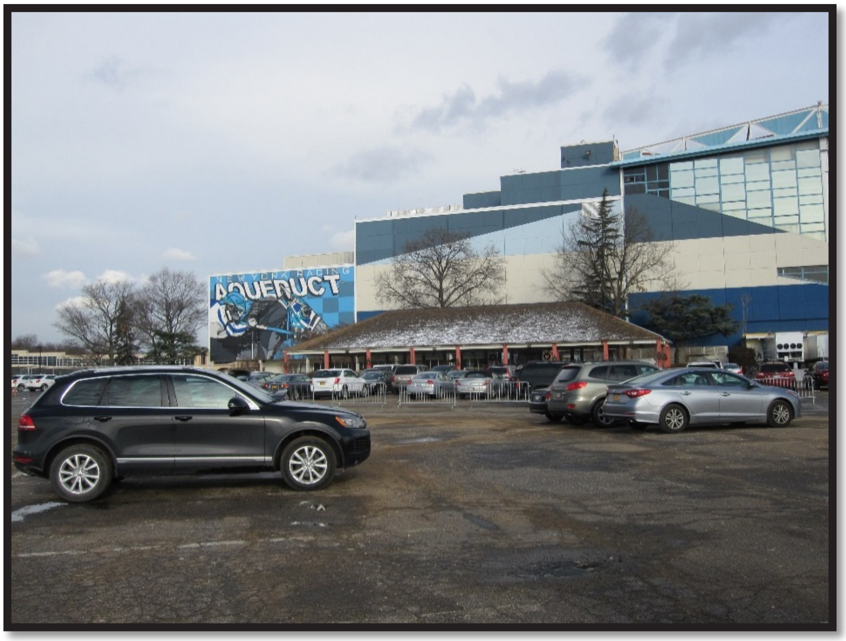
Exhibit B

These pictures show the Aqueduct Parcel was mostly unused at the times of our site visits:

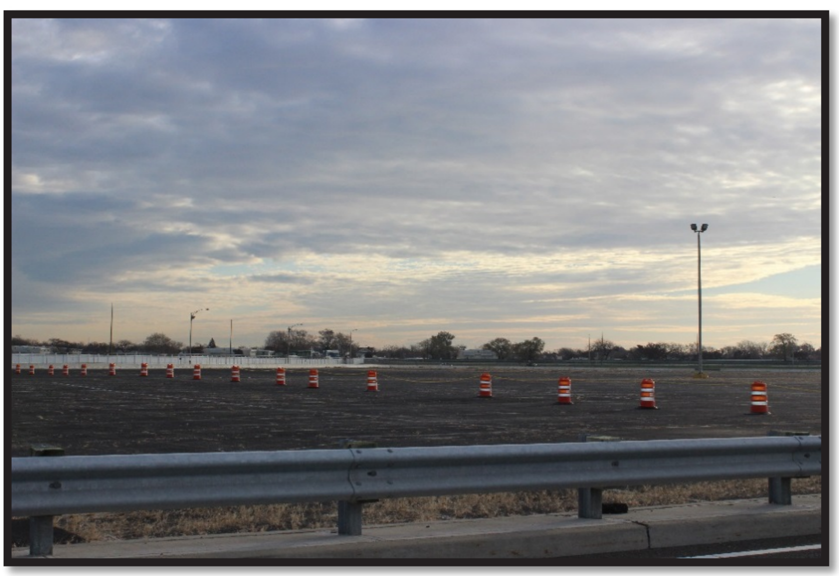
Aqueduct Parcel parking lot.



Barricaded entrance to the Aqueduct Parcel.
Actual entrance is at NYRA.



Parking for patrons at the Aqueduct Parcel pursuant to NYRA's permit with the Port Authority.



Plastic drum barricades delineating NYRA's area from the Port Authority's area.

Agency Comments

THE PORT AUTHORITY OF NY & NJ

Stephanie Dawson
Chief Operating Officer

January 17, 2017

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

Attached is the response from the Port Authority Director of Aviation to the audit of the New York City Airport Lease.

Stephanie E. Dawson

Stephanie Dawson
Chief Operating Officer

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THE PORT AUTHORITY OF NY & NJ

January 18, 2017

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
123 William Street, 21st Floor
New York, NY 10038

Re: Response to NYS Audit of New York City Lease

Dear Ms. Maldonado:

Thank you for the opportunity to respond to your draft audit report dated December 1, 2016 covering the New York State's Comptroller's Office review of the Amended and Restated lease agreement between the City of New York (The City) as lessor and The Port Authority of New York and New Jersey (The Port Authority) as lessee dated November 24, 2004. We appreciate the efforts that you and your staff have taken to assess the actions taken by the Port Authority relative to our compliance with the terms of the referenced lease agreement. We are pleased that you have concluded that all applicable rental payments due the City of New York were made in accordance with the lease terms.

In addition, we have provided specific responses to each of your observations and recommendations below as they relate to the terms and conditions of certain ancillary agreements that were also executed as part of the 2004 amended lease agreement. Please note, that a number of the recommendations you make require action by the City, as the lessor, and without prior knowledge of their position on a number of these issues, we, as the lessee, cannot properly assess the actions that may be required of us.

We would like to note that this audit was commenced after a previous audit of Aviation Revenues conducted by your office was cancelled subsequent to the completion of fieldwork with no findings or issuance of a draft report.

Queens Capital Projects

The Agreement to Fund Queens Projects requires the Port Authority to pay the City $100 million for capital projects in Queens, and provides for the City to identify up to $20 million of capital investment to be so funded per year between 2005 and 2009. The Port Authority's obligations under this agreement were assumed by the City as a portion of the consideration given by the City in its acquisition from the Port Authority of certain property at Hunters Point, Queens

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New York State Comptroller Recommendations

1. Prior to signing an agreement for the disposition of real property, formally appraise the value of such property to ensure that adequate compensation is received.

2. Actively coordinate with City officials to ensure that all identified capital projects, pursuant to the 2004 lease agreement, are funded and completed in a timely manner.

Port Authority Response

The Port Authority disagrees with this recommendation. The transaction you refer to was more than a disposition, it was a swap of obligations, which was an arms-length negotiation between the two parties. The City and the Port Authority determined that the value exchanged for resolution of the two issues, which included institutional concerns and qualitative aspects in addition to economic elements, met their independent needs. Therefore, a formal appraisal was not necessary.

* Comment 1

Both the selection of specific capital projects and the obligation to make the investments are the sole responsibility of the City of New York, and the Port Authority has no control over what projects arc approved and funded and the timing of such investment being made However, the Port Authority is certainly available and willing to work with the City once individual projects are identified.

Airport Board

The Airport Board Agreement requires the Port Authority to create an Airport Board to review on a quarterly basis the operations and performance of the Municipal Air Terminals.

New York State Comptroller Recommendation

3. In conjunction with the City, take the necessary steps to reconvene the Board and have the Board fulfill its responsibilities under the Lease.

Port Authority Response

The Port Authority does not agree with this observation. At the inception of the revised City Lease in 2004, the City of New York believed an Airport Board was necessary to protect the City's interests and to facilitate dialogue between the City and the Port Authority. Currently the Port Authority and the City have a very good working relationship. Already much interaction takes place between staff members at all levels as it relates to airport operations and capital

* Comment 2

*See State Comptroller's Comments, page 22.

THE PORT AUTHORITY OF NY & NJ

investment in the airports. The Port Authority believes formal meetings of the Airport Board are unnecessary.

Additionally, the Port Authority and NYC EDC have re-established the standards and statistics that the Port Authority will report on based on a quarterly reporting schedule starting in 1Q 2017.

* Comment 3

Feasibility Study of Lower Manhattan to JFK Airport Access Ride

The Direct Rail Agreement required the Port Authority to perform a study on the feasibility of a one-seat ride between JFK and Lower Manhattan.

New York State Comptroller Recommendation

4. Deliver a final report to the Steering Committee for its approval, and take appropriate action to determine whether to proceed with the project, and if approved, include funding provisions for the One-Seat Ride Access between Lower Manhattan and JFK Airport.

Port Authority Response

The Port Authority disagrees with this recommendation. The report, as issued, was acceptable to the majority of the stakeholders. As was explained, the Metropolitan Transportation Authority could not issue a final study until all four parties agreed. In addition, the Governor of the State of New York and his Airport Advisory Panel just recently called for the examination of a one-seat ride from Manhattan to JFK and the Port Authority intends to work with the MTA and other relevant stakeholders on that recommendation. Additionally, we note that the Port Authority has committed $2.5 billion in its recently released draft 10-year capital plan to upgrade the Airports' infrastructure to facilitate, among other benefits, access improvements at LaGuardia and JFK.

* Comment 4

Aqueduct Parcel

The lease provides for allowable uses of the Aqueduct Parcel.

New York State Comptroller Recommendations

5. Comply with the lease terms by using the Aqueduct Parcel for employee and long-term parking lot facilities supporting JFK Airport.

THE PORT AUTHORITY OF NY & NJ

6. Obtain formal approval from the City for use of the parcel before signing off on any permit/ contract for other use.

Port Authority Response

Section 20.2 of the Lease restricts the activities for which the Port Authority *may* use the Aqueduct Parcel. Specifically, without the City's written consent, the Parcel may not be used for "any purpose other than long-term and employee parking lot facilities supporting the John F. Kennedy International Airport." However, neither Section 20.2 nor any other part of the Lease imposes an affirmative obligation on the Port Authority to continuously use the Aqueduct Parcel for long-term and employee parking.

Nevertheless, as was explained to your staff, the Port Authority has periodically used the Parcel for parking for the employees of contractors constructing capital projects on the airport. Given the magnitude of future capital projects anticipated at JFK, the Port Authority expects to do so again in the future to minimize the cost of contractor parking and related matters for future JFK capital projects.

On May11, 2016 the NYC EDC consented to a lease (AYE 448) between the New York Racing Association (NYRA) and the Port Authority for the use of a portion of the Parcel. Additionally, NYCEDC and the PA have agreed on a procedure by which NYCEDC would approve future requests for occasional use of the Parcel.

* Comment 5

Huntley A. Lawrence

Huntley A. Lawrence
Director
Aviation Department

State Comptroller's Comments

1. One of the key elements of a strong internal control system is documentation. According to standards of internal control promulgated by the State Comptroller, by recording information related to significant events, "… management creates an organizational history that can serve as justification for subsequent actions and decisions and will be of value during self-evaluations and audits." Regarding this transaction, Port Authority officials state that "The City and the Port Authority determined that the value exchanged for resolution of the two issues, which included institutional concerns and qualitative aspects in addition to economic elements, met their independent needs." They assert that this was an "arms-length negotiation." However, without any documentation (such as an appraisal), the public and decision makers had limited assurance that the Port Authority received appropriate "value" for the disposed real property. Moreover, when this disposition was negotiated, the Port Authority and New York City had a pre-existing business relationship, as New York City was (and still is) the lessor for the Port Authority's lease of the JFK and LaGuardia Airports. An arms-length transaction generally requires that the affected parties be independent and have no formal pre-existing relationship which could provide one party with advantage over the other.
2. Under the terms of the contract, the Airport Board (Board) has certain responsibilities, including the selection and retention of consultants. Under the Board's bylaws, half of its members are appointed by New York City. These Board members' terms are not time-limited. Instead, their tenures end only after they resign or are removed from the Board, and their replacements are named. Currently, none of the Board's New York City members are employed by New York City. Further, we are pleased that New York City and the Port Authority have a good working relationship. However, this does not change the fact that the current Board (that includes four private citizens) is still, under the terms of the contract, tasked with certain responsibilities, including reviewing the standards and statistics that the Port Authority now intends to report, starting in the first quarter of 2017. Moreover, there is no evidence that the Board's current members formally delegated the responsibilities in question to the persons who are currently carrying out the related job functions.
3. We are pleased that the Port Authority and the City have re-established the standards and statistics that the Port Authority will report on based on a quarterly schedule starting in 1Q2017. However, this is only part of the solution. For about 13 years, these statistics were not provided or reviewed, and without a formal process to ensure appropriate oversight, this deficiency may happen again.
4. Although the Port Authority disagreed with the recommendation, the actions referenced by Port Authority officials are nonetheless consistent with the recommendation's general intent. Thus, we urge the Port Authority to fulfill the request from the Governor and the Airport Advisory Panel to prepare an "examination of a one-seat ride from Manhattan to JFK." To the extent practical, the Port Authority should use the work from the existing feasibility study and draft report, as referenced on pages 8 and 9 of this audit report, to help perform the recently requested examination.
5. We are pleased that the Port Authority and the City have taken corrective action regarding the use of the Aqueduct Parcel.